

REPORT ON AN INVESTIGATION INTO EVENTS
SURROUNDING THE LIMMUD CONFERENCE
AT WITS MEDICAL SCHOOL ON 9 AND 10 AUGUST 2009

INTRODUCTION

1. On 9 and 10 August 2009 an external organisation, Limmud, held a conference on the Wits Medical School campus. The University had hired out the venue for this purpose. One of the speakers invited by Limmud to participate in the conference was Lt Col David Benjamin, an officer in the Israel Defence Force.
2. Two organisations at Wits, the Palestine Solidarity Committee and Amnesty International (Wits Branch) objected to the fact that Lt Col Benjamin would be speaking on the campus.
3. In the event, Lt Col Benjamin did speak at the Limmud conference. Demonstrations were staged both on and outside the campus. Various disputes and complaints arose from these events.
4. The Vice-Chancellor decided that an investigation should be conducted into the matter, and appointed me to undertake this. The terms of reference of the investigation were stipulated as follows:

“To investigate the events leading up to and during the Limmud conference which took place on 9 and 10 August 2009, and in particular to investigate:

- (1) claims that “racial profiling” and/or inflammatory slurs took place;*
- (2) assertions that the University unreasonably attempted to prevent students from legitimate protest action;*
- (3) an allegation that the University did not respond seriously and timeously to the issue;*
- (4) whether the University exercised its proper responsibility with regard to ensuring proper control and use of the venues hired to an external organisation. If necessary recommendations should be made on this issue”.*

5. By means of a widely distributed e-mail, I invited members of the Wits community and interested members of the general public to provide me with relevant information which would assist me in conducting the investigation. I also invited people who wished be interviewed to indicate this, and to provide a summary of what information they would be able to provide.

6. I received written communications from 74 people. I then conducted interviews at the University over a period of three days. In all, I interviewed 25 people. A list of those who responded to the e-mail and/or were interviewed

is attached to this report as Annexure A. I also undertook an inspection of the premises at the Medical School where the events in question took place.

7. This is my report on the investigation which I carried out.
8. I wish to express my appreciation to those people who came forward to provide information. I am grateful for the frank way in which they expressed themselves. I also wish to record my appreciation to Ms Asma Ooni, of the office of the Vice-Chancellor, who made all of the logistical arrangements for the enquiry in an extremely efficient, courteous and pleasant manner.
9. The structure of this report is as follows:
 - 9.1 I first provide an account of the facts of what happened on the days in question.
 - 9.2 I then analyse why events transpired as they did.
 - 9.3 I then respond to the specific issues raised in my mandate, and deal with other matters which arose during the course of this investigation.
 - 9.4 I conclude with a series of recommendations for consideration by the University.

THE FACTS OF THE EVENTS LEADING UP TO AND AT THE LIMMUD CONFERENCE

10. Limmud is an organisation which seeks to create a space in which all Jews can explore the various facets of their Jewish identity. It attempts to create a diverse and inclusive forum in which any Jew can experience the full gamut of Jewish opinion and belief. One of the ways in which Limmud seeks to achieve its goals is through the holding of an annual conference, which is offered in various cities. The 2009 Johannesburg conference was held at the Wits Medical School campus on 9 and 10 August.
11. This was the third occasion on which Limmud used the Wits Medical School as the venue for its Johannesburg conference. This has been possible because from time to time, Wits hires out its facilities for use by external organisations.
12. The meetings held by such organisations are not part of the academic activities of the University. The University does not seek to exercise any control or influence over who is invited to speak at such events.
13. In this particular instance, one of the persons invited by the conference organisers was Lt Col David Benjamin, a former South African who served as a legal adviser to the Israel Defence Force. It appears that Lt Col Benjamin had a role in advising the Israel Defence Force with regard to its conduct in Gaza during December 2008. That conduct has, of course, been a matter of considerable international controversy. It is alleged that war crimes were

committed during the course of that conduct. It is not within my brief to express any view as to whether that is the case: it is sufficient for the purposes of this investigation to note that this is a matter which has excited considerable controversy and passion.

14. One of the organisations on the Wits Campus is the Palestine Solidarity Committee (Wits PSC). It learnt on the weekend of 1-2 August that Lt Col Benjamin would be speaking on the campus at the Limmud conference the following weekend. On Monday 3 August it held a meeting to discuss the matter. The consequence of this meeting was that at 16h45 on Wednesday 5 August, the Wits PSC sent a fairly lengthy e-mail to the Vice-Chancellor referring to the matter. Because of the importance of this e-mail, a copy is attached to this report (annexure B).

15. The e-mail referred to the imminent presence of Lt Col Benjamin on the Medical School campus. It pointed out that Lt Col Benjamin was one of a number of persons who were alleged to be guilty of war crimes arising out of the events in Gaza in December 2008, and that a number of people in South Africa, including Prof John Dugard, had been party to a dossier which had been lodged with the National Directorate of Public Prosecutions on Monday 3 August 2009, alleging war crimes on the part of a number of Israeli political and military figures. In this e-mail, the Wits PSC urged the University to disallow Lt Col Benjamin from speaking on the campus, and further called for the University *“to formally dissociate itself from him”*. It stated further:

“We as students who find the presence of Benjamin inimical to the values of the university and justice will not let it go unrecognized and will join the protest of the speaker should Wits grant him the space to proceed with his presentations”.

16. The e-mail did not state what the Wits PSC would actually do if the University did not accede to its call for Lt Col Benjamin to be disallowed from speaking on the Campus. It said that the PSC would *“join the protest of the speaker”*, but did not say what protest it would *“join”*, and whether this would take the form of a demonstration or some other form of protest (of which there are of course many) - or whether, if there would be a demonstration, when and where it would take place.
17. For some reason, the e-mail was not received by the Vice-Chancellor. He became aware of the matter at approximately 16h30 the following day, Thursday 6 August, when the Wits PSC sent him another e-mail as a reminder, and asked how Wits intended to proceed with the matter. The Vice-Chancellor responded at 16h55, stating that he had not received the original message although it had the correct e-mail address, and that he would consult with members of the Senior Executive Team about this. He said further that he would unfortunately have to leave for the Eastern Cape by 12h00 on the following day (Friday).
18. On Friday 7 August, by way of an e-mail sent at 12h03, the Wits branch of Amnesty International informed the Vice-Chancellor and other members of

Senior Management that it supported the request by the Wits PSC for the University to intervene in the hosting of Lt Col Benjamin.

19. The University administration had by now realised that this developing situation could give rise to conflict. There have previously been incidents of conflict on the campus around issues of Israel and Palestine. Before this exchange of e-mails had taken place, the senior members of the University administration had not been aware at all of the impending conference, which had been arranged administratively through the Medical School. They had also been unaware of the intended presence of Lt Col Benjamin as a speaker on the campus.
20. On the morning of Friday 7 August Ms Lamese Abrahams of the Division of Student Affairs telephoned Mr Desai of the Wits PSC. She asked him what they were planning. Mr Desai told her that she should speak to COSATU with regard to its plans. As far as the Wits PSC was concerned, he said that their actions would be determined by the response of Senior Management to their e-mail. He did not say that they were planning to hold a demonstration if the University administration did not accede to their requests.
21. That morning the Registrar (Dr Swemmer) established the basic facts regarding the conference. (It is worth noting that at this time there was also another pressing problem on the campus, in relation to a strike which was taking place. This also required urgent attention.) He called a meeting of the Crisis Committee, which he chairs, at 14h00 that Friday afternoon. In the

meanwhile, Prof Bozzoli had been appointed as Acting Vice-Chancellor in the absence of Prof Nongxa.

22. The Crisis Committee meeting was attended by, amongst others, representatives of Limmud, Mr Kemp (the Head of Campus Control) and other officials of Campus Control, Ms Wendy Kahn of the South African Jewish Board of Deputies, and Dr Swemmer.
23. By this time, the administration had learnt more of the background to the conference, some of which Ms Kahn had provided to Dr Swemmer on the telephone. The administration had established that no warrant had been issued for the arrest of Lt Col Benjamin. Dr Swemmer expected, from his past experience, that a demonstration could be anticipated on Sunday 9 August, although no formal notice of this had been given. He had also learnt that the South African Police Service and the Metro Police were aware of the matter. How this came about is not entirely clear.
24. It was not the function of the Crisis Committee to decide whether Lt Col Benjamin should be prevented from speaking on the Campus. That was not within its remit. It proceeded on the assumption that he would indeed speak on the campus, and its function was to ensure that matters were properly regulated on the day. I deal further with this below under the heading "Security arrangements".
25. At 15h36 on Friday 7 August, Prof Bozzoli sent an e-mail to the Wits PSC. She informed them that she was Acting Vice-Chancellor, and that she had

asked Dr Swemmer to handle the matter in the immediate future. She informed them that he was at present in a meeting where a solution was being sought. (This was a reference to the meeting of the Crisis Committee). She apologised for the slip-ups in communication, and stated that she would keep the PSC informed as matters developed.

26. Later that afternoon, the Wits PSC sent a further e-mail to Prof Bozzoli informing her of developments with regard to the laying of charges against Lt Col Benjamin.
27. That night at 18h16, the Wits branch of Amnesty International wrote to the Vice-Chancellor and other members of senior management asking for their response to the concerns which had been raised.
28. At 14h02 on Saturday 8 August, Prof Bozzoli wrote to the Wits PSC and Amnesty International (Wits) stating that as Acting Vice-Chancellor, she had looked carefully into the matter, and that the following appeared to be the situation:

“ The conference is not organised by Wits. Wits venues have (been) booked by a private organisation for a private conference.

- *Mr Benjamin is one of a variety of invitees to this conference.*
- *We frequently let out our venues to a variety of groupings, and as an institution which values free speech and diversity, our approach*

in all such cases is to accept bookings on good faith and to avoid any interference in the proceedings other than to ensure that they are orderly.

- *By corollary, the University values the freedom of those amongst our staff and students who might wish to mount peaceful and orderly protest on our premises, as long as permission is obtained and such protests are managed through the proper channels.”*

29. At 17h33 on Saturday 8 August, the Wits PSC and Amnesty International (Wits) wrote to Prof Bozzoli thanking her for her reply and “*your support for peaceful protest*”. They said that they:

“..trust that our previous notification of such plans to Wits administration in correspondence dated 05 August satisfies the necessary channels of communication. We plan to proceed with a small peaceful protest on Wits Medical Campus premises to maintain the integrity of the Wits staff and student body and to publicly express our disapproval of David Benjamin’s presence.

“We have CC’ed Robert Kemp, Head of Campus Control, and we trust you will expedite the above arrangement.”

They also identified their contact person, and provided her telephone number.

30. This was in fact the first occasion on which the would-be protestors informed the University administration that they intended to hold a demonstration. Ms Nurina Ally, a student who was one of the protestors, informed me that the nature of the protest to take place crystallised only after the response had been received from the administration. This is consistent with what Mr Desai told Ms Abrahams.

31. In reply (at 18h54), Prof Bozzoli asked for a copy of the letter of 5 August providing notification of the planned protest. At 19h00, the Wits PSC sent her a copy of the e-mail of 5 August, to which I have referred (Annexure B). At 19h51, Prof Bozzoli replied as follows:
 - 31.1 She pointed out that the original e-mail of 5 August 2009 did not ask for permission to mount a small and peaceful protest on campus, as had been suggested in the more recent e-mail.

 - 31.2 She said that she had consulted widely and established that University officials were not aware of such request having been made through any other channels. Such request required extensive discussions with security and other officials, and agreement needed to have been reached regarding language to be used, posters developed, positioning of protestors, and entry and exit from campus.

 - 31.3 She concluded as follows:

“Given that none of these criteria for a legitimate and peaceful protest on campus have been met, as well as the fact that it is a long weekend, and that the conference begins tomorrow, it will not be possible for us to manage a protest on campus.”

32. Fairly early on the morning of Sunday 9 August a group of approximately 15 protesters went onto the Medical School campus. Most but not all of them were Wits staff or students. They commenced a silent demonstration outside the glass doors which are the entrance to the Medical School building.
33. The protesters were approached by the Operations Manager from Wits Campus Control (Mr Maluleke). Mr Desai, one of the leaders of the protest, stated that Prof Bozzoli had given permission for the protest. Mr Maluleke spoke to Dr Swemmer on the telephone and reported what was talking place. Dr Swemmer then spoke to Mr Desai on the telephone. He said that it was not correct that Prof Bozzoli had given permission for the protest. His attitude was that the protest was contrary to the university rules, because no permission had been given for it. He said that the protestors must leave the campus or face the consequences.
34. Dr Swemmer went to the Medical School campus, where he observed what was happening. He reported to Prof Bozzoli by telephone. She then went to the Medical School campus to deliver a copy of her e-mail of Saturday evening stating that permission for the protest had not been granted, because Mr Desai had told Dr Swemmer that he had not seen that e-mail.

35. Prof Bozzoli remained outside the campus, and spoke to Mr Desai on the telephone. She told him that permission had not been granted for the protest. She then spoke on the telephone to Dr Jackie Dugard, a staff member who was participating in the protest. Dr Dugard explained that there was only a small number of protesters, and that the protest was peaceful and silent. She urged Prof Bozzoli to agree that the protest could continue. Prof Bozzoli agreed to this. The protest then continued.
36. At a certain stage, the protesters placed themselves in front of the glass doors in such a manner that while they did not actually prevent Limmud conference participants from entering the building, they made it difficult for them to do so. An official of Wits Campus Control asked the protesters to move aside in order to make it easier for participants to enter the building. They did so, and then stood on either side of the piazza leading to the entrance to the building.
37. It is common cause that the protest was silent and dignified. No complaint was made to me about the conduct of the protesters who were on the campus, save for the obstruction of the door which, as I have said, was short-lived.
38. At a certain point, an additional side entrance to the Medical School building was opened. This is known as the Marie Curie entrance. Participants in the conference were directed to this entrance in order to avoid their having to walk past the protesters at the front entrance. This attempt was not effective, as one group of the protesters then went to stand at the Marie Curie entrance.

However, the opening of the second entrance gave rise to problems which I describe below.

39. The protesters remained on the campus until about midday, when they left.

The external protest

40. At some time after the on-campus protesters had arrived and entered the campus, a group of protesters gathered outside the Medical School campus, in the road. This was referred to by some as the COSATU protest. There were approximately 18 protesters. It seems that the organisers had given notice to the municipality in accordance with the requirements of the Regulation of Gatherings Act. The situation was monitored by the SA Police Service.
41. The form of the external protest varied from time to time. Prof Bozzoli, who was outside the gate for a period, saw no offensive behaviour. However, there is ample evidence that there was offensive behaviour at times. Some of the protesters shouted abusive and offensive slogans at those who were entering. Some of those who were entering, and particularly those who had children with them, found it not only offensive, but also intimidating. This was particularly the case when the protesters formed around the entrance, requiring conference-goers to pass between them in order to enter. Prof Karen Milner of the Psychology Department, who had children with her, described an ugly scene outside the campus between 10h00 and 11h00.

42. The external protesters were not members of the Wits community. They were denied entry to the campus, to which they had no right of access. Their protest was apparently lawful, but at times it was also offensive and intimidating. It seems clear that it “raised the temperature”, which in turn had an impact on the level of tension inside the campus, where a protest of quite a different kind was taking place.

Security arrangements

43. As I have stated above, security arrangements for Sunday 9 August were discussed at the meeting of the Crisis Committee on the afternoon of Friday 7 August.
44. The position of the University administration was that there must be no hindrance to staff or students who were going about their academic business at the Medical School. This had to be accommodated by the conference organisers. The organisers accepted this.
45. After a fairly lengthy discussion, it was agreed that matters would be handled as follows:
- 45.1 Access to the Medical School campus would be restricted to:
- 45.1.1 students and staff members of Wits (the intention was that this should be limited to medical students, but in the event this proved impossible to achieve, because the access cards

of all students enable them to gain access to the Medical School campus); and

- 45.1.2 participants in the Limmud conference.
 - 45.2 University security personnel would be responsible for identifying Wits staff and students through their access cards.
 - 45.3 Limmud would provide marshals to stand with the Wits security personnel to assist them by identifying Limmud participants.
 - 45.4 Metal detectors would be placed at an entrance point, and would be staffed by the marshals appointed by Limmud.
 - 45.5 The University would place additional security personnel at the Medical School campus in order to avoid any disruption of the conference.
46. Both Dr Swemmer and Mr Kemp were insistent, when I interviewed them, that at the Crisis Committee meeting it was never contemplated or agreed that the Limmud marshals would control access to the Medical School building through the glass doors at the entrance. Their view was that any member of staff or student who had legitimately gained access to the campus was entitled to enter the building without hindrance, and that the marshals had neither the right nor the duty to stop staff and students and question them. The intention was that by the time any person had reached the entrance to the building, he or she would already have been cleared for access to the

Medical School as either a staff member or student, or a participant in the Limmud conference. Their expectation was that the marshals would provide security at the entrance to the hall in which the event in question was to take place, or at a point which gave access to the hall, but not at the entrance to the Medical School building.

47. In the event, however, what happened was quite different.

48. On the day, the manner in which security was organised was that people wishing to obtain access to the Medical School campus had to go through the following “checkpoints”:
 - 48.1 They would first go through the pedestrian or traffic gate abutting the road;

 - 48.2 Students and staff would then go through the turnstile which they regularly use, by means of their access cards, while Limmud participants were directed through a gate at that site;

 - 48.3 They were then directed to the security centre, where the metal detector was installed and operated as had been agreed; and

 - 48.4 There was further access control at the glass doors which are the entrance to the Medical School building.

49. While there were some difficulties at the first three “checkpoints” to which I have referred, the real problems arose at the glass doors which are the entrance to the Medical School building.
50. The marshals stopped people who attempted to enter the building through the glass doors, and asked them what their business was and why they were entering. The intention behind this was to keep protestors out of the building. This became a flashpoint for the disputes which arose, and which I describe below.
51. A number of the protesters referred to the marshals as “CSO”, referring to the Community Service Organisation, a voluntary Jewish community organisation which provides security at Jewish community events. The Limmud organisers described the CSO as their “security advisers”. The marshals were appointed by Limmud, but many or most of whom were also members of the CSO. A number of them were described as young men wearing dark glasses. They do not appear to have received any professional training, and they received no specific training for this event.
52. The Wits PSC, Amnesty International (Wits branch) and others have made a number of complaints about the conduct of the marshals. They allege that the marshals were aggressive and engaged in “racial profiling”. The latter allegation is at the heart of the complaints which were subsequently made to the University administration. The Limmud organisers vigorously denied that there had been any “racial profiling”. They stated that while they were not

aware of any aggressive behaviour on the part of the marshals, if there was any such conduct, they did not condone it and they regretted it.

53. In a matter such as this, the accounts given by the participants tend to accord with the perspectives which they represent. Fortunately, information was also made available by people who had come onto the campus for their professional work, and who were not in any way party to either the Limmud conference or the protest. Their accounts of the events were mutually consistent, and are of great assistance in understanding what actually happened. I therefore first describe the information which they provided.
54. Dr Norma Tsotsi is a lecturer in the Steve Biko Centre for Bioethics at the Medical School. She came onto the Medical School campus on Sunday 9 August to prepare some lectures. She arrived at about midday. When she came to the entrance, she was stopped by a *“very young man”*. She showed her parking disk, and he asked for her staff card. She asked why this was necessary, as she was just going to swipe it, but he was *“very hard”* and insisted that she produce it. He then spoke on a walkie-talkie, and let her in. She went through the metal detector, and then to the entrance. At this time, there were no protesters present.
55. When Dr Tsotsi went to the glass doors, a young man *“with a very hard face”*, who was *“very cold”*, asked her for her staff card. His manner made her think of the apartheid days. He started writing down her staff number and name. When she asked him why he was doing this, he said that if she wanted to come in, he had to give her this information. He asked her where she was

going, which floor she was going to, what she was going to do there, and whether she was planning to come back the following day. She found this young man hard and insensitive, and was scared. She asked the Wits security guards what was going on, and they gave her no answer. She went straight to her office, without looking about her, because she did not want anyone else to ask her questions. In the light of her experience she was hesitant about returning to the campus on the Monday to continue her work, but decided to do so. On that day the process was more gentle, but it still “felt like ‘you don’t belong here’”. It felt like an apartheid thing.”

56. At the time when I interviewed Dr Tsotsi, it was more than seven weeks after the incident. She still became emotional when she recounted the experience. She said that she could not believe that she could be treated like this in South Africa, by people who were the age of her own children. She experienced their faces and body language as hostile. *“It felt like a country within a country.”* She found this all the more upsetting because while she was studying overseas, she had been friendly with both Israelis and Palestinians.

57. Prof Judith Bruce, of the Department of Nursing Education, submitted a report by e-mail. I was not able to interview her because she was away at the time when I conducted the interviews. She went to the Medical School on Monday 10 August, and was prevented from entering the Medical School gate by a man in civilian clothes. She experienced her treatment by a security officer and civilian security official as *“hostile and arrogant”*, and stated *“For the first time in 15 years I felt intimidated, harassed and unsafe at my place of work”*.

58. Ms Janine Carrim, a final year medical student, needed to use the computer room on the third floor for academic purposes. At the glass doors she was questioned in a *“rather unfriendly manner”* as to her intentions at medical School, and as to which areas she needed access. Her student number was recorded and one of the private security officials followed her up to the computer room. The security officials dealt with her in *“an intimidating manner”*. She was searched, interrogated and followed *“like a common criminal”*. She said that she was not able to comment on whether any *“racial profiling”* took place.
59. A further account of the events of 9 August was provided in a report which was made to the Health Sciences Faculty immediately after the event, by an organisation which had been conducting a First Aid course for students in the faculty on that weekend. This organisation reported as follows:
- 59.1 The instructor in the First Aid course was denied entry to the Medical School premises by the *“private security organisation”*, despite the fact that Wits security had cleared the instructor.
- 59.2 The instructor was asked for identification and was extensively and repetitively questioned five times between the main gate and the main doors of the Medical School.
- 59.3 Students attending the course were made to stand outside on the grass and were not allowed entry to the building.

- 59.4 The instructor was denied access to the room which had been booked to be used for this course, because it was being used by the private security officials. The instructor asked for the room to be vacated as it had been booked for the First Aid course. This was however only done at 10h45, forcing the instructor to teach the students on the grass outside the Medical School.
- 59.5 Once the instructor and students had been allowed access to the room, they were disturbed on several occasions by being “checked up on” by the “private security organisation”.
- 59.6 The instructor was compelled to escort any student who wanted to access the toilets or the vending machine, as they were considered a “threat” to the security of the private function.
- 59.7 These events resulted in an overall delay of more than two hours, and several traumatised students.
- 59.8 Comments on the student evaluation forms relating to the day’s events included:

“Students were searched and initially refused entry to class etc, etc. This was dehumanising; we were treated like criminals!”

“The event being held at Medical School was invasive, and the people were rude and treated us like criminals.”

“... They didn’t treat us well.”

“...We were treated like criminals and that didn’t feel comfortable and nice.”

- 59.9 The organiser of the training stated that the manner in which registered students of the Faculty were treated was unacceptable, and that the instructor had been distraught since the events of that Sunday. He described the “*private security officials*” as displaying “*rude and arrogant behaviour*”.
60. It is impossible not to accept these accounts of what happened. They are mutually consistent. They were provided by people who had no axe to grind and who, it is clear, were genuinely offended by the manner in which they were treated.
61. These accounts are also consistent with accounts given some of the participants. More than one participant mentioned an incident in which a young black female medical student who tried to enter the building to do her work was persistently questioned by one of the marshals, to the point where she burst into tears.

“Racial profiling”

62. One of the matters I am required by the terms of referencing to investigate is the claims that “*racial profiling*” took place at the Limmud conference.

63. The term "*racial profiling*" carries a number of different meanings and connotations. It will, I believe, be more helpful if I were to describe what actually took place on the day in question.
64. In the first place, two things emerge clearly from the information which I collected:
- 64.1 There were black people who attended the Limmud conference without experiencing any difficulty or obstruction, and who found it a welcoming event.
- 64.2 There were white people who were stopped and questioned quite firmly before they were allowed to enter the Medical School campus and building.
65. I am satisfied, from the information which I collected, that the organisers did not have a policy of harassing or questioning people who were not white, or of treating black people differently from white people. Such a policy would be fundamentally inconsistent with the whole ethos of Limmud. I saw no evidence that there was any such policy.
66. However, that does not dispose of the matter. A number of the protesters asserted that on occasion, the marshals treated people who were black (or not white) differently from people who were white. They recounted events which appeared to support this view. It is important to understand how this could be.

67. The matter was explained as follows by Mr Adam Charnas, who attended the Limmud conference with his father. He stated that when he and his father arrived at the Medical School campus, the main entrance to the campus was crowded by protesters through whom they had to pass. The protesters hurled insults at them, calling them “baby killers” and “Nazis”. Inside the campus, they were briefly questioned by security guards who were members of the Jewish community. The security guards immediately recognised them and so they passed through relatively swiftly. He commented that the security guards

“may have failed to realise the consequences of their actions when they passed members of the Jewish community through their checks swiftly while retaining non members for an extended period of time. Having worked in security operations overseas, I can attest that this kind of profiling, while clearly incorrect, happens regularly. It is natural to understand your friends and family to be of no threat and thus not to check them. I do however maintain that the security forces were shamefully unaware of the political consequences of their actions and may very well have overstepped their boundaries.”

68. Mr Charnas had no axe to grind against the Limmud marshals. He was at the Medical School to attend the conference. He was very critical of the protesters outside the gate, saying that the proximity of these aggressive and insulting protesters had created a feeling of high tension and insecurity. (By contrast, he stated that the protesters within the University complex were very well behaved.) He was not opposed to the presence of Lt Col Benjamin at the conference.

69. It seems to me that Mr Charnas's account of what transpired is compelling. None of the Limmud participants to whom I put it, was able to dispute the accuracy of his account and explanation.

70. It is likely that this inherent problem was aggravated by the decision to open a separate entrance (the Marie Curie entrance) for the conference participants. The Marie Curie entrance is reached before the main entrance to the Medical School building. Ms Sherona Gani, a final year Bachelor of Health Sciences student, explained what transpired. She stated that the young men who were standing at the Marie Curie entrance signalled to those people who were walking past, whom they had identified as conference-goers, to come to the Marie Curie entrance.

71. The conference-goers were overwhelmingly Jewish. They were therefore overwhelmingly white. Inevitably, the marshals would have been more likely to identify white people as likely conference-goers than black people. It seems inevitable that they would have signalled only or mainly to white people to enter the Marie Curie entrance, rather than at random to people who were passing.

72. This is what Ms Gani described. She was standing at the Marie Curie entrance. She said that she did not see the marshals call any person of colour to the Marie Curie entrance. She said that while there might well have been white people still entering through the main entrance, as she did not see everyone who was passing, it was only white people who were called to the

Marie Curie entrance. She said that one of the protesters raised this with the marshals. The only response of the marshals was to laugh.

73. The behaviour of the security guards was, to put it at its lowest, inappropriate. They were in a situation in which sensitivities were high. It is troubling that some of them, at least, did not appreciate the consequences of what they were doing, even when this was raised with them. It is, however, not entirely surprising. The marshals were young people who appear to have been given no training for the sensitive situation in which they were operating. Even skilled and experienced people would have found this a difficult situation. The marshals were not skilled and experienced in dealing with such situations.
74. It is likely that this insensitivity to the political and racial context, taken together with the aggressive conduct of some of the marshals, was a toxic mixture. It explains, for example, the experience and response of Dr Tsotsi.
75. Certain of the marshals also interfered with attempts by conference-goers to talk to the protesters. This was so even – perhaps particularly - where the conference-goers and the protesters were demonstrably on friendly terms, and there could not have been any apprehension that a hostile situation might develop, and should be averted. Mr Aidan Mosselson, a Wits staff member who was a volunteer at the conference and a conference-goer, spoke to two friends who were participating in the protest, and wanted to give them some papers. An “aggressive” marshal told him that he must desist, or he would not be allowed into the conference, and pushed him towards the entrance. In another incident, attempts were made to prevent a conference-goer from

entering the building after she had engaged in friendly conversation with protestors who were friends of hers.

76. It is not clear to me on what authority the marshals attempted to close down this engagement between conference-goers and protesters. This was contrary to the stated purposes and ethos of Limmud. It no doubt further served to create the impression that the marshals were not only attempting to ensure that only Limmud participants gained access to the venues, but were in fact attempting to close down discussion and protest.

Photography

77. Limmud appointed a person to take photographs of and around the conference.
78. A number of the protesters complained that the photographer was extremely intrusive, to the point of being intimidating. He repeatedly and continuously took photographs of them. When they turned their backs to avoid being photographed further, he followed them around as they turned.
79. The Limmud organisers informed me that the photographer was at large to take such photographs as he thought appropriate. They said that there was no intention to intimidate the protesters, or to use the photographs for any sinister purpose.

80. I accept that the photographer had a general mandate to take photographs of whatever happened at and around the conference. People who choose to participate in a demonstration, sacrifice some part of their right to privacy: the very purpose of the demonstration is to make a visible public statement. However, when the repeated taking of photographs has no rational purpose, it is understandable that some would experience it as intimidatory of a peaceful protest. The intimidatory effect may have been aggravated by the fact that, according to Ms Merle Favis (who attended the conference), he was wearing a “CSO” badge. The conduct of the photographer was inconsistent with the ethos which Limmud proclaims.

The rules relating to protests and demonstrations on the Wits campus

81. In her e-mail of the evening of Saturday 8 August Prof Bozzoli stated that the University “*values the freedom of those amongst our staff who might wish to mount peaceful and orderly protest on our premises, as long as permission is obtained and such protests are management through the proper channels*”.
82. During the course of the interviews which I conducted, I asked several participants what the University’s rules and procedures were with regard to protests. In particular, was there a rule which required permission for protests, was this applicable to all protests, and what were the proper channels to be followed in this regard?
83. It emerged that the University does not, at the moment, have a rule which governs student protests. There are draft rules which have been in circulation

for some time, but they have not yet been finalised. There are also what were referred to as practices or protocols governing protests. These have not been formalised, and have developed over time. Not surprisingly, different parties gave different accounts of what those practices and protocols are. One of the matters which emerged is that the University is particularly concerned about situations where there are “counter-demonstrations” taking place at the same time, because of the possibility of conflict. This was of course such a situation.

84. It became clear that to the extent that there is any established practice or protocol that no protest may take place on the campus without permission (and this is not universally accepted), its terms are not clear. If there is indeed a practice or protocol that permission is required, it is often honoured more in the breach than in the observance. Protests frequently take place without any permission being requested. Understandably, whatever the protocol may be, the University generally adopts a tolerant attitude: if there is no violence or disruption caused by a protest, then no action usually follows.
85. It follows from the fact that there is no formal rule with regard to protests, there is also no formal channel which has been established in order to give notice or obtain such permission as might be required for the holding of a protest.
86. I would make the following observations in this regard.

87. First, a university is an institution which has a commitment to freedom of expression as a core value. Protest is a form of expression. It follows that a university should indeed value the freedom of staff and students who might wish to mount peaceful and orderly protests, as stated by Prof Bozzoli. This has been very much part of the tradition of the University of the Witwatersrand for very many years. It is a part of the University's ethos of which it is justifiably proud.
88. Of course, there are limits to freedom of expression, just as there are limits to all rights. It is legitimate for a university to regulate the exercise of the right. It seems to me that the starting-point for any such regulation should be a commitment to ensuring that freedom of expression is as wide as reasonably possible.
89. The fact that there are no formal rules governing this matter, creates the space for dispute and conflict to arise. It is also undesirable in principle, as limits on freedom of expression need to be clearly articulated and justified. The possibility of abuse or of unfair or arbitrary treatment is created where the rules are not clear and applicable to all.
90. As I shall seek to demonstrate below, one of the causes of the problems in this matter was that a rather ambiguous notice was given to the University administration at a late stage. It was given to the Vice-Chancellor, and he did not see it until approximately 24 hours after it had been given. If the University is to regulate protest effectively, in a manner which gives as full rein as is reasonably possible to the right to protest, it is necessary that effective

channels be identified and made known for dealing with any notification which is given or any request for permission which is made. It seems to me unlikely that the Vice-Chancellor is the appropriate person in this regard, given the many and varied responsibilities which he has. One can expect that where notification or a request is given to the Vice-Chancellor by e-mail, it will frequently happen that the matter simply cannot receive timely attention.

91. It may be noted that in this section of my report, I have referred to the giving of notice and the requesting of permission. The two are not necessarily synonymous. It is conceivable that there may be situations in which notice must be given of a protest so that the necessary arrangements may be made, but no permission is required in order to protest. There may be other situations in which a protest may not be permissible unless prior permission is obtained. These are matters which need to be debated within the University and properly formulated. It would not be appropriate for me to attempt to suggest rules in that regard.

ASSESSMENT

92. On the face of things, it was not necessary for tension and conflict to have arisen as they did:

92.1 The University administration stated that Wits is committed to supporting or permitting peaceful and non-disruptive protests.

92.2 The Limmud organisers stated that they had no objection to a peaceful and non-disruptive protest.

92.3 The demonstration on the Medical School campus was in fact a peaceful and non-disruptive protest.

93. The obvious question, then, is what went wrong? Why did such difficulties arise when there was so much common ground between the parties? It seems to me that at least the following factors contributed to this. I mention them in rough chronological order, but not in any order of significance.

94. First, the rules at Wits with regard to protests are not clear. While a practice or protocol has emerged over time, it cannot be said that the position is known by everybody, or that there is general agreement as to its precise contents. This creates “grey areas” which are easily exploited, or which give rise to conflict because of different understandings of what the rules are.

95. Secondly, the conference organisers did not inform the University administration that one of the speakers was very controversial, and that his participation might lead to some conflict. The South African Police Service became aware of this, but not the University administration. The only special security arrangement the organisers made with the University administration was to request that two additional guards be made available on the Saturday and Sunday nights to look after the equipment which would be left overnight on the premises. Mr Kemp said that if he had been alerted to the potential problem, he would have “rung the alarm bells” at a much earlier stage, and

Campus Control could have managed the situation better. He could have spoken to those who might be expected to protest, and made adequate arrangements in advance.

96. Thirdly, the initial notice which the Wits PSC and Wits Amnesty International gave to the University administration was late and ineffectual. The event was taking place on the morning of Sunday 9 August. It was only late on the afternoon of Wednesday 5 August that the Wits PSC raised the matter with the administration. That e-mail to the Vice-Chancellor did not indicate a clear intention to mount a demonstration if the University did not agree to the request to prevent Lt Col Benjamin from speaking on the campus.
97. Fourthly, the University's response to the initial communication was slow, having been initially delayed by the failure of the first message to reach the Vice-Chancellor (resulting in a delay of 24 hours). It was only at 14h02 on Saturday afternoon that the administration informed the Wits PSC and Amnesty International (Wits) that it would not intervene.
98. Fifthly, it was only at 17h33 on the afternoon of Saturday 8 August that the administration was informed that a demonstration would be held the following morning. The result was that there was little time for the discussions which would have been necessary if practical arrangements were to be made to ensure that a protest could take place in a manner which was non-disruptive.
99. Sixthly, the marshals – who were initially intended solely to carry out the function of identifying Limmud participants – took over an enlarged “security”

function. They were not trained to carry out such a function in a highly charged situation. They do not appear to have appreciated the consequences of the manner in which they performed their functions. They over-reached the bounds of their authority, and some of them acted in an aggressive manner. They were, by their very nature, partisan in a context in which it might be necessary to keep the peace between two disputing parties.

100. Seventhly, the hostile and offensive protest which took place outside the gate led to the situation becoming more highly charged than would otherwise have been the case.

SPECIFIC FINDINGS

101. I was mandated to investigate certain specific matters. I first summarise my findings on those matters. I then deal with some related matters which arise from the investigation.

Racial profiling and inflammatory slurs

102. I prefer not to use the term “racial profiling”, which has a variety of possible connotations. I have found that the Limmud organisers did not have a policy of treating members of different racial groups in a different manner. However, I have found that at least some such differential treatment did take place. I have suggested some reasons why this was so.

103. I have found that the protesters outside the University gates engaged in inflammatory and offensive slurs of people who were attending the conference.

104. I received no evidence that either the protestors on the campus or the Limmud participants engaged in inflammatory slurs. Words were clearly exchanged from time to time, and some of them were angry or intended to be hurtful. However, as far as I have been able to establish, they were exchanges of the kind one would anticipate in this situation, and not particularly offensive.

Did the University unreasonably attempt to prevent legitimate protest action? Did it respond seriously and timeously?

105. Leaving aside the question of compliance with University rules or practice concerning protest, the protest on the campus on 9 August 2009 was legitimate. It was peaceful and non-disruptive, and it was directed at a matter about which there is genuine and legitimate controversy.

106. The University administration did initially attempt to prevent students from engaging in this protest. The reasons for this are set out in this report. In summary, it was the result of a combination of factors: the lack of precision as to the rules and procedures for protests on the campus, the late raising of the complaint regarding Lt Col Benjamin, the delayed response by the administration, the late notice of the demonstration, and the difficulty of making timeous security arrangements.

107. The delayed response of the administration was itself the result of a combination of factors. The administration did not recognise, at an early stage, the potentially conflictual situation which was emerging. This was in part a consequence of the failure of the conference organisers to give warning to the administration of the potential problem, the late and ambiguous raising of the matter by the Wits PSC, the fact that the initial e-mail message was directed only to the Vice-Chancellor, and its failure to reach him. The result was that the University administration's response was slow, except for the calling of the Crisis Committee meeting on the afternoon of Friday 7 August.
108. If there had been an earlier response by the administration to the complaint about Lt Col Benjamin, it might well have been possible for arrangements to have been made in advance for a peaceful and non-disruptive protest to take place without any substantial difficulty.
109. I have given a good deal of thought to the question whether the initial attempts of the administration to prevent the protest were unreasonable. I can understand the feeling expressed by a number of protestors, that they expected the University to protect their right to protest rather than to attempt to stop the protest. Their complaint would have a good deal more force if the protestors had given the administration timely notice of their intention to protest, and of the form which the protest would take. That would have enabled the administration to take appropriate steps to ensure that the right to protest was fulfilled – which in my opinion is what it should then have done in the circumstances of this case, given the seriousness and immediacy of the issue which was raised, and the limited and non-disruptive form of protest

which was planned. However, as late as Friday morning, in response to a direct question from Ms Abrahams, the organisers did not disclose what they had in mind. It was only at 17h33 on Saturday 8 August that they made known their intention to mount a demonstration the following morning. Given the late notice, and the history of conflict on the campus on issues around Israel and Palestine, I can not find that the administration's initial response was unreasonable.

110. Dr Swemmer's approach when he arrived at the campus was clearly based on his view that there was a protocol or practice requiring prior permission for a protest of this kind, and his knowledge that the Acting Vice-Chancellor had declined to give such permission.
111. After the discussion between Dr Dugard and Prof Bozzoli, at a time when it had been demonstrated that the protest was peaceful and non-disruptive, the University administration did not attempt to prevent the protest continuing.
112. I am not called upon to express an opinion on whether the administration should have prevented Lt Col Benjamin from speaking on the campus, or should have dissociated the University from him. This is not a matter which was debated in the interviews which I conducted. However, I deal in the next section with some considerations which appear to be relevant to this question.

Control over venues hired to an external organisation

113. The question whether the University exercised proper control over the use of its venues by an external organisation raises a complex set of issues.
114. In the first place, it is important to clarify that the control of the use of university venues by external organisations does not appear to raise an issue of academic freedom. Academic freedom is in the first instance concerned with the academic activities of the university. It may well extend beyond the lecture hall and the research facility to student activities on the campus, or at least some such activities. A university does not function only in its lecture halls and its research facilities. The engagement of students in debate and activity around issues of the day is very much part of a university, and essential if the university is to fulfil its mission to the full. However, there seems to be no basis for a contention that the activities of external organisations, which hire venues from Wits for their own purposes, fall within the bounds of academic freedom. They are not part of the intellectual activities of the university.
115. That is not to say that a university should not welcome such activities as contributing to the general ethos of free speech and debate on the campus. Even in that situation, however, this is not a manifestation of academic freedom: it is a manifestation of freedom of expression, which is a broader and different concept.

116. To say this is not to devalue the importance of freedom of expression. Freedom of expression is a primary condition for the functioning of a university. This carries with it the implication that a university should protect both conventional forms of expression, and protest, which is a form of expression.
117. A university is of course under no obligation to make its facilities available to outside organisations. It could legitimately decide to make its facilities available to outside organisations only for certain purposes, and not to make them available for other purposes. In my experience, different universities take different approaches to this question.
118. It is a matter for Wits to decide whether it will make its facilities generally available, and if so, on what terms and for what purposes. This raises policy questions which I do not think fall properly within the scope of this investigation. I have not sought to debate them with those whom I interviewed, or to carry out any investigation into the policies of other universities and the reasons for those policies. It is a matter on which Wits may wish to refine its policies.
119. I would suggest for consideration that the University should make it a condition of letting its venues that the organisers give it prompt notice if any of the proposed speakers or activities are likely to give rise to controversy which requires the University either to consider whether special security arrangements should be made, or to consider whether it will permit the person concerned to speak on the campus, or the activity in question to take place on

the campus. I expect that in making such decisions Wits would, consistently with its traditions and values, in general seek to promote freedom of expression. One can however think of examples of situations where a speaker or activity might be so offensive that the University might choose to specify that the event will not be permitted to take place if that person is invited to speak or that activity is planned. That is within the rights of the University. Again, however, that decision would need to start from the premise of the desirability and indeed necessity of freedom of speech.

120. I would also suggest that the University should make it clear to external parties which hire University facilities that the University permits and indeed encourages peaceful and non-disruptive protest as a legitimate form of freedom of expression. Those who wish to undertake activities without the risk of experiencing such protests should hire private venues owned by organisations which are purely commercial in nature, and which do not have the University's commitment to freedom of speech as part of their values. To put it simply, part of the price of the use of University facilities (and the cachet which comes with it) is acceptance that protests may take place, and that the University authorities will not intervene to prevent this, as long as the protests are peaceful and non-disruptive.
121. If the event requires special security arrangements because of disputes that may arise, these should be in the hands of the University or an agency hired by the University. It is inherently unsatisfactory that the security officials should be provided by the event organisers, as they will inevitably be perceived as partisan in any disputes which may arise.

RECOMMENDATIONS

122. I make the following recommendations which I hope will be of assistance of the members of the University community in future.

122.1 The University should formalise and make known the rules which are applicable to protests on campus.

122.2 I venture to suggest that such rules should be aimed at promoting peaceful and non-disruptive freedom of expression on campus, and that consideration should be given to distinguishing between protests of which notice should be given, and protests which require prior permission.

122.3 The rules should provide an easily accessible channel for such notice to be given or such request to be made, such that there can be reasonable confidence that the University will be able to respond to it speedily.

122.4 The University should consider whether it wishes to introduce any regulation of the hiring of University facilities to external organisations.

122.5 Where facilities are hired to external organisations:

122.5.1 The University should consider imposing a requirement that it be given prompt notice if any of the proposed speakers or

activities are likely to give rise to controversy which requires the University either to consider whether special security arrangements should be made, or to consider whether it will permit the person concerned to speak on the campus, or the activity in question to take place on the campus.

122.5.2 The organisations should be informed that the University permits and indeed encourages peaceful and non-disruptive protest as a legitimate form of freedom of expression.

122.5.3 If special security arrangements are necessary because of disputes that may arise, they should generally be undertaken by the University or an agency hired by the University, and not by the external organisation.

CONCLUSION

123. The events surrounding the Limmud conference were traumatic to some of the people affected. In my investigation, I have attempted to find explanations rather than simply to apportion blame for what transpired.

124. The University rightfully takes pride in its diversity and multiculturalism, and in its commitment to freedom of expression. In an environment of this kind, opposing views are sometimes expressed with passion and anger. That is inevitable where people engage with the issues of the day.

125. The Wits tradition is a tradition of such engagement, and of freedom of expression and mutual respect. I hope that this report will assist the University community to build on, expand and enhance that tradition.

GEOFF BUDLENDER SC

21 October 2009

**ANNEXURE A:
PEOPLE WHO RESPONDED TO THE E-MAIL AND/OR WERE INTERVIEWED**

Ms Nurina Ally
Dr Shireen Ally
Ms Viv Anstey
Mr Edgar Banda
Dr David Bilchitz
Mr K Bonaventure
Prof Belinda Bozzoli
Prof Judith Bruce
Ms Janine Carrim
Mr Adam Charnas
Mr Gilad Cohen
Mr Muhammad Desai
Ms Aqueela Dinat
Ms Naomi Dinur
Dr Jackie Dugard
Ms Merle Favis
Ms Robert Freeman
Ms Fatima Gabru
Ms Sherona Gani
Dr Kelly Gillespie
Mr Ivan Ginsberg
Prof Daryl Glaser
Mr Jeremy Gordin
Ms Deborah Green-Hitmann
Prof Ran Greenstein
Ms Sharon Groenmeyer
Prof Shireen Hassim
Ms Meira Hockman
Ms Stephanie Hodes
Prof Jonathan Hyslop
Mr Na'eem Jeenah
Mr Jason Joffa
Ms Kate Joseph
Ms Wendy Kahn
Ms Judith Katzew
Dr Rodney Katzew
Mr R S Kemp
Ms Suraya Bibi Khan
Ms Janet Kriseman
Ms Cynthia Kros
Ms Gayle Langley
Mr Daniel Lipshitz
Ms Rebecca Luton
Mr George Mahlangu
Ms Jill Mainwaring
Mr Falaza Maluleke
Ms Jackie Maris
Ms Shabnam Mayet

Prof Karen Milner
Mr Laurence Milner
Mr Mopeli Moshoeshe
Mr Aidan Mosselson
Ms Naadira Munshi
Prof David Mycock
Mr Xavier Ngabo
Dr Noor Nieftagodien
Prof Loyiso Nongxa
Dr Dasantha Pillay
Mr Komnas Poriakis
Prof Michael Rudolph
Mr Joshua Schewitz
Ms Sarah Schwartz
Ms Yael Shalem
Mr Gideon Shapiro
Mr Benjamin Shulman
Ms Aayesha Soni
Mr Wayne Sussman
Dr D Swemmer
Dr Norma Tsotsi
Dr Shereen Usdin
Ms Natasha Vally
Mr Salim Vally
Mr Brimadevi Van Niekerk
Mr Irshaad Vawda
Ms Bianca Wailer
Dr V Yengopal
Ms Charisse Zeifert
Mr Luvuyo Zitwana

----- Forwarded message -----
 From: Wits PSC <witspsc@gmail.com>
 Date: Wed, Aug 5, 2009 at 4:45 PM
 Subject: Dear Professor Loyiso Nongxa
 To: Loyiso.Nongxa@wits.ac.za
 Cc: Prem.Coopoo@wits.ac.za

Wednesday 5th August 2009

Dear Professor Loyiso Nongxa,

The Wits Palestine Solidarity Committee and other concerned students would like to bring your attention to the imminent presence of Lieutenant-Colonel David Benjamin on the University of Witwatersrand campus. Benjamin will be participating in the Limmud conference to be held at Wits Medical School on Sunday the 9th and Monday the 10th of August 2009.

Benjamin was the prime legal advisor to the Israeli Defense Force (IDF) and advised senior IDF commanders on Operational Law issues. Benjamin served in the Military Advocates Corps, which provides legal advice to the Israeli Army. Benjamin declared that all the military factors regarding Israel's December 2008 attack on Gaza, including the use of white phosphorus as a chemical weapon (illegal under international law), were approved by the Military Corps. By virtue of his position and his explicit statements(<http://www.bloomberg.com/apps/news?pid=20601087&sid=agqXg9VD8v6o&refer=home>), Benjamin is intimately implicated in the use of white phosphorus in Gaza and what the United Nations has declared as the deliberate targeting of civilian locations including schools and universities.

It is for this reason that a number of applicants in South Africa, including former Wits Law professor, John Dugard, former Intelligence minister Ronnie Kasrils, and Law professor Max du Plessis, have included Benjamin's name in a dossier - that was lodged with the National Directorate of Public Prosecutions on Monday, 3 August 2009 - which alleges war crimes against a number of Israeli political and military figures. That someone of the stature of Professor Dugard calls for the arrest of a person - on charges of war crimes - is certainly relevant to Wits University when such a person will be speaking at a Wits venue. Furthermore, the possibility of Benjamin being arrested on our campus can be extremely embarrassing for Wits.

In order to persist in building the case that Wits is "A World-Class African University" and "a prestigious leading university that...inspires confidence, hope and pride in our country and our continent," we strongly urge Wits to disallow Benjamin from speaking on our premises and further call for Wits to formally dissociate itself from him. We feel that hosting Benjamin who is a war criminal would severely tarnish the image of our institution. We as students who find the presence of Benjamin inimical to the values of the university and justice will not let it go unrecognized and will join the protest of the speaker should Wits grant him the space to proceed with his presentations.

Given the pertinence of this issue, we would appreciate your expeditious response to this letter.

Sincerely
 Kate Joseph
 Wits Palestine Solidarity Committee