Dear Prof Phakeng


1. Please find attached a copy of my final report number 40 of 2019/2020 on an investigation into allegations of improper failure by the University of Cape Town to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016, improper failure by the South African Police Service to investigate and report on the drowning incident and an undue delay by the National Prosecuting Authority to re-open an inquest into the matter.
2. Your attention is specifically directed to the remedial action contained in paragraph 7 of the report as well as the monitoring of remedial action as contained in paragraph 8.

Best wishes

[Signature]

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 05/08/2019
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER FAILURE BY THE UNIVERSITY OF CAPE TOWN TO PROVIDE SAFETY MEASURES AGAINST THE DROWNING OF MR MB MADIBA, IMPROPER FAILURE BY THE SOUTH AFRICAN POLICE SERVICE TO INVESTIGATE AND REPORT ON THE DROWNING INCIDENT AND AN UNDUE DELAY BY THE NATIONAL PROSECUTING AUTHORITY TO RECOMMEND THE RE-OPENING OF AN INQUEST INTO THE MATTER
INDEX

Executive Summary ........................................................................................................... 3

1. INTRODUCTION ........................................................................................................... 14

2. THE COMPLAINT ......................................................................................................... 15

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR ......................... 16

4. THE INVESTIGATION ................................................................................................ 22

5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS ............................................................... 28

6. FINDINGS ................................................................................................................... 56

7. REMEDIAL ACTION .................................................................................................. 61

8. MONITORING ............................................................................................................. 62
Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and published in terms of section 8(2A) (a) of the Public Protector Act No. 23 of 1994 (the Public Protector Act).

(ii) The report communicates my findings and the appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into a complaint of alleged improper failure by the University of Cape Town (UCT) to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba, improper failure by the South African Police Service (SAPS) to investigate and report on the drowning incident and an undue delay by the National Prosecuting Authority (NPA) to re-open an inquest into the matter.

(iii) The complaint was lodged with my office on 04 May 2016 by Mr and Mrs Madiba (the Complainants), the parents of Mr Mosimanegape Boys Madiba (the Deceased).

(iv) The Complainants alleged that:

(a) The UCT and/or its employees improperly failed to provide safety measures to prevent the drowning of the Deceased in that the UCT allowed him to join its rowing club without training or testing his swimming ability;

(b) On 12 March 2016, the UCT took the Deceased to a dam for swimming practice and this was done without the provision of safety measures such as a life jacket or a safety boat in case of an adverse event;

(c) The Deceased signed for indoor rowing, but he was taken in the UCT's bus and made to swim at a dam.
(d) When they requested documentation from the UCT, proving that the Deceased had joined indoor rowing, the responsible administrative directors informed them that there was none. The said documents were only provided upon enquiry of the eNews Channel Africa (eNCA);

(e) The Deceased was not made to sign an indemnity form for indoor rowing and this was confirmed by Mrs Linda Hall, the then UCT’s Acting Manager: Sports;

(f) The South African Police Service (SAPS) and National Prosecuting Authority (NPA) unduly delayed to investigate and report on the matter; and

(g) There was no communication from the UCT regarding its intention to investigate the circumstances, processes and procedures that led to the drowning of the Deceased.

(h) This complaint was initially lodged with the Western Cape Provincial office and was subsequently closed on 21 September 2017. Following a meeting with Mr and Mrs Madiba (the Complainants) and my Provincial Investigations and Integration Unit held on 21 February 2018, I decided to proceed with the investigation into the matter to explore areas that were not fully covered in the investigation that was closed on 21 September 2017.

(v) On analysis of the complaint, the following issues were considered and investigated:

a) Whether the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016;

b) Whether the University of Cape Town unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba;
c) Whether the South African Police Service improperly failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba;

d) Whether the National Prosecuting Authority unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba; and

e) Whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town, South African Police Service and National Prosecuting Authority in the circumstances.

(vi) Key laws and policies taken into account to determine if there had been maladministration by the organs of state and prejudice to the Complainants were principally those imposing administrative standards that should have been complied with by the UCT, the SAPS and the NPA or its officials. Those are the following:

(a) Section 195(1) of the Constitution which provides that Public Administration must be governed by democratic values and principles enshrined in the Constitution and further states that a high standard of professional ethics must be promoted and maintained and that people’s needs must be responded to;

(b) Section 17A of the Inquest Act 58 of 1959 provides for the re-opening of an inquest by the Minister of Justice and Correctional Services on the recommendation of the National Director of Public Prosecutions (NDPP);

(c) The Rowing South Africa (RowSA) Constitution of 2012 stipulates the purpose of the RowSA, which is a body established by the Constituent members to promote and develop the sport of rowing in all forms in South Africa, and to that end, to establish the policy and standards for, and the coordination of rowing nationally, and to manage, control, discipline and plan for the future development of the sport at national level;
(d) The Rowing South Africa (RowSA) new Constitution of 2016 makes provision for the Code of Conduct which binds the Constituent Members of the RowsA and their representatives. Reference has also been made to Clause 1.3.2 which stipulates that “Constituent Members of the RowSA shall ensure that they and in turn, all their members develop and adopt codes of conduct which reflects the principles and key elements of this code…”;

(e) The University Sport South Africa (USSA) Constitution of January 2016 which promotes and advances university sport in South Africa by utilising effective management and planning strategies to enhance and increase university student participation in sport at the regional, national and international levels;

(f) The University Sport South Africa – Rowing Association (USSA-R Association) Constitution of January 2016, encourages participation in rowing by any student registered at a tertiary institution registered with the USSA. It also maintains and improves the standards of rowing in all institutions registered with USSA and it enforces the laws of rowing recognised by RowSA; and

(g) The White Paper on Transforming Public Service (Batho Pele White Paper) Government Gazette No. 18340 of 01 October 1997. The relevant Batho Pele principle ofCourtesy provides that “Citizens should be treated with courtesy and consideration”.

(ix) I issued notices to the UCT and the NPA in terms of section 7(9)(a) of the Public Protector Act indicating my intended findings into the matter. In essence, the NPA agreed with my intended findings, whereas, the UCT, represented by its attorneys, questioned my jurisdiction on the matter. The attorneys’ arguments are discussed in the body of the report.

(x) Having considered the evidence uncovered during the investigation against the applicable law and related prescripts, I make the following findings:
(a) Regarding whether the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016:

(aa) The allegation that the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016 is substantiated.

(bb) The UCT had no rowing safety measures or rules in place at the time of the drowning of the Deceased as required by the RowSA. It only developed and implemented its rowing Standard Operating Protocols in 2017 as a result of this drowning incident.

(cc) The conduct of the UCT was in contravention of the RowSA Constitution, the USSA-R Constitution and clauses 1.3.2, 1.3.3, 1.3.4 and 2.3.1.7 of the RowSA Code of Conduct.

(dd) The conduct of the UCT also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the University of Cape Town unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba:

(aa) The allegation that the UCT unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba is substantiated.

(bb) The UCT only appointed Adv. Mayosi on 29 June 2017, as the Presiding Officer of an inquiry to consider the circumstances, processes and procedures leading up to and surrounding the drowning of the deceased at Misverstand Dam on a weekend outing with the UCT Rowing Club on 12 March 2016. This was fifteen (15) months
after the drowning incident. Furthermore, the Mayosi report was only finalised in June 2018, two (2) years and three (3) months after the incident.

(cc) The UCT’s conduct was in contravention of section 195(1)(a) and (e) of the Constitution and the Batho Pele Principle of Courtesy.

(dd) The conduct of the UCT also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(c) Regarding whether the South African Police Service failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba:

(aa) The allegation that the SAPS failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba is not substantiated.

(bb) My investigation revealed that the SAPS properly opened an inquest docket, CAS number 3/2016 on 01 April 2016. A formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017.

(cc) Magistrate Groenewald found that the likely cause of the death was drowning whilst swimming in the Misverstand Dam. The Court further found that the death was not brought by any act or omission involving or amounting to an offence on the part of any person.

(dd) The IPID also investigated the alleged improper conduct by the SAPS, but found that an inquest docket was properly opened, instead of a culpable homicide case.

(ee) The conduct of both SAPS and IPID was found not to be in contravention of section 195 of the Constitution and Batho Pele principles of Courtesy and Information.
The conduct of the SAPS also does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Regarding whether the National Prosecuting Authority unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba:

The allegation that the NPA unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba is substantiated.

I wrote to the office of the NDPP on 21 May 2018 to consider recommending to the Minister to re-open the Deceased’s inquest in terms of section 17A of the Inquest Act, but to date the matter has not been finalised. My last correspondence with the office of the NDPP was on 08 March 2019 wherein it was advised that my request is with Adv. Batohi for consideration.

The conduct of the NPA is in contravention of section 195 of the Constitution and the Batho Pele principle of Courtesy.

The conduct of the NPA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Adv. Batohi has, however, undertaken to urgently make a submission to the Minister to consider the re-opening of the inquest into the matter.

Regarding whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town, South African Police Service and the National Prosecuting Authority in the circumstances:
Regarding whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town

(aa) The allegation that the Complainants suffered prejudice as a result of the conduct of the UCT is substantiated.

(bb) The Complainants submitted that they are distressed by the fact that their son, a young man and promising student, drowned in Misverstand Dam, whilst being under the care of the UCT. They further submitted that this was the biggest loss of their lives.

(cc) According to the Mayosi report, the loss of their son has had a severe and debilitating impact on the Complainants. The impact of their loss was aggravated by the manner in which they felt they were treated by all those in authority who played various roles after the death of their son. In this regard, they were aggrieved by their treatment by the SAPS members dealing with the investigation of the death of their son; the Magistrate who presided over the inquest; and ultimately the UCT.

(dd) Although the UCT paid for the transportation of the deceased’s body from Cape Town to O. R Tambo International airport, complainants allege that the UCT had also committed to pay airfares for the immediate family to attend the memorial service of Mr Mosimanegape Boyz Madiba in Cape Town. The estimated total expenses incurred by the Complainants due to the drowning of the Deceased allegedly amounts to **R755 000.00** which is broken down as follows: **R36 000.00** (transportation cost of the corpse from the airport); **R150 000.00** (burial cost); **R75 000.00** (transportation cost to attend memorial service); **R20 000.00** (transportation cost to the SAPS in Cape Town); and **R30 000.00** (transportation cost to attend inquest hearing at Moorreesburg Magistrates Court); **R24 000.00** (therapy sessions); and **R420 000.00** (unveiling of the Deceased’s tombstone). They, however, could not provide my office with supporting documents.
(ee) The UCT instituted inquiry proceedings when Advocate Mayosi was appointed as per a letter dated 29 June 2017 to consider the circumstances, processes and procedures leading up to and surrounding the drowning of the Deceased at Misverstand Dam on a weekend outing with the UCT Rowing Club on 12 March 2016. The process was initiated fifteen (15) months after the drowning incident.

(ff) Advocate Mayosi's report into the inquiry was only finalised in June 2018 and submitted to the former Vice Chancellor, Dr Price as per a cover letter dated 21 June 2018.

(gg) The maladministration by the UCT resulted in improper prejudice to the Complainant as envisaged in section 182(1) of the Constitution and improper prejudice as envisaged in section 6(4)(v) of the Public Protector Act.

**Regarding whether the Complainants suffered prejudice as a result of the conduct of the South African Police Service:**

(hh) The allegation that the Complainants suffered prejudice as a result of the conduct of the South African Police is not substantiated.

(ii) The SAPS properly opened an inquest docket, CAS number 3/2016, on 01 April 2016. A formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017. No prejudice was therefore suffered.

**Regarding whether the Complainants suffered prejudice as a result of the conduct of the National Prosecuting Authority:**

(jj) The allegation that the Complainants suffered prejudice as a result of the conduct of the NPA is substantiated.
The NPA caused prejudice to the Complainants in that the matter remains unresolved by its undue delay to consider recommending the re-opening of the inquest to the Minister. The suspicion and mistrust by the Complainants that there was negligence in the death of their son would remain. This would have a devastating effect on their wellbeing.

The conduct of the NPA is in violation of section 195(1)(a) and (e) of the Constitution and the Batho Pele principle of Courtesy.

The conduct of the NPA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Adv. Batohi undertook to urgently make a submission to the Minister to consider the re-opening of the inquest in the matter at the time of the date of the report.

The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

The Vice Chancellor of the UCT must take effective and appropriate steps to ensure that:

The UCT's adopted guidelines on Rowing rules are submitted to Rowing South Africa, within thirty (30) working days from the date of the report, to ensure compliance with the Rowing South Africa Code of Conduct; and

Workshops and training sessions on Rowing Rules must be rolled out to Novice and potential rowers prior to subscription as registered club members. Proof of the workshop/training sessions must be tracked and monitored; and
I also recommend to the Vice Chancellor of the UCT that:

(cc) The University considers an *ex gratia* payment to the Complainants for the loss of their son and expenses incurred by the Deceased’s immediate family to attend the memorial service at UCT.

The National Director of Public Prosecutions to consider:

(dd) Submitting a recommendation to the Minister of Justice and Correctional Services, within thirty (30) working days from the date of this report, to consider the re-opening of the inquest into the matter in terms of section 17A of the Inquests Act 58 of 1959.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER FAILURE BY THE UNIVERSITY OF CAPE TOWN TO PROVIDE SAFETY MEASURES AGAINST THE DROWNING OF MR MB MADIBA, IMPROPER FAILURE BY THE SOUTH AFRICAN POLICE SERVICE TO INVESTIGATE AND REPORT ON THE DROWNING INCIDENT AND AN UNDUE DELAY BY THE NATIONAL PROSECUTING AUTHORITY TO RECOMMEND THE RE-OPENING OF AN INQUEST INTO THE MATTER

1. **INTRODUCTION**

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(2A)(a) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8 of the Public Protector Act to the following people to note the outcome of my investigation and implementation of the remedial action:
1.2.1 The Vice Chancellor of the University of Cape Town (the UCT), Professor M Phakeng;

1.2.2 The Chairperson of the Council of the UCT; Mr S Pityana;

1.2.3 The Ombudsman of the UCT, Ms Z Makamandela;

1.2.4 The Minister of Higher Education, Science and Technology, Dr BE Nzimande;

1.2.5 The National Director of Public Prosecutions, Advocate S Batohi;

1.2.6 The National Commissioner of Police, Lt Gen KJ Sitole; and

1.2.7 The Acting Executive Director of Independent Police Investigative Directorate (IPID), Mr VO Senna.

1.3 A copy of the report is also provided to Mr and Mrs Madiba (the Complainants) to inform them of the outcome of the investigation.

1.4 The report relates to an investigation into allegations of improper failure by the UCT to provide safety measures against the drowning of Mr Mosimanegape Boys Madiba, improper failure by the South African Police Service (the SAPS) to investigate and report on the drowning incident and an undue delay by the National Prosecuting Authority (the NPA) to recommend the reopening of an inquest into the matter.

2. THE COMPLAINT

2.1 On 04 May 2016, I received a complaint from Mr and Mrs Madiba (the Complainants), that I must intervene and investigate improper failure by the UCT to provide safety measures against the drowning of their son, Mr Mosimanegape
Alleged maladministration by the UCT, SAPS and NPA in the drowning of Mr MB Madiba

Boyz Madiba (the Deceased), in Cape Town on 12 March 2016.

2.2 In the main, the Complainants alleged the following:

2.2.1 The UCT and/or its employees improperly failed to provide safety measures to prevent the drowning of the Deceased in that the UCT allowed him to join its rowing club without training or testing his swimming ability;

2.2.2 On 12 March 2016, the UCT took the Deceased to a dam for swimming practice and this was done without the provision of safety measures such as a life jacket or a safety boat in case of an adverse event;

2.2.3 The Deceased signed for indoor rowing, but he was taken in the UCT’s bus and made to swim at a dam. When they requested documentation from the UCT, proving that the Deceased had joined rowing, the responsible administrative directors informed them that there was none, until the eNews Channel Africa (eNCA) enquired after which such documents proving that he had joined indoor rowing were provided;

2.2.4 The Deceased was not made to sign an indemnity form for indoor rowing and this was confirmed by Mrs Linda Hall, the then UCT’s Acting Manager: Sports;

2.2.5 The SAPS and NPA unduly delayed to investigate and report on the matter; and

2.2.6 There was no communication from the UCT regarding its intention to investigate the circumstances that led to the drowning of the Deceased.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 Mandate of the Public Protector
3.1.1 The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power, as regulated by national legislation, to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action".

3.1.3 Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.1.4 The Public Protector's powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purpose of an investigation.

3.1.5 In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the
Public Protector has a binding effect. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."  

3.1.6 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65).

3.1.7 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67).

3.1.8 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68).

3.1.9 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69).

3.1.10 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the

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1. [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
2. Supra at para [73].
demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70).

3.1.11 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71).

3.1.12 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a)).

3.1.13 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)).

3.1.14 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.1.15 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows when confirming the powers of the Public Protector:

3.1.15.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 79).

3.1.15.2 The Public Protector, in appropriate circumstances, has the power to direct the president to appoint a commission of enquiry and to direct the manner of its
implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective. (paragraphs 85 and 152);

3.1.15.3 There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (paragraphs 91 and 92);

3.1.15.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers( paragraphs 100 and 101):
   (a) Conduct an investigation;
   (b) Report on that conduct; and
   (c) To take remedial action.

3.1.15.5 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (paragraph 104);

3.1.15.6 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (Paragraph 105);

3.1.15.7 The fact that there is no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (paragraphs 107 and 108); and
3.1.15.8 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112).

3.1.16 To this end, the Public Protector would like to emphasise that adjudicative functions and pure litigation which relates to a claim for special or general damages are lawsuits which are judicial in nature. A court of law is best suited to hear and adjudicate on such matters. The office of the Public Protector is an office modelled on an institution of an ombudsman whose function is to ensure that government officials carry out their tasks effectively, fairly and without corruption, maladministration and prejudice\(^3\). It is therefore trite that the decisions of the Public Protector are administrative actions\(^4\).

3.1.17 The UCT, SAPS and NPA are organs of state and their conduct amounts to conduct in state affairs. This matter, therefore, falls squarely within the ambit of the Public Protector’s mandate.

3.1.18 I issued a notice to the UCT dated 09 May 2019, in terms of section 7(9)(a) of the Public Protector Act, but my jurisdiction over the matter was disputed.

3.1.19 In a letter dated 23 May 2019, Ms Adela Petersen, the Director: Litigation of Fairbridges Wertheim Becker Attorneys, representing the UCT (the UCT’s attorneys), referred to section 182(3) of the Public Protector Act which provides that I may not investigate court decisions. She submitted that my office has exceeded its jurisdiction in these circumstances where a court of law has already made a finding after conducting a full inquest into the circumstances surrounding the death of the Deceased.

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\(^3\) Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa 1996(4) SA744 (CC) at 161.

\(^4\) Minister of Home Affairs et al v Public Protector et al 2017(2) SA 597 (GP).
3.1.20 Furthermore, the UCT’s attorneys submitted that despite the finding of the Inquest Court, my office elected to investigate the drowning of the Deceased which was already concluded by the said Court and which in effect amounts to an investigation of a court decision.

3.1.21 They argued further that the Complainants could have pursued a civil claim for the alleged damages that they have suffered, but have failed to institute proceedings within the three year period required in terms of the Prescription Act, 1969. They indicated that my office could have elected not to investigate the matter because the Complainants did not exhaust all their legal remedies at the time when they approached my office.

3.1.22 It is my view that the UCT’s argument is misplaced in the sense that the exclusion of court decisions from the jurisdiction of the Public Protector in section 182(3) of the Constitution is based upon the existence of the long established system of judicial review of court decisions. The exclusion contemplates that the Public Protector’s jurisdiction is not automatically ousted where the subject matter or aspects of a complaint are or have been the subject of judicial proceedings because the two processes involve separate sets of charges, are decided against separate standards and result in two separate outcomes, even if they concern the same alleged act of impropriety. The mere fact that allegations before the Public Protector might have been the subject of judicial proceedings does warrant an assumption that she is purporting to investigate or review the merits of the court decision. The Public Protector retains jurisdiction to investigate administrative acts even when those acts are peripheral to the adjudication itself.

3.1.23 My office is well within its mandate to investigate the issue of maladministration which focused on processes and procedures leading up to, and surrounding the drowning of the Deceased. Clearly, by investigating elements of maladministration against the UCT, I did not encroach into the Inquest Court’s jurisdiction.
4. **THE INVESTIGATION**

4.1 **Methodology**

4.1.1 My investigation was conducted in terms of section 182(1) of the Constitution which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 **Approach to the investigation**

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong occasioned by the said maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on
what happened based on a balance of probabilities. The Supreme Court of Appeal\(^5\) (SCA) made it clear that it is the Public Protector’s duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met or complied with by the UCT, SAPS or NPA to prevent maladministration and prejudice.

4.2.4 The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had a state organ complied with the regulatory framework setting the applicable standards for good administration.

4.3 The Investigation Process

4.3.1 The investigation process commenced with the monitoring of the matter for compliance, correspondence with the UCT, SAPS and NPA, meeting with the National Director of Public Prosecutions, Adv. S Batohi, analysis of the relevant documentation; conducted research; consideration and application of the relevant laws, regulatory framework and jurisprudence.

4.4 On analysis of the complaint, the following issues were considered and investigated:

4.4.1 Whether the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016;

\(^5\) Public Protector versus Mail and Guardian 2011(4) SA 420 (SCA)
4.4.2 Whether the University of Cape Town unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba;

4.4.3 Whether the South African Police Service failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba;

4.4.4 Whether the National Prosecuting Authority unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba; and

4.4.5 Whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town, the South African Police Service and the National Prosecuting Authority in the circumstances.

4.5 The Key Sources of information

4.5.1 Documents

4.5.1.1 The complaint letter dated 01 August 2016;
4.5.1.2 A subscription form from the UCT Rowing Club dated February 2016;
4.5.1.3 An Inquest docket dated 01 April 2016;
4.5.1.4 An indoor rowing invoice from UCT dated 04 March 2016; and
4.5.1.5 A report from Advocate N Mayosi dated 21 June 2018.

4.5.2 Correspondence sent and received

4.5.2.1 A letter from my office to the Provincial Head: Western Cape, IPID, Advocate N Ngele, dated 19 October 2016;
4.5.2.5 A letter from Advocate Ngele to my office dated 26 October 2016;
4.5.2.6 An email from my office to the Complainants dated 12 November 2016;
4.5.2.7 An email from the Complainants dated 14 November 2016;
4.5.2.8 A letter from my office to the then Vice Chancellor of UCT, Dr M Price, dated 21 May 2018;

4.5.2.9 A letter from my office to the former IPID Executive Director, Mr R McBride, dated 21 May 2018;

4.5.2.10 A letter from my office to the former National Director of Public Prosecutions, Advocate S Abrahams, dated 21 May 2018;

4.5.2.11 A letter from my office to the then Acting National Director of Public Prosecutions, Dr S Ramaite, dated 07 August 2018;

4.5.2.12 A letter from Dr Price dated 07 June 2018 to my office;

4.5.2.13 An email from my office to the NPA dated 20 August 2018;

4.5.2.14 An email to my office from the NPA dated 23 August 2018;

4.5.2.15 An email from my office to Mr Marco Voller, of the NPA dated 10 September 2018;

4.5.2.16 An email from my office dated 02 October 2018 to the NPA;

4.5.2.17 An email from the NPA dated 04 October 2018;

4.5.2.18 A letter dated 14 December 2018 from Ms Ronel Bester, from the NPA;

4.5.2.19 An email from my office to the Complainants on Adv Matzke’s commitment about the NPA’s commitment to finalise the matter dated 21 November 2018;

4.5.2.20 A letter dated 14 December 2018 from Ms Bester to my office;

4.5.2.21 An email from my office to Ms Bester dated 18 January 2019;

4.5.2.22 An email from my office to Ms Bester dated 28 February 2019;

4.5.2.23 An email from my office to Ms Bester dated 08 March 2019;

4.5.2.24 An email from my office to Advocate Matzke dated 08 March 2019;

4.5.2.25 An email from my office to Advocate M Khaeane in the office of the NDPP dated 08 March 2019 and

4.5.2.26 An email from Advocate Khaeane dated 08 March 2019.
4.5.3 Meetings

4.5.3.5 A meeting between my investigation team and the Complainants on 05 April 2018;

4.5.3.6 A meeting between the Ombudsman of the UCT and myself on 08 February 2019; and

4.5.3.7 A meeting between my investigation team and the Complainants on 21 May 2019.

4.5.4 Legislation and other prescripts

4.5.4.1 The Constitution;

4.5.4.2 The Public Protector Act;

4.5.4.3 The Inquest Act 58 of 1959;

4.5.4.4 The Rowing South Africa (RowSA) Constitution of 2012;

4.5.4.5 The Rowing South Africa (RowSA) new Constitution of 2016;

4.5.4.6 The University Sport South Africa (USSA) Constitution of January 2016

4.5.4.7 The USSA-R Association (Association) Constitution of January 2016; and


4.5.5 Case Law

4.5.5.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);

4.5.5.2 Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa 1996(4) SA744 (CC) at 161;

4.5.5.3 Minister of Home Affairs et al v Public Protector et al 2017(2) SA 597 (GP);

4.5.5.4 President of the Republic of South Africa v Office of the Public Protector and Others Case no 91139/2016 [2017] ZAGPPHC 747;

4.5.5.5 Public Protector v Mail and Guardian 2011(4) SA 420 (SCA);
4.5.5.6  Marais NO v Tiley 1990(2) SA 899(A);
4.5.5.7  Ahmed Essop Timol (1Q01/2017) [2017] ZAGPPHC 652 (12 October 2017); and
4.5.5.8  MA Gamede v The Public Protector, High Court of South Africa, Gauteng Division, Pretoria, 99246/2015

5.  THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1  Regarding whether the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016:

Common cause issues

5.1.1  It is common cause that the Deceased was a first year student at the UCT and joined the UCT Rowing Club as a novice rower in February 2016.

5.1.2  On 17 February 2016, the coach of the novice rowing team, Mr Regan Dolman (the Coach), met with a group of novice rowers for the first time to establish whether or not they could swim. They all indicated that they could swim and the Deceased was amongst the group.

5.1.3  On 12 March 2016, the Coach took the novice rowers on another excursion for their second training session at the Misverstand Dam. The purpose of the training was to do a sculling test which also involved testing the novice rowers for their swimming ability. The Deceased passed on during this training session as a result of drowning.
Issues in dispute

5.1.4 The Complainants argued that the UCT improperly failed to provide rowing safety measures to safeguard against the drowning of the novice rowers, including the Deceased. They further indicated that the UCT took the Deceased to a dam for a swimming practice and this was done without the provision of safety measures such as a life jacket or a safety boat in case of an adverse event.

5.1.5 They reported that the Deceased signed for indoor rowing, but was made to swim at a dam. When they requested documentation from the UCT to prove that the deceased had joined the UCT’s Rowing Club, the responsible administrative directors informed them that there was none, until the eNews Channel Africa (eNCA) enquired after which the documents proving that he had joined indoor rowing were provided.

5.1.6 In support thereof, the Complainants provided me with a copy of the UCT’s Rowing Club subscription form which the Deceased completed in February 2016. In terms of the form, the Deceased subscribed to be a member of the UCT’s Indoor Rowing team. An invoice dated 04 March 2016 submitted by the Complainants also indicated that he joined the Indoor Rowing team.

5.1.7 I raised the matter by writing to Dr Price, as per a letter dated 21 May 2018 in which I enquired about the UCT’s responsibilities to a student when he or she joined a rowing club. I further requested the UCT’s applicable policy or procedures on rowing and any measures put in place to avoid a recurrence of a similar incident.

5.1.8 In a letter dated 07 June 2018, Dr Price responded as follows:
“(i) Request: A detailed explanation of the responsibilities of the University to a student such as the deceased where such a student joins a club such as the rowing club

Response:

These were responsibilities according to our practice in 2016. [Own emphasis]

- Students are divided into two club categories - those that are novice rowers and those that are experienced, and the training and practice sessions are run and supervised separately.
- Supervision is always by a coach with the recognised qualified certification.

Rowing

- Initial training sessions for novices on water is individually supervised by the coach with the boat initially held by the coach and other rowers.
- Rowing training in open water is supervised by a coach who is in a separate boat moving alongside the crew. Life jackets cannot be worn given the mobility required for rowing.

Swimming

- Swimming training in open water is accompanied by the coach who swims with the students.

- No boats are required for swimming training because of the wake they cause, as well as possible resultant current.

(ii) Request: A Copy of the applicable University policy/policies on rowing and/or any written procedures applicable in such circumstances.
Response:

Following this accident of drowning we formalised standard operating protocols (SOPs) and strengthened them [own emphasis]. The SOPs are attached (Attachment 1). (To be noted: this development took some time because we could find no SOPs in the National Rowing Federation or any other South African clubs and thus had to design them from scratch eventually drawing on international examples).

(iii) Request: Information on any interventions that have since been put in place to avoid a recurrence

Response:

Standard operating protocols were implemented in 2017, the key new interventions were:

• an observed swimming test by an independent assessor which requires the swimmer to swim 50m and tread water for 5 minutes;
• a written declaration of swimming competency (implemented in 2018, copy attached as Attachment 2);
• a directory of emergency service numbers at a point closest to the practice session; and
• certification that coaches have Level Three first aid skills.

I want to emphasise the point that the university does not have a sport known as "Indoor Rowing" [Own emphasis], and that the sign-up form indicates that the students signed a form headed "Novice Rowing" (Attachment 5). The claim by the parents of the deceased is a result of an administrative decision to differentiate "Novice Rowing" from "Rowing" on the student fee account. On the account the club is referenced as "Indoor Rowing" instead of "Novice Rowing" (this fees statement would
never have been seen by the student at the time of signing up). (The account reference originated many years ago from the administrator who designed the account codes interpreting the description of the activities which include indoor ergonomic rowing machines. But we have since aligned the invoicing system to say "Novice Rowing").

It is true that students did not sign specific indemnity forms for each club or society that they join. They do however, sign a general indemnity form linked to their registration as a student which covers all sports too. This signed form is attached (Attachment 6). We have, in the interim, instituted a specific form for each sport”.

5.1.9 Dr Price further indicated that the UCT appointed Advocate N Mayosi in June 2017 to lead an independent inquiry into the drowning incident of the Deceased. My office was provided with a copy of the report dated 21 June 2018.

5.1.10. According to Adv. Mayosi’s report (the Mayosi report) she was appointed “to consider the circumstances, processes and procedures leading up to, and surrounding the drowning of Mr Mosimanegape Boyz Madiba (‘Mr Madiba’) at Misverstand Dam, in Moorreesburg, on 12 March 2016.” She was also mandated to make findings and recommendations which would “prevent or reduce and/or mitigate against the risk of the recurrence of a similar incident”.

5.1.11. With reference to the UCT’s responsibilities towards students who wanted to join the rowing club, the Mayosi report confirmed the information provided by Dr Price above. Adv. Mayosi found “no fault with the sign-up process for new recruits, the subscription form that was in place in February 2016.” She, however, recommended to the UCT that its Sports and Recreation Department, should, in consultation with the UCT Rowing Club, “develop a short and simply worded pamphlet for dissemination to potential recruits for rowing containing basic minimum information about the sport, including, but not limited to, a description
of the sport, stating clearly where the sport occurs, outlining training requirements and the minimum proficiencies or skills required in order to be able to participate in the sport, be it a novice or otherwise the amended subscription form should insert a paragraph with the following words:

"BY SIGNING THIS FORM YOU FURTHER ACKNOWLEDGE THAT YOU HAVE BEEN INFORMED OF THE NATURE OF THE SPORT YOU ARE SUBSCRIBING TO, AND THE BASIC MINIMUM PROFICIENCIES REQUIRED TO PARTICIPATE IN THAT SPORT."

5.1.12. Adv. Mayosi further found that it was not sufficient for the UCT Rowing Club to have merely asked students whether they could swim, without verifying further. She recommended that:

"Recommendation 3.1: A formal assessment should be conducted of a novice rower’s swimming ability. The swim test conducted should be at least 50m of continuous swimming, and should include the rower putting his or her head under water, and should include treading water.

Recommendation 3.2: A rower who could not complete the swim test must wear a personal flotation device, which can be either a life jacket (which gives them buoyancy and will keep their heads out of the water) or a buoyancy aid; and further must not be permitted to row alone in a single scull.

Recommendation 3.3: The swim test can be done either in a swimming pool or in a dam. If it is conducted in a dam, then I recommend that it be subjected to the further recommendations I make below under other safety and precautionary measures."

5.1.13. With reference to safety measures, the Mayosi report also confirmed what Dr Price indicated that "it is not customary for rowing clubs to have lifesavers and
other emergency personnel present at training sessions… Rowers generally do not wear life jackets whilst rowing (except the coxswain), as they are said to restrict movement and therefore limit rowing ability.” She recommended that:

Recommendation 5: Team members must be told to discuss any activity they are planning with the coach, and agree with him/her how the training session will be conducted and how they intend to participate (or not) in the training session, and they tell them what they can and cannot do.

Recommendation 6: There should always be someone on the (dam) bank. To this end, …for training sessions that occur in open water, there should be an additional rowing official in attendance stationed at the bank, who amongst other things observes the rowers and the coach, checks the number of rowers who get into and out of the water; keeps watch over the training session and acts as an extra pair of eyes for the coach. Both the coach and the rowing official should have on them equipment that enables them to communicate with each other.

Recommendation 7: The coach must tell the novice rowers that they can never go into the water alone. In addition, it must be the rule that a team member must always tell someone else that she or he is going to the water, how long they will be in the water, where exactly they are going and what they intend to do there; and where, for whatever reason, there is no one present to tell then in that case under no circumstances can the rower be in the water alone”.

5.1.14 The Mayosi report also provided a sworn statement of the Coach on the matter. He, too, confirmed Dr Price’s statement on the matter.

5.1.15 I issued a section 7(9)(a) notice to Prof Phakeng dated 09 May 2019, in which I indicated my intended adverse findings against the UCT in improperly failing to comply with the rowing processes and procedures to prevent the drowning of the Deceased.
5.1.16 In their response dated 23 May 2019, the UCT's attorneys argued that the University had rules in place at the time of the drowning. They indicated that the said rules may not have been recorded by the UCT in formal guidelines, but the UCT did have safety measures and protocols in place. They said that UCT did not develop safety guidelines in 2017, but amplified what was already in place or as Dr Price stated "following this accident of drowning we formalised standard operating protocols and strengthened them".

Application of the relevant legal prescripts

5.1.17 Rowing in South Africa is governed by Rowing South Africa (the RowSA). The organisation is recognised by the Department of Sport and Recreation and the South African Sports Confederation and Olympic Committee (SASCOC). It was created in terms of the amended Rowing Constitution of 2012 (the new Rowing Constitution). Section 29 of the new Rowing Constitution provides that it was approved as amended at a meeting of the Council of RowSA held in 2012 and shall replace all publications of the Constitution of the RowSA.

5.1.18 Section 3 of the new Rowing Constitution makes provision for the purpose of the RowSA as follows:

"RowSA is the body established by the Constituent members to promote and develop the sport of rowing in all forms in South Africa, and to that end, to establish the policy and standards for, and the co-ordination of rowing nationally, and to manage, control, discipline and plan for the future development of the sport at the national level."

5.1.19 Section 2.2 of the new Rowing Constitution provides that the RowSA Constituent Members include, amongst others, University Sport South Africa, Rowing (USSA-R). The UCT rowing club was registered with the USSA-R and therefore a Constituent Member at the time of the drowning incident.
5.1.20 In terms of section 24(a) of the new Rowing Constitution, the RowSA “Code of Conduct…shall…bind Constituent Members of the RowSA and their representatives.”

5.1.21 It follows from the above provisions that the UCT’s rowing team is governed in terms of the principles of the new Rowing Constitution.

5.1.22 In accordance with the new Rowing Constitution, the USSA-R adopted its own Constitution which created the USSA-R Association (Association).

5.1.23 Some of the principles and aims of the Association include “participation in rowing by any student registered at a tertiary institution registered with the USSA; to take such steps to maintain and/or improve the standards of rowing in all institutions registered with USSA; and to enforce the laws of rowing, recognised by RowSA”.

5.1.24 The RowSA Code of Conduct (Code) came into effect on 01 December 2009 in terms of clause 14 thereof.

5.1.25 Clause 1.3.1 of the Code provides that it shall apply and bind:

"1.3.1.1 Constituent Members and their representatives"

5.1.26 Clause 1.3.2 provides that “Constituent Members of the RowSA shall ensure that they and in turn all their members develop and adopt codes of conduct which reflects the principles and key elements of this code…”

5.1.27 According to clause 1.3.3 “until every member has developed and adopted their own code of conduct, this code shall bind that member, club, university, school or organisation. Copies of member’s own code of conduct must be filed with the RowSA’s office, preferably in both electronic and “hard” form.”
5.1.28 The UCT was expected to develop and adopt its own rowing code of conduct and failure to do so meant that it was bound by the Code at the time of the drowning incident.

5.1.29 Clause 1.3.4 provides that “Universities…are all entitled to use, vary and/or adopt the codes…to suit their own positions and circumstances…”

5.1.30 Clause 2.3 provides for the code of conduct of the rowing staff and coaches and clause 2.3.1 provides that:

“As University rowing club we have the right to work in friendly, supportive and secure environment. To achieve this I will:

2.3.1.7.1 Create and maintain an attractive and safe environment”.

5.1.31 It is evident from the above provisions that the UCT was expected to develop and adopt its own rowing code of conduct to, amongst others, ensure a safe environment for the rowers, including the novice. Furthermore, in the absence of its own code of conduct, it was bound by the Code. According to Dr Price, the UCT had not developed nor adopted a code of conduct in line with the new Rowing Constitution and the Code at the time of the drowning incident.

5.1.32 In his letter of 07 June 2018, he indicated as follows:

“

(iv) Request: A Copy of the applicable University policy/policies on rowing and/or any written procedures applicable in such circumstances
Response:

Following this accident of drowning we formalised standard operating protocols (SOPs) and strengthened them. The SOPs are attached (Attachment 1). (To be noted: this development took some time because we could find no SOPs in the National Rowing Federation or any other South African clubs and thus had to design them from scratch eventually drawing on international examples.)

(v) Request: Information on any interventions that have since been put in place to avoid a recurrence

Response:

Standard operating protocols were implemented in 2017, the key new interventions were:

- an observed swimming test by an independent assessor which requires the swimmer to swim 50m and tread water for 5 minutes;
- a written declaration of swimming competency (implemented in 2018, copy attached as Attachment 2);
- a directory of emergency service numbers at a point closest to the practice session; and
- certification that coaches have Level Three first aid skills."

5.1.33 It is unjustifiable what the UCT’s attorneys have indicated in their response to my section 7(9)(a) notice that the UCT had safety protocols in place and not formal guidelines, but did not provide my office with the contents or particulars of the protocols when requested in my initial letter to Dr Price.

5.1.34 A thorough investigation is required more than merely accepting the contents of a response at face value and relying on the statements or opinions of the author.
It is essential for investigators to conduct their own thorough investigations aimed at verifying and corroborating significant facts by means of independent evidence.

5.1.35 When enquiries were made, the information requested was not forthcoming and the UCT elected not to provide my office with the contents or particulars of the safety protocols that were allegedly in existence during the drowning incident when they were requested to do so by my office. It was not clear which Code of Conduct or Constitution informed the UCT’s safety protocols which are referred to and which they claim existed during the drowning incident. The formal guidelines were only developed by the UCT in 2017 after the drowning incident as indicated in Dr Price’s correspondence above.

5.1.36 In response to my section 7(9)(a) notice, the UCT’s attorneys submitted that it was not specified in which respect the UCT was said to have breached the respective constitutions listed. In their response, it was indicated that RowSA did not prescribe a time period within which Constituent Members had to develop their own code of conduct, the UCT could therefore not be said to be in contravention of clauses 1.3.2, 1.3.3 and 1.3.4 of the Code of Conduct.

5.1.37 It was further submitted that no evidence was provided by my office that the Rowing Club did not operate within a safe environment, so there was no basis to allege that the UCT’s conduct was in contravention of section 2.1.1.7 of the Code of Conduct.

5.1.38 The UCT’s attorneys, however, conceded that the UCT did not have formal guidelines and a Code of Conduct as required by USSA-R Constitution and the RowSA Code of Conduct as no timelines had been prescribed for Constituent members.
5.1.39 As one of the most prominent universities in South Africa and the world, the UCT has been existence since 1812. The UCT’s Rowing Club was founded in 1912 and has since grown to become one of the most competitive rowing clubs in South Africa. It is presumed that a University that prides itself on being an inclusive University and a leader in the global higher education landscape and a Constituent Member of USSA-R Association would have formal guidelines in place as envisaged by RowSA.

5.1.40 It is clear that during the drowning incident of the Deceased on 12 March 2016, the UCT’s Rowing Club operated without formal safety guidelines in accordance with the provisions of the RowSA Code of Conduct, RowSA Constitution and the USSA–R Constitution.

5.1.41 The UCT also recognises its obligation in respect of the safety of its students, as encapsulated in its Statute and Statement of Values for the University of Cape Town and its Members which provides as follows:

"As a community, the University commits itself, and expects all its members, to exemplify and uphold these values and to reflect them not only in institutional and personal relationships, but also in all other aspects of University life, including work, sport, recreation, and cultural, intellectual, religious and other activities. As a values-based community, we aspire to an encompassing ethos which affirms and protects the fundamental human rights enshrined in the Constitution; and encourages the institution and all its members to accept responsibility for the welfare of the community and for behaving in accordance with these community values.

We commit ourselves to … concern for the personal safety, health and welfare of all members of the community."
5.1.42 Under the Occupational Health and Safety Act 85 of 1993 (the OHS Act), Higher Education institutions must guarantee an environment that is safe and without risk to the health and safety of the higher institution community.

5.1.43 In the matter of Potgieter v University of Stellenbosch [2016] JOL 36822 (WCC) the Court stated that:

“…compliance with a statutory obligation is not itself determinative of this issue (safety of students), and that other considerations of policy such as accountability, industry norms and constitutional imperatives are equally important”.

“(t)he plaintiff and other students ... have a constitutional right to bodily integrity. Institutions such as the defendant (Universities) should be accountable for the safety of those ... Students are, after all, students and ... their parents should be able to place their faith in these institutions to have adequate measures to address the safety of their children. These parents and students represent a not insignificant sector of society.”

5.1.44 The University had a moral and legal obligation to safeguard and protect its students against injury, occupational diseases and risk to their health and safety. This includes full responsibility to protect students involved in sport and recreation disciplines under its control from any form of physical risk and to develop and implement an effective risk management strategy to identify, eliminate and control unsafe acts and conditions.

Conclusion

5.1.45 Based on evidence gathered, it can be concluded that at the time of the drowning of the Deceased, the UCT had not developed its rowing code of conduct in compliance with the RowSA new Constitution and Code of Conduct to provide, amongst others, a safe rowing environment to rowers.
5.2 Regarding whether the University of Cape Town unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba:

Common cause issues

5.2.1 Dr Price, on behalf of the UCT, appointed Adv. Mayosi as per a letter dated 29 June 2017, as the Presiding Officer in an inquiry to consider the circumstances, processes and procedures leading up to and surrounding the drowning of the Deceased at Misverstand Dam on a weekend outing with the UCT Rowing Club on 12 March 2016. This was fifteen (15) months after the drowning incident.

5.2.2 The Mayosi report was only finalised in June 2018 and submitted to Dr Price as per cover letter dated 21 June 2018.

Issues in dispute

5.2.3 The Complainants argued that the UCT unduly delayed to initiate its own investigation into the drowning of the Deceased. They further indicated that there was no communication from the UCT for a prolonged time after the funeral of the Deceased regarding any steps the UCT would take or was taking to investigate the drowning incident.

5.2.4 I issued a section 7(9)(a) notice in which an intended adverse finding was made with regard to this issue in that it took the UCT fifteen (15) months to appoint the Mayosi inquiry into the drowning incident.

5.2.5 In response to my section 7(9)(a) notice, the UCT’s attorneys argued that there was no legal obligation on the UCT to conduct an investigation into the cause of death of the Deceased and that the duty rested with the SAPS and Court which completed the investigation.
5.2.6 They further indicated that despite there being no legal obligation to investigate the cause of the death of the Deceased, the UCT conducted its own internal investigation at the request of the Director: Student Development which was conducted by its Manager: Investigations Department whose report was made available to the University management on 08 June 2016. Such a report was never made available to my office, except the Mayosi report.

5.2.7 In so far as the allegations regarding lack of communication or failure to communicate with the Complainants are concerned, the UCT’s attorneys highlighted that on 15 March 2016 at approximately 14:00, a meeting was convened with the Complainants as well as the UCT staff which included the Coach wherein the drowning incident was discussed. It was also indicated that the initial communications between the Complainants and the UCT was through the UCT’s Department of Student Affairs and subsequently with the office of the Vice-Chancellor who regularly updated them on progress of the matter.

5.2.8 However, the Mayosi report indicated that “this absence of communication planted in them a suspicion, which grew and became deep-seated, that the University was somehow culpable in the death of their son, and was concealing facts regarding what occurred on 12 March 2016. The length of time it has taken for me to complete this particular report must unfortunately also have compounded their feelings of suspicion and mistrust”.

5.2.9 According to the Mayosi report, the UCT, in response to its lack of communication to the Complainants, responded that “it adopted the view that it could not draw any conclusions regarding what led to the death of Mr Madiba as there were formal investigations by the SAPS underway, and thereafter an inquest. The University elected to await, and rely on, the outcomes of those investigations.

This stance only served to heighten the suspicion of the Madiba family. They became convinced that they were being unfairly and unjustly treated, because
they were black, by a system represented by white men to whom their son’s life did not matter”.

5.2.10 The UCT’s attorneys did not raise any query relating to the Mayosi report on the finding of lack of regular update of the Complainants by the UCT.

Application of the relevant legal prescripts

5.2.11 The University’s conduct needs to be tested against the principles of good administration outlined in section 195(1) of the Constitution which provides as follows:

(1) Public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained;
(b) ...;
(c) ...;
(d) ...;
(e) People’s needs must be responded to;
(f) ...
(g) ...”

5.2.12 It was expected of the University to reflect a high standard of professional ethical conduct by communicating regularly with the Complainants, especially after such a tragic loss of their son. Failure to conduct itself in that way and to communicate with the Complainants would be defeating the principles and values of the Constitution.

5.2.13 “Batho Pele”, a Sesotho word, which means “People First,” is an initiative that was launched in 1997 to transform the Public Service at all levels. The initiative
was launched because the democratic South African government inherited a Public Service that was not people-friendly and lacked the skills and attitudes to meet the developmental challenges facing the country. In the struggle to transform the Public Service, the old culture had to be changed to ensure that the people are served properly.

5.2.14 The relevant Batho Pele principle of courtesy provides that:

"Citizens should be treated with courtesy and consideration."

5.2.15 It is clear from the above principle that a family, which lost a son under such tragic circumstances, expected to be regularly contacted by the UCT for emotional support and update with any investigation being conducted in the matter. Failure to do so would be in contravention of the spirit of the Batho Pele Principles.

Conclusion

5.2.16 Based on evidence gathered, it can be concluded that the University did not initiate an investigation into the drowning incident promptly, thereby contravening the constitutional principles and values of good governance in public administration.

5.3 Regarding whether the South African Police Service failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba:

Common cause issues

5.3.1 On 01 April 2016, the Complainants tried to open a case of culpable homicide against the UCT with the SAPS, Moorreesburg Police Station, but were informed by Captain van Schalkwyk that in cases of an unnatural death such as drowning, an inquest docket had to be opened.
5.3.2 An inquest docket, CAS number 3/2016, was opened on 01 April 2016. A formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017. Magistrate Groenewald found that the likely cause of the death was drowning whilst swimming in the Misverstand Dam. The Court further found that the death was not brought by any act or omission involving or amounting to an offence on the part of any person.

Issues in dispute

5.3.3 The Complainants argued that the SAPS improperly failed to investigate and report on the outcome of the drowning incident. This allegedly prompted them to approach the IPID, Western Cape office, to lodge a complaint against the SAPS.

5.3.4 My office raised the matter with Adv Ngele on 19 October 2016.

5.3.5 In response, Adv Ngele, as per a letter dated 26 October 2016, indicated as follows:

"The reason for Mr. Madiba's complaint...was that he wanted Capt. Van Schalkwyk to change the docket to a charge of Culpable Homicide but Capt. Van Schalkwyk had refused because he had already indicated to Mr Madiba that the normal procedure in cases of drowning is to open an Inquest docket as a Culpable Homicide will only be opened when there is evidence of negligence.

After perusing the docket, IPID was satisfied with the investigation and that proper guidance was given to the investigation officer by Capt. Van Schalkwyk." [sic]
Conclusion

A preliminary investigation was conducted by IPID and the complainant was also kept abreast until such time that it became clear that he was not willing to accept the outcome as communicated by Messrs Thokolo and Anthony of this office. Therefore, his complaint lodged against the members of the South African Police Service was found to be unfounded, based on the fact that Capt. Van Schalkwyk and Const. Mentoor’s actions did not constitute misconduct as they did not transgress the prescripts of SAPS Regulations or any law”.

5.3.6 I issued a discretionary notice dated 09 May 2019 to the Complainants indicating that my investigation into their allegations against the SAPS was not substantiated. A meeting was subsequently arranged with the Complainants on 21 May 2019. They indicated that they tried to open a case of culpable homicide with the SAPS at Moorreesburg Police Station because of criminal negligence, but Captain van Schalkwyk informed them that in cases of unnatural deaths such as drowning, an inquest docket had to be opened.

5.3.7 The Complainants expressed their dissatisfaction with the findings of the Magistrate who conducted the inquest as, in their view, the underlying criminal investigation by Captain van Schalkwyk and Detective Mentoor was incomplete. The Complainants are of the view that not all witnesses were interviewed or statements taken from them. In summation, they allege that the Magistrate conducted an informal inquest and the SAPS conducted a shoddy and incomplete investigation which did not allow for a proper decision by either the Magistrate or the Director of Public Prosecutions who declined to prosecute when they made presentations to him.

5.3.8 My investigation revealed that the SAPS properly opened an inquest docket, CAS number 3/2016 on 01 April 2016. A formal inquest hearing into the circumstances
leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017.

5.3.9 Magistrate Groenewald found that the likely cause of the death was drowning whilst swimming in the Misverstand Dam. The Court further found that the death was not brought by any act or omission involving or amounting to an offence on the part of any person.

5.3.10 My investigation further revealed that the alleged improper conduct by the SAPS was investigated by the IPID and subsequently found that an inquest docket was properly opened, instead of a culpable homicide case as requested by the Complainants.

Application of the relevant legal prescripts

5.3.11 Section 195 of the Constitution provides that:

(1) Public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained;
(b) ...;
(c) ...;
(d) ...;
(e) People’s needs must be responded to;
(f) ...; and
(g) “

5.3.12 It was expected of the SAPS and IPID to reflect a high standard of professional ethical conduct by handling the complaint and reporting the outcome to the
Complainants, especially after such a tragic loss of their son. Failure to deal with the complaint in terms of the applicable laws and not providing the Complainants with the outcome would defeat the principles and values of the Constitution.

5.3.13 The relevant Batho Pele principles of Information and Courtesy provide that:

"Citizens should be given full accurate information about the public services they are entitled to receive.

Citizens should be treated with courtesy and consideration".

5.3.14 The SAPS and IPID were expected, in a courteous and considerate manner, to provide the Complainants with accurate information about the process to be followed in handling the drowning of the Deceased. Failure to do so would be in contravention of the spirit of the Batho Pele Principles.

5.3.15 Section 5 subsection (1) and (2) of the Inquest Act 58 of 1959 (Inquest Act) stipulates that:

(1) If criminal proceedings are not instituted in connection with the death or alleged death, the public prosecutor referred to in section 4 shall submit those statements, documents and information submitted to him to the magistrate of the district concerned.

(2) If on the information submitted to him in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall, subject to the directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of the death is held by a judicial officer in terms of section 6".
5.3.16 As indicated above, a formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017.

Conclusion

5.3.17 The evidence gathered indicates that the SAPS and IPID complied with the applicable legal prescripts when they investigated the matter and the conduct of the police respectively.

5.4 Regarding whether the National Prosecuting Authority unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba.

Common cause issues

5.4.1 Based on the Complainants’ dissatisfaction with the SAPS’ investigation into the death of the Deceased and the subsequent Inquest Court’s judgement, I decided to refer the matter, as per a letter dated 21 May 2018, to Adv S Abrahams, the former NDPP, in terms of section 17A of the Inquest Act which provides for the re-opening of an inquest by the Minister of Justice and Correctional Services (the Minister) on the recommendation of the NDPP.

Issues in dispute

5.4.2 The Complainants argued that the NDPP unduly delayed to consider recommending to the Minister to re-open the inquest into the death of the Deceased.

5.4.3 As indicated above, I referred the matter to the NPA on 21 May 2018 requesting the NDPP to consider recommending to the Minister to re-open the inquest in
terms of section 17A of the Inquests Act. A reminder was sent on 20 August 2018 and an email was received on 23 August from Mr MP Voller indicating that the matter was handled by the office of the Deputy NDPP and that a response would be forthcoming. On 02 October 2018, another reminder was sent to Mr Voller and on 04 October 2018, he indicated that the then Head of National Prosecution Services, Adv. N Jiba, was overseeing the matter as it fell within her mandate.

5.4.4 On 21 November 2018, Adv. Trish Matzke, from the NDPP’s office, informed my office about a meeting that was arranged between their office and the Complainants to obtain more information on the matter. Adv. Matzke further advised that a memorandum had been finalised by her team for submission to Dr Ramaite and that the latter would contact the Complainants directly as soon as a decision had been reached.

5.4.5 On 18 January 2019, Ms Bester, sent a letter-dated 14 December 2018 informing my office that, after consultation with the National Prosecution Services and due to the sensitivity of the matter, it was decided to place the request to re-open the inquest before Adv Batohi for further consideration. On 08 March 2019, Adv. Khaeane confirmed that Adv Batohi was considering the matter.

5.4.6 My office served Adv Batohi with a section 7(9)(a) notice dated 09 May 2019. On 13 May 2019, I held a meeting with Adv Batohi and her team, in which she agreed to treat the matter with utmost urgency and undertook to expedite an application to the Minister to consider the re-opening of the inquest into the death of the Deceased in terms of section 17A of the Inquest Act.

Application of the relevant legal prescripts

5.4.7 Section 195(1) of the Constitution provides that:
"Public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained;
(b) …;
(c) …;
(d) …;
(e) People's needs must be responded to;
(f) …"

5.4.8 It was expected of the NPA to reflect a high standard of professional ethical conduct by promptly considering the request to recommend the re-opening of the inquest, especially after such a tragic loss of their son. Failure to deal with the request on time would defeat the principles and values of the Constitution.

5.4.9 The relevant Batho Pele principle of Courtesy provide that:

"Citizens should be treated with courtesy and consideration."

5.4.10 It is clear from the above principle that it was expected of the NPA to prioritise the matter taking into account its sensitivity and that a family tragically lost a son. Failure to do so would be in contravention of the spirit of the Batho Pele Principles.

5.4.11 In terms of the Inquests Act, section 17A (1) provides that the Minister may, on the recommendation of the State Attorney concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.
5.4.12 The Appeal Court in *Marais NO v Tiley* 1990(2) SA 899(A) at 901F-902A held as follows:

"...The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and so that persons responsible for such deaths may, as far as possible, be brought to justice..."

5.4.13 The application of section 17A of the Inquest Act was also confirmed in the matter of *The re-opened inquest into the death of Ahmed Essop Timol* ([IQ01/2017] ZAGPPHC 652 (12 October 2017).

**Conclusion**

5.4.14 Based on evidence gathered, it can be concluded that the NPA did not comply with the values and principles regulating good governance in public administration as espoused in the Constitution when it delayed to consider recommending to the Minister to re-open the inquest into the drowning of the Deceased. However, Adv Batohi undertook to urgently make a submission to the Minister in this regard.

5.5 Regarding whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town, South African Police Service and National Prosecuting Authority in the circumstances:

**Issues in dispute**

5.5.1 The Complainants submitted that they are distressed by the fact that their son, a young man and promising student, drowned in Misverstand Dam, whilst being
under the care of the UCT. They further submitted that this was the biggest loss of their lives.

5.5.2 According to the Mayosi report, the loss of their son has had a severe and debilitating impact on the Complainants. The impact of their loss was aggravated by the manner in which they felt they were treated by all those in authority who played various roles after the death of their son. In this regard, they were aggrieved by their treatment by the SAPS members dealing with the investigation of the death of their son; the Magistrate who presided over the inquest; and ultimately the UCT.

5.5.3 The Complainants reported that after the death of the Deceased, they incurred R36 000.00 transportation costs for the conveyance of the Deceased’s body from OR Tambo International Airport to the funeral parlour and further incurred burial costs of R150 000.00. They allegedly embarked on a trip amounting to R75 000.00 to the UCT to attend the Deceased’s memorial service. They indicated further that they undertook a trip to the SAPS in Cape Town with four (4) family members to initiate an investigation process into the drowning incident and for the opening of a case of negligence against the UCT. They allegedly incurred travelling costs of R20 000.00. They indicated that they also embarked on another trip with three (3) family members to attend the inquest hearing at Moorreesburg Magistrates Court which amounted to R30 000.00.

5.5.4 The death of the Deceased has allegedly been a traumatic and tragic incident for the Complainants and their family which eventually led to their state of depression. The Deceased’s father is a business man who has not been able to lead a normal life since the death of his son. The family business was his source of income but the passing of his son has affected their quality of life and livelihood as a family. Though the family has been able to get professional help through therapy sessions amounting to R24 000.00 with Psychiatrists and their Community Church this is the chapter in their lives they may never be able to
close. The Complainants have also reported an expense of **R420 000.00** for the unveiling of the Deceased’s tombstone.

5.5.5 The estimated total expenses allegedly incurred by the Complainants due to the drowning of theirs son amounts to **R755 000.00**. They, however could not provide my investigation team with supporting documents.

5.5.6 The matter remains unresolved by the NPA’s undue delay to consider recommending the re-opening of the inquest to the Minister. The suspicion and mistrust by the Complainants that there was negligence in the death of their son would remain. This would have a devastating effect on their well-being.

5.5.7 The UCT’s attorneys argued that there is no evidence that establishes a causal link between the conduct of the UCT and the alleged losses sustained by the Complainants.

5.5.8 They further argued that no proof has been submitted to my office in respect of the alleged damages sustained and that furthermore any claim for damages has prescribed.

5.5.9 It is further argued that the there is no causal *nexus* that the UCT is responsible for the mental status of the Complainants and that no medical evidence has been provided in this regard.

5.5.10 In my meeting with Adv Batohi held on 13 May 2019, she undertook to urgently make a submission to the Minister to consider the re-opening of the inquest in the matter.
Conclusion

5.5.11 Based on the evidence gathered, it can be concluded that the Complainants suffered financial and emotional prejudice as a result of the conduct of the UCT and NPA.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I now make the following findings:

6.1 Regarding whether the University of Cape Town failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016:

6.1.1 The allegation that the University of Cape Town improperly failed to provide safety measures against the drowning of Mr Mosimanegape Boyz Madiba on 12 March 2016 is substantiated.

6.1.2 The UCT had no rowing safety measures or rules in place at the time of the drowning of the Deceased as required by the RowSA. It only developed and implemented its rowing Standard Operating Protocols in 2017 as a result of this drowning incident.

6.1.3 The conduct of the UCT was in contravention of RowSA Constitution, USSA-R Constitution and clauses 1.3.2, 1.3.3, 1.3.4 and 2.3.1.7 of the RowSA Code of Conduct.

6.1.4 The conduct of the UCT also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
6.2 Regarding whether the University of Cape Town unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba:

6.2.1 The allegation that the UCT unduly delayed to investigate the drowning incident of Mr Mosimanegape Boyz Madiba is substantiated.

6.2.2 The UCT only appointed Adv. Mayosi on 29 June 2017, as the Presiding Officer in an inquiry to consider the circumstances, processes and procedures leading up to and surrounding the drowning of the deceased at Misverstand Dam on a weekend outing with the UCT Rowing Club on 12 March 2016. This was fifteen (15) months after the drowning incident. Furthermore, the Mayosi report was only finalised in June 2018, two (2) years and three (3) months after the incident.

6.2.3 The UCT’s conduct was in contravention of section 195(1)(a) and (e) of the Constitution and the Batho Pele Principle of Courtesy.

6.2.4 The conduct of the UCT also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether the South African Police Service failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba:

6.3.1 The allegation that the SAPS improperly failed to investigate and report on the drowning of Mr Mosimanegape Boyz Madiba is not substantiated.

6.3.2 My investigation revealed that the SAPS properly opened an inquest docket, CAS number 3/2016 on 01 April 2016. A formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017.
6.3.3 Magistrate Groenewald found that the likely cause of the death was drowning whilst swimming in the Misverstand Dam. The Court further found that the death was not brought by any act or omission involving or amounting to an offence on the part of any person.

6.3.4 The IPID also investigated the alleged improper conduct by the SAPS, but found that an inquest docket was properly opened, instead of a culpable homicide case.

6.3.5 The conduct of both SAPS and IPID was found not to be in contravention of section 195 of the Constitution and Batho Pele principles of Courtesy and Information.

6.3.6 The conduct of the SAPS also does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.4 Regarding whether the National Prosecuting Authority unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba:

6.4.1 The allegation that the NPA unduly delayed to recommend the re-opening of an inquest into the death of Mr Mosimanegape Boyz Madiba is substantiated.

6.4.2 I wrote to the office of the NDPP on 21 May 2018 to consider recommending to the Minister to re-open the Deceased’s inquest in terms of section 17A of the Inquest Act, but to date the matter has not been finalised. My last correspondence with the office of the NDPP was on 08 March 2019 wherein it was advised that my request is with Adv. Batohi for consideration.

6.4.3 The conduct of the NPA is in contravention of section 195 of the Constitution and the Batho Pele principle of Courtesy.
6.4.4 The conduct of the NPA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.4.5 Adv Batohi has, however, undertaken to urgently make a submission to the Minister to consider the re-opening of the inquest into the matter.

6.5 Regarding whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town, South African Police Service and the National Prosecuting Authority in the circumstances:

Regarding whether the Complainants suffered prejudice as a result of the conduct of the University of Cape Town

6.5.1 The allegation that the Complainants suffered prejudice as a result of the conduct of the UCT is substantiated.

6.5.2 The Complainants submitted that they are distressed by the fact that their son, a young man and promising student, drowned in Misverstand Dam, whilst being under the care of the UCT. They further submitted that this was the biggest loss of their lives.

6.5.3 According to the Mayosi report, the loss of their son has had a severe and debilitating impact on the Complainants. The impact of their loss was aggravated by the manner in which they felt they were treated by all those in authority who played various roles after the death of their son. In this regard, they were aggrieved by their treatment by the SAPS members dealing with the investigation of the death of their son; the Magistrate who presided over the inquest; and ultimately the UCT.
6.5.4 Although the UCT paid for the transportation of the deceased’s body from Cape Town to O. R Tambo International airport, the complainants allege that they had also committed to pay airfares for the immediate family to attend the memorial service of Mr Mosimanegape Boyz Madiba in Cape Town. The estimated total expenses incurred by the Complainants due to the drowning of the Deceased allegedly amount to R755 000.00 which is broken down as follows: R36 000.00 (transportation cost of the corpse from the airport); R150 000.00 (burial cost); R75 000.00 (transportation cost to attend memorial service); and R20 000.00 (transportation cost to the SAPS in Cape Town); R24 000.00 (transportation cost to attend inquest hearing at Moorreesburg Magistrates Court); and R420 000.00 (unveiling of the Deceased’s tombstone). They, however, could not provide my office with supporting documents.

6.5.5 The UCT instituted inquiry proceedings when Advocate Mayosi was appointed as per a letter dated 29 June 2017 to consider the circumstances, processes and procedures leading up to and surrounding the drowning of the Deceased at Misverstand Dam on a weekend outing with the UCT Rowing Club on 12 March 2016. The process was initiated fifteen (15) months after the drowning incident.

6.5.6 Advocate Mayosi’s report into the inquiry was only finalised in June 2018 and submitted it to the former Vice Chancellor, Dr Price as per a cover letter dated 21 June 2018.

6.5.7 The maladministration of the UCT resulted in improper prejudice to the Complainant as envisaged in section 182(1) of the Constitution and improper prejudice as envisaged in section 6 (4)(v) of the Public Protector Act.

Regarding whether the Complainants suffered prejudice as a result of the conduct of the South African Police Service:
6.5.8 The allegation that the Complainants suffered prejudice as a result of the conduct of the South African Police is not substantiated.

6.5.9 The SAPS properly opened inquest docket, CAS number 3/2016, on 01 April 2016. A formal inquest hearing into the circumstances leading to the death of the Deceased was convened at the Moorreesburg Magistrates Court on 21 April 2017. No prejudice was therefore suffered.

Regarding whether the Complainants suffered prejudice as a result of the conduct of the National Prosecuting Authority:

6.5.10 The allegation that the Complainants suffered prejudice as a result of the conduct of the NPA is substantiated.

6.5.11 The NPA caused prejudice to the Complainants in that the matter remains unresolved by its undue delay to consider recommending the re-opening of the inquest to the Minister. The suspicion and mistrust by the Complainants that there was negligence in the death of their son would remain. This would have a devastating effect on their well-being.

6.5.12 The conduct of the NPA is in violation of section 195(1)(a) and (e) of the Constitution and the Batho Pele principle of Courtesy.

6.5.13 The conduct of the NPA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.5.14 Adv. Batohi undertook to urgently make a submission to the Minister to consider the re-opening of the inquest in the matter at the time of the date of the report.
7. REMEDIAL ACTION

The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, with a view of remedying the impropriety referred to in this report is the following:

The Vice Chancellor of the UCT must take effective and appropriate steps to ensure that:

7.1 The UCT’s adopted guidelines on Rowing rules are submitted to Rowing South Africa, within thirty (30) working days from the date of the report, to ensure compliance with the Rowing South Africa Code of Conduct; and

7.2 Workshops and training sessions on Rowing Rules must be rolled out to Novice and potential rowers prior to subscription as registered club members. Proof of the workshop/training sessions must be tracked and monitored.

I also recommend to the Vice Chancellor of the UCT that:

7.3 The University considers an *ex gratia* payment to the Complainants for the loss of their son and expenses incurred by the Deceased’s immediate family to attend the memorial service at UCT.

The National Director of Public Prosecutions to consider:

7.4 Submitting a recommendation to the Minister of Justice and Correctional Services, within thirty (30) working days from the date of this report, to consider the re-opening of the inquest into the matter in terms of section 17A of the Inquests Act 58 of 1959.
8. **MONITORING**

8.1 The Vice-Chancellor of the UCT and the National Director of Public Prosecutions must, within fifteen (15) working days from the date of the report, submit an Action Plan to my office indicating how the remedial action in paragraph 7 will be implemented.

8.2 The submission of the Action Plan and the implementation of my remedial action shall, in the absence of a Court Order directing otherwise, be complied with within the period prescribed in my report.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 05/08/2019