
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO: 44 of 2019/20

"Allegations of improper conduct and maladministration by the Department of Correctional Services"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE DEPARTMENT OF CORRECTIONAL SERVICES RELATING TO THE PAYMENT OF PENSION BENEFITS TO THE MOTHER OF A DECEASED EMPLOYEE, MR SIYANGAPHI FILIFANI
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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 section 8(2A)(a) of the Public Protector Act 23 of 1994 (the Public Protector Act).

(ii) The report communicates my findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into allegations of improper conduct and maladministration by the Department of Correctional Services (the Department) pertaining to the payment of pension benefits to the mother of a deceased employee, Mr Siyangaphi Filifani.

(iii) The complaint was lodged on 13 March 2017 by Ms Nkunkuma Filifani (the Complainant) alleging that her son, Mr Siyangaphi Filifani, who was employed by the Department, passed away on 01 May 2009 and that she never received the pension benefits from the Government Employees Pension Fund (GEPF) that she was entitled to, as a nominated beneficiary.

(iv) The Complainant further alleged that when she raised the matter with the officials of the Department in De Aar, she was informed that the relevant beneficiary forms in terms of which she was awarded a benefit were forwarded to the Government Pensions Administration Agency (GPAA) for payment, however no payment was ever received.

(v) Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

(a) Whether the Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr Siyangaphi Filifani, and if not
(b) Whether the failure by the Department to inform the GPAA was improper, constitutes maladministration and prejudiced the Complainant.

(vi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Department, a meeting with a Customer Service Agent of the GPAA, an analysis of the documents and information obtained during the investigation and the application of the relevant laws and other prescripts.

(vii) Having considered the evidence and information obtained during the investigation, I now make the following findings:

(a) Regarding whether the Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr Siyangaphi Filifani.

(aa) The allegation that the Department had failed to duly inform the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr S Filifani, is substantiated.

(bb) The evidence and information obtained during the investigation clearly indicate that the Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA, as is required by the Government Employees Pension Law Amendment Act, 2004.

(b) Regarding whether the failure by the Department to inform GPAA was improper, constitutes maladministration and prejudiced the Complainant.

(aa) The allegation that the failure by the Department to inform GPAA that the Complainant was a nominated beneficiary of the pension benefits of an
employee, the late Mr S Filifani, was improper, constitutes maladministration and prejudiced the Complainant, is substantiated.

(bb) The Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA, as is required by the Government Employees Pension Law Amendment Act, 2004. This resulted in the Complainant not being paid accordingly by the GPAA when Mr Filifani passed on. The Department was entrusted by the late Mr Filifane to have done so as his employer and at his request.

(cc) The failure by the Department 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.

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

(a) The National Commissioner of Correctional Services to:

(aa) Determine, with the assistance of the GPAA, the amount and interest that the Complainant is entitled to as a nominated beneficiary of the pension benefits of her late son, Mr S Filifani when he passed away on 1 May 2009.

(bb) Calculate interest on the determined amount of the pension benefits that the Complainant was entitled to, in terms of the relevant provisions of the Prescribed Rate of Interest Act, 1975.

(cc) Pay to the Complainant the amount equal to the pension benefit and interest to which she is entitled to within a period of thirty (30) business days from the date of receipt of my report.
(dd) Apologise to the Complainant in writing for the failure on the part of the Department and the prejudice that she suffered as a result thereof, within a period of thirty (30) business days from the date of receipt my report.

(ee) Conduct an investigation into the conduct of the officials of the Department involved in the failure to submit the nomination forms of Mr Filifane to the GPAA, with a view of taking appropriate action against them, within a period of thirty (30) business days from the date of receipt of my report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE DEPARTMENT OF CORRECTIONAL SERVICES RELATING TO THE PAYMENT OF PENSION BENEFITS TO THE MOTHER OF A DECEASED EMPLOYEE, MR SIYANGAPHI FILIFANI

1. INTRODUCTION

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

1.2 The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to:

1.2.1 Mr Arthur Fraser, the National Commissioner of the Department of Correctional Services.

1.2.2 Copies of the report are also provided to Mr K Sukdev, the Chief Executive Officer of the Government Pensions Administration Agency (GPAA) and Ms Nkunkuma Filifani, who lodged the complaint, to inform them of the outcome of my investigation.

1.3 The report relates to an investigation into allegations of improper conduct and maladministration by the Department of Correctional Services (Department) relating to the payment of pension benefits to the mother of a deceased employee, Mr Siyangaphi Filifani.

2. THE COMPLAINT

2.1 The complaint was lodged on 13 March 2017 by Ms Nkunkuma Filifani (the Complainant).
2.2 In the main, the Complainant alleged that her son, Mr Siyangaphi Filifani, who was employed by the Department, passed away on 01 May 2009 and that she never received the pension benefits from the Government Employees Pension Fund (GEPF) that she was entitled to, as a nominated beneficiary.

2.3 She further alleged that when she raised the matter with the officials of the Department in De Aar, she was informed that the relevant beneficiary forms in terms of which she was awarded a benefit, were forwarded to the GPAA for payment, however no payment was ever received.

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

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

3.2 Section 182(1) of the *Constitution* provides that:

> "The Public Protector has the power as regulated by national legislation –
> (a) 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;
> (b) to report on that conduct; and
> (c) to take appropriate remedial action."

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through
conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 In the matter of 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.¹ 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."²

3.6 In the above-mentioned constitutional matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

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

3.6.2 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);

3.6.3 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

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
² Supra at para [73].
empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (Paragraph 68);

3.6.4 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);

3.6.5 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 demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (Paragraph 70);

3.6.6 The Public Protector’s power to take 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);

3.6.7 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 the power that is by its nature of no consequence [Paragraph 71(a)];

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation [Paragraph 71(d)]; and

3.6.9 “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)].
3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71);

3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (paragraph 82);

3.7.3 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 (paragraph 100 and 101):

a) Conduct an investigation;
b) Report on that conduct; and
c) To take remedial action.

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

3.7.5 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 o);

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

3.8 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute ‘special circumstances’ depends on the merits of each case.

3.9 The Department of Correctional Services is an organ of state and its conduct amounts to conduct in state affairs, as a result, the matter falls within the ambit of the Public Protector’s mandate.

3.10 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

4. **THE INVESTIGATION**

4.1 **Methodology**

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3 The investigation process included correspondence with the Department, a meeting with a Customer Service Agent of the GPAA, an analysis of the documents and information obtained during the investigation and the application of the relevant laws and other prescripts.

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 impropriety or maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where she would have been, but for the improper conduct or maladministration?

4.2.1.5 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. In this particular case, the factual enquiry principally focused on whether or not the Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of her son, the late Mr Siyangaphi Filifani, a former employee, and if not whether the failure by the Department was improper, constitutes maladministration and prejudiced the Complainant.

4.2.1.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department to prevent improper conduct, maladministration and prejudice to the Complainant.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of impropriety or maladministration.
4.3 On analysis of the complaint, the following were issues considered and investigated.

4.3.1 Whether the Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr Siyangaphi Filifani; and if not

4.3.2 Whether the failure by the Department to inform GPAA was improper, constitutes maladministration and prejudiced the Complainant.

4.4 THE KEY SOURCES OF INFORMATION

4.4.1 Documents

4.4.1.1 A copy of the Nomination of Beneficiaries Form WP1002;
4.4.1.2 A copy of the Withdrawal from the Fund Form Z102;
4.4.1.3 A copy of the Nomination of Beneficiaries for PERSAL pay-outs;
4.4.1.4 Copies of Identity Documents for all beneficiaries;
4.4.1.5 A copy of the termination of service form.

4.4.2 Correspondence between the Public Protector and:

4.4.2.1 The GPAA, dated 16 August 2017;
4.4.2.2 The Department, dated 29 August 2017, 3 October 2017, 26 February 2018 and 14 March 2019.

4.4.3 Legislation and other prescripts


4.4.3.2 The Public Protector Act, 23 of 1994.
4.4.3.3 Pension Fund Act, 24 of 1956.

4.4.3.4 Government Employees Pension Law Amendment Act, 21 of 2004.

4.4.3.5 Prescribed Rate of Interest Act, 55 of 1975.

4.4.3.6 GEPF Guidelines.

4.4.4 Interviews

4.4.4.1 Meeting with Ms Annelize Coetzee, Customer Service Agent at GPAA, Kimberley Regional Office, held on 14 November 2018.

4.4.5 Notices in terms of section 7(9) of the Public Protector Act

4.4.5.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act, to the Commissioner of the Department of Correctional Services, Mr Arthur Fraser on 25 June 2019 and his response thereto, dated 25 July 2019.

4.4.6 Jurisprudence considered

4.4.6.1 Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11;2016(3) SA 580(CC);

4.4.6.2 President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP).
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 Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr Siyangaphi Filifani.

*Common cause issues or undisputed facts*

5.1.1 It is common cause that Mr Siyangaphi Filifani was employed by the Department on 1 February 1999 (PERSAL No 18781837 1) and that he passed away on 1 May 2009.

5.1.2 Mr Filifani nominated the Complainant as one of the beneficiaries of his GEPF pension benefits, on 24 March 2009.

5.1.3 Further, that according to the Department's records (form WP1002) the nomination of the Complainant was for twenty percent (20%) of Mr Filifani's pension benefits.

5.1.4 It is not in dispute that the Department was responsible for submitting the nomination form (WP1002) to the GPAA, as Mr Filifani's employer.

5.1.5 It is also common cause that the Complainant never received the pension benefits that she was entitled to from the GEPF when her son passed away.

*Issues in dispute*

5.1.6 The Complainant contended that she was prejudiced due to the failure on the part of the Department to ensure that she received the GEPF pension benefits of her deceased son that she was entitled to.
5.1.7 It was established from the records of the Department that Mr Gert Nel, the Divisional Head: Human Resource Management of the Department at De Aar, informed Mr Paul Nkabinde, the Assistant Director: Services Termination at the Head Office of the Department in Pretoria by email on 17 May 2016, that the relevant documents nominating the Complainant as a beneficiary were sent to the Head Office of the Department.

5.1.8 Mr Paul Nkabinde confirmed that the documents were received by the Head Office and were on file, but that there is no indication in the records that the nomination form was forwarded to the GPAA.

5.1.9 During the investigation, Mr Nkabinde indicated by email dated 19 March 2019, that there appears to have been an administrative oversight and that it could not be established from the Department’s records why the nomination form on the relevant file was not forwarded to the GPAA.

5.1.10 Ms Annelize Coetzee, Customer Service Agent of the GPAA at its Kimberley Regional Office, was approached during the investigation on 14 November 2018. She submitted copies of the relevant documents in respect of the withdrawal from the GEPF of the pension benefits due to Mr Filifani that were received from the Department. The Withdrawal From Fund Form (Z102) submitted by the Department on 10 July 2009 did not include the name of the Complainant as a beneficiary and the Nomination Form (WP 1002) was not submitted by the Department. Accordingly, no payment was made to the Complainant.

Application of relevant legal prescripts

5.1.11 Section 3 of the Government Employees Pension Law Amendment Act 21 of 2004 provides that:

"If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the applicable form of
the Fund and subject to the prescribed conditions, notify the Board of his or her wish that the said gratuity be paid on his or her death to the beneficiaries mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form. Notwithstanding anything to the contrary in any law contained, the Board may on the death of a member who so notified the Board pay at its discretion the gratuity concerned in accordance with the member’s wish”.

5.1.12 Section 37C(bA) of the Pension Fund Act, 24 of 1956 provides that:

“If a member has a dependent and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable; provided that this paragraph shall only apply to the designation of nominee made on or after 30 June 1989; provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees”.

5.1.13 According to the GEPF Guidelines a death gratuity is paid to beneficiaries as a once off cash lump sum. This does not depend on whether or not the deceased completed a beneficiary form (WP1002). If no valid beneficiary form exists, the GEPF may divide and award the gratuity among the beneficiaries according to the rules of the fund.

5.1.14 In his response to the Section 7(9) notice affording him an opportunity to respond to the information and evidence referred to above, dated 25 July 2019, the National Commissioner of the Department of Correctional Services only requested that a meeting be convened to be attended by officials of the Department and the GPAA
regarding this matter to present all documents and information. The National Commissioner did not respond to any of the information and evidence already obtained during the investigation from officials of the Department and the GPAA.

Conclusion

5.1.15 The evidence and information obtained during the investigation clearly indicate that the Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA. This resulted in the Complainant not being paid according to her nomination by the GPAA when Mr Filifani passed on.

5.1.16 A further meeting with the officials as suggested by the National Commissioner, would have served no purpose, as the evidence was not disputed.

5.2 Regarding whether the failure by the Department to inform GPAA was improper, constitutes maladministration and prejudiced the Complainant:

Common cause issues or undisputed facts

5.2.1 It is common cause that Mr Siyangaphi Filifani was employed by the Department of Correctional Services on 1 February 1999 and that he passed away on 1 May 2009.

5.2.2 Mr Filifani nominated the Complainant as one of the beneficiaries of his GEPF pension benefits on 24 March 2009. She was to receive 20% of his pension benefits in the event of his demise.

5.2.3 It is not in dispute that the Department was responsible for submitting the nomination form (WP1002) to the GPAA.

5.2.4 It is also common cause that the Complainant never received the pension benefits from the GEPF that she was entitled to when her son passed away.
5.2.5 The Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA as indicated in paragraph 5.1 above. This resulted in the Complainant not being paid accordingly by the GPAA when Mr Filifani passed on. Such conduct is improper, constitutes maladministration and resulted in prejudice to the Complainant. The Department was entrusted by the late Mr Filifane to have done so as his employer and at his request.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the provisions of the relevant legal prescripts and the obligations the Department should have complied with, I make the following findings:

6.1 Regarding whether the Department duly informed the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr Siyangaphi Filifani

6.1.1 The allegation that the Department had failed to duly inform the GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr S Filifani, is substantiated.

6.1.2 The evidence and information obtained during the investigation clearly indicate that the Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA, as is required by the Government Employees Pension Law Amendment Act, 2004.
6.2 Regarding whether the failure by the Department to inform the GPAA was improper, constitutes maladministration and prejudiced the Complainant:

6.2.1 The allegation that the failure by the Department to inform GPAA that the Complainant was a nominated beneficiary of the pension benefits of an employee, the late Mr S Filifani, was improper, constitutes maladministration and prejudiced the Complainant, is substantiated.

6.2.2 The Department failed to submit the relevant documents in terms of which the Complainant was nominated as a beneficiary of the GEPF benefits of the late Mr Filifani to the GPAA, as is required by the Government Employees Pension Law Amendment Act, 2004. This resulted in the Complainant not being paid accordingly by the GPAA when Mr Filifani passed on. The Department was entrusted by the late Mr Filifane to have done so as his employer and at his request.

6.2.3 The conduct of the Department 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.

7. REMEDIAL ACTION

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

7.1 The National Commissioner of Correctional Services to:

7.1.1 Determine, with the assistance of the GPAA, the amount and interest that the Complainant was entitled to as a nominated beneficiary of the pension benefits of her late son, Mr S Filifane when he passed away on 1 May 2009.
7.1.2 Calculate interest on the determined amount of the pension benefits that the Complainant was entitled to, in terms of the relevant provisions of the Prescribed Rate of Interest Act, 1975.

7.1.3 Pay to the Complainant the amount equal to the pension benefit and interest to which she is entitled to within thirty (30) business days from the date of my report.

7.1.4 Apologise to the Complainant in writing for the failure on the part of the Department and the prejudice that she suffered as a result thereof, within thirty (30) business days from the date of my report.

7.1.5 Conduct an investigation into the conduct of the officials of the Department involved in the failure to submit the nomination forms of Mr Filifani to the GPAA, with a view of taking appropriate action against them, within thirty (30) business days from the date of my report.

8 MONITORING

8.1. The National Commissioner of the Department of Correctional Services to submit an implementation plan to me, indicating how the remedial action referred to in paragraph 7.1 is implemented, within fifteen (15) business days from the date of receipt of my report.

8.2. Unless the remedial action taken by the Public Protector is reviewed and set aside by a Court of law, compliance is not optional and same must be complied with within the stated period.

ADV BUSISWE MKHWEBANE
THE PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 25/01/2019