

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT BY THE
FUNCTIONARIES OF THE DEPARTMENT OF CORRECTIONAL SERVICES
RELATING TO THE ESCAPE OF MR THABO BESTER FROM THE MANGAUNG
CORRECTIONAL CENTRE AND ALLEGATIONS OF UNDUE DELAY AND/OR
OMISSION BY THE FORMER DEPUTY MINISTER OF CORRECTIONAL SERVICES
TO INTERVENE REGARDING THE INCIDENT.**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
BCC	Bloemfontein Correctional Contracts (Pty) Ltd
CCR	Central Control Room
CCTV	Close Circuit Television
Correctional Services Act	Correctional Services Act, 1998
Committee	Parliamentary Portfolio Committee on Justice and Correctional Services
DCS	Department of Correctional Services
DCS MCC Controller	Department of Correctional Services Mangaung Correctional Centre Controller
DRC	Director Regional Commissioner for Free State and Northern Cape Regions
Constitution	Constitution of the Republic of South Africa, 1996
DNA	Deoxyribonucleic acid
G4S	G4S Bloemfontein Correctional Services (Pty) Ltd
JICS	Judicial Inspectorate of Correctional Services
Investigation Team	Investigation Team of the Public Protector
Minister	Minister of Justice and Correctional Services
MCC	Mangaung Correctional Centre
OPSC	Office of the Public Service Commission
PPP	Public-Private Partnership
Public Protector Act	Public Protector Act, 1994
SAPS	South African Police Service
SMS	Senior Management Service

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into alleged improper conduct by officials of the Department of Correctional Services (DCS) regarding the escape of Mr Thabo Bester (Mr Bester) from the Mangaung Correctional Centre (MCC), as well as allegations of failure by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa (Mr Holomisa), to intervene regarding the incident.
- (iii) The investigation originates from a complaint lodged on 28 March 2023 by Mr Elias Muller (the Complainant), who alleged, *inter alia* that:
 - (a) According to his observations and based on several media reports, the DCS might have acted in breach of its legal obligation and in violation of the Constitution in the handling of the incident that led to Mr Bester's escape from prison;
 - (b) The DCS did not do an "*admirable*" job, following the fire that occurred in Mr Bester's prison cell;
 - (c) The DCS' failure to investigate the incident properly and urgently, exposed Mr Bester's victims to possible fear for their lives and also exposed the public to Mr Bester's "*violent and fraudulent conduct*";

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- (d) The manner in which the DCS handled this incident is embarrassing and the DCS acted in breach or violation of section 237 of the Constitution, which requires all Constitutional obligations to be performed diligently and without any delay; and
- (e) The DCS seemingly only became aware of Mr Bester's escape from prison during the month of March 2023.
- (iv) The Complainant also requested the Public Protector to investigate allegations about Mr Holomisa, who was allegedly informed by a prison official about Mr Bester's prison escape during the previous year (2022), but apparently did nothing with the information that was shared with him by the prison official.
- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
- (a) Whether there was undue delay and/or omission by the functionaries of the Department of Correctional Services to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act, and
- (b) Whether there was undue delay and/or omission by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa, to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution

and amounts to undue delay as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act.

- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law, and related prescripts.
- (vii) Notices in terms of section 7(9)(a) of the Public Protector Act (the Notice/s) were issued to all the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed provisional findings and remedial action from 07 May 2024 to 12 June 2024:
 - (a) Minister of Correctional Services, Dr Pieter Groenewald (Dr Groenewald);
 - (b) National Commissioner of Correctional Services, Mr SM Thobakgale (Mr Thobakgale);
 - (c) Speaker of the National Assembly, Ms T Didiza (Ms Didiza) and
 - (d) Former Deputy Minister of Correctional Services, Mr Holomisa.
- (viii) Written responses to the Notices were received between 23 July and 07 August 2024 from Mr Holomisa, Ms Didiza, Mr Thobakgale, Ms KA Ramolobeng, Mr Mahonono, Ms Phahlane and from Dr Groenewald.
- (ix) The responses and information/evidence submitted by the respondents were duly considered by the Public Protector.
- (x) Having regard to the evidence and regulatory framework determining the standard that should have been complied with by DCS, the Public Protector makes the following findings:

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- (a) **Whether there was undue delay and/or omission by the functionaries of the Department of Correctional Services to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act**
- (aa) The allegation that there was undue delay by the functionaries of the DCS to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from MCC, **is substantiated.**
- (bb) The investigation revealed that in the early hours of 03 May 2022, a fire broke out at MCC Cell 35, where Mr Bester was incarcerated.
- (cc) The incident was attended by G4S' officials who then alerted the SAPS and upon the arrival of the SAPS at the scene, G4S pointed out the charred body, believed to be that of Mr Bester.
- (dd) The evidence before the Public Protector further reveals that on the same day, G4S' officials also notified the DCS' Controller, Mr Mahonono, who attended the scene.
- (ee) Initially, the incident was treated as a case of suicide by an inmate in the prison cell, and an inquest docket was registered by SAPS as per Bloemspruit CAS 26/05/2022. However, following the forensic postmortem examination conducted by Dr Fouche on 04 May 2022 on the deceased found in the cell, a suspicion of foul play was raised by Dr Fouche.

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- (ff) The suspicion by Dr Fouche was based on the fact that there were no signs of smoke inhalation or soot found in the trachea pipes of the deceased and that the cause of death was consistent with the fracture of the skull. This resulted in further investigations by SAPS, which led to the inquest docket being replaced with Bloemspuit CAS 289/05/2022 for the murder case.
- (gg) Although the DCS was informed of the escape by the SAPS during the June 2022 meeting and by JICS in August 2022, it took no less than 06 months for the DCS to report the case as one of escape. Furthermore, it took the DCS approximately 55 calendar days post its investigation report dated 18 November 2022, to report the matter to the SAPS on 12 January 2023. This is contrary to the provisions of paragraph 10.10 of the SOP which sets out the reporting timelines for such incidents, to the relevant reporting structures stipulated in paragraphs 10.7.4 and 10.9.5, including the SAPS.
- (hh) DCS' internal investigation report makes no findings relating to their own inadequacies and delays but rather focuses on contractual lapses and breaches by G4S. It is clear that the outcome of DCS' investigation had no bearing on reporting the matter to the SAPS.
- (ii) Taking in consideration the criminal profile of Mr Bester, the functionaries of DCS should have acted swiftly and discharged their legal duty as provided for in section 12(1)(c) read with section 7(2) of the Constitution, which required DCS to act positively and prevent the potential harm or risks posed by the escape of Mr Bester to the public by immediately reporting to SAPS upon becoming aware as contemplated in Paragraph 10.7 of the SOP.
- (jj) However, evidence at the disposal of the Public Protector reveals that DCS did not act expeditiously despite receiving information and leads, even after the conclusion of their own investigation on 22 November 2022. Mr Mahonono took a casual approach and only opened the criminal case as per Bloemspuit

CAS 316/01/2023, to report the escape of Mr Bester to SAPS on 12 January 2023.

- (kk) The entrenchment of the right to be free from violence in section 12(1)(c), read with section 7(2) of the Constitution are indicative of a legal duty resting on the State to act positively to protect everyone from violent crimes by taking active steps to prevent violation of this right and to ensure physical safety of the public.
- (ll) The evidence before the Public Protector indicates that the incident was only reported to the National Commissioner, Mr Thobakgale on 25 November 2022 through a report he received from the Director: Contract Management, Ms Phahlane. It was hereafter that Mr Thobakgale instructed his office to follow up with the region to determine whether the criminal case was opened. Even after this instruction, it is evident that Mr Mahonono still did not open a criminal case, until 12 January 2023.
- (mm) This was in contrast with section 106 of the Correctional Services Act, which requires the DSC Controller to monitor the daily operations at MCC and report to the National Commissioner. This was also in contravention of subparagraph 10.7.6 of the Standard Operating Procedure: Safety and Security, which requires that whenever escapes/attempted escapes occur such must be reported to the different reporting structures outlined in paragraphs 10.9.5, which includes reporting to SAPS.
- (nn) Mr Mahonono's version that he reported to SAPS during meetings held between the two institutions does not constitute reporting, as it is SAPS which informed DCS of the progress in investigations. Mr Mahonono had to report the incident to SAPS in order to satisfy the obligation that DCS had to prove that the inmate was in lawful custody as contemplated in subparagraph 10.7.15 of the SOP which states that when an inmate is to stand trial on a charge of escape, it will be necessary to prove that the inmate was legally in custody.

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- (oo) It was further necessary for DCS to report the escape of Mr Bester to SAPS, as expressly required by Subparagraph 10.7.10 of the SOP to have substantive proof that investigation for escape was indeed underway and to provide SAPS with the key evidence regarding the matter, profile information related to the fugitive such as fingerprint number, addresses of his/her next of kin, physical features of the fugitive including scars, tattoos and photographic images, which may be of assistance to the SAPS in tracing the fugitive.
- (pp) Mr Mahonono's version that they did not receive any proof of the escape from SAPS or a report from the G4S is immaterial in that the investigations into the escape was reported to the DCS in the meetings held with SAPS and JICS.
- (qq) Furthermore, Mr Mahonono's version that there was a refusal by the SAPS to open a case in the meeting held in November 2022, is improbable. It is clear from the evidence that the meetings held by SAPS, which commenced prior to June 2022 were to provide progress on the investigation into the matter.
- (rr) Evidence revealed further that Ms Phahlane, the Director: Contract Manager, relinquished her responsibility to the Director of MCC employed by G4S to report the escape of Mr Bester. This was clear from her own assertion that Ms Phahlane considered reporting the escape to be the duty of the Director of MCC employed by G4S and not hers. This is further evident from the focus of the DCS' investigation report on the security breaches committed by G4S and not on any failures or delays by DCS.
- (ss) Following G4S investigation into the matter, several of their officials were charged, found guilty of misconduct and dismissed.
- (tt) The delay by the functionaries of DCS to report the escape case to SAPS in the circumstances does not align with the prompt action envisaged by the

reporting obligations set out by the Paragraph 10.7 and Subparagraph 10.9.5 of the SOP, which regulate escapes in prisons.

(uu) In the circumstances, the functionaries of the DCS namely, Ms Phahlane and Mr Mahonono unduly delayed complying with the regulatory prescripts imposed on them by Paragraph 10.7 and Subparagraph 10.9.5 of the SOP in reporting the escape of Mr Bester to SAPS for the purposes of enforcing sections 106, 115 and 117 of the Correctional Services Act.

(vv) Accordingly, the Public Protector finds that the conduct of the DCS' MCC Controller, Mr Mahonono and DCS' Director Contract Management, Ms Phahlane, constitute improper conduct as contemplated in terms of section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

(b) Whether there was undue delay and/or omission by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa, to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay and/or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act

(aa) The allegation that there was undue delay and/or omission by Mr Holomisa to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from MCC, **is unsubstantiated.**

(bb) The evidence at the disposal of the Public Protector, shows that Mr Holomisa received the first email from a whistleblower on 11 June 2022, tipping him off about the escape of Mr Bester from MCC. On 08 November 2022, Mr Holomisa

received the second email from the same whistleblower reminding him about the first email.

- (cc) On 09 May 2022, the DCS had already commissioned an internal investigation and Mr Mahonono had issued letters appointing investigators namely, Ms Setlai and Mr Moshoeshoe to commence the DCS' internal investigation.
- (dd) Evidence presented before the Public Protector, reveals that at the time of receipt of the email tipping him off about Mr Bester's escape on 11 June 2022, Mr Holomisa was aware that the DCS had already started with an internal investigation on 09 May 2022.
- (ee) Although he was not aware of the scope of the investigation, Mr Holomisa was satisfied and confident that the matter was receiving the necessary attention by the National Commissioner and his team. Furthermore, evidence reveals Mr Holomisa was being kept informed by the National Commissioner of the developments regarding the internal investigation conducted by DCS, through informal discussions (in person or telephonic) he often holds with Mr Thobakgale.
- (ff) It was noted that the DCS' investigation report was finalised on 18 November 2022 and approved by Mr Mahonono on 22 November 2022. The DCS' report ultimately concluded amongst other things that Mr Bester escaped from MCC, after considering the postmortem and DNA reports.
- (gg) As a result, the Public Protector could not find that the conduct Mr Holomisa constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, undue delay and/or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act, 1994.

- (xi) Having regard to the evidence, the regulatory framework determining the standard that DCS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Minister of Correctional Services

- (a) Must take note of the findings of improper conduct against the DCS functionaries as highlighted in this report, in connection with the allegation that there was undue delay by implicated officials of the DCS, namely Mr Mahonono and Ms Phahlane to act according to the prescripts and protocol on information received in as far as the escape of Mr Bester from Mangaung Correctional Centre is concerned in line with the authority, powers and functions of the Minister contemplated in section 92(2) of the Constitution.

The National Commissioner of DCS

- (b) Within **ninety (90)** calendar days from the date of receipt of this report, develop an appropriate DCS' Escape Prevention Strategy and Guidelines for the MCC facility within the statutory powers vested to the National Commissioner in terms of sections 95(3) and 112 of the Correctional Services Act, indicating monitoring mechanisms, proper systems to be put in place or steps directing how the functionaries of the DCS and Contractors must effectively prevent and manage escapes of inmates within MCC, including all other correctional facilities.
- (c) Within **one hundred and twenty (120)** days from the date of receipt of this report ensure that DCS has a Documented Guideline which communicates how Anonymous Anti-Corruption Reports from the centralised OPSC's Hotline

and other sources will be attended to by DCS, in line with the purpose and the objects of the Protected Disclosures Act, 2000 and other relevant prescripts.

- (d) Take cognisance that since DCS has already taken disciplinary action against Mr Mahonono and Ms Phahlane, therefore the Public Protector will not be taking any further remedial action in this regard.

The Speaker of the National Assembly

- (e) Within thirty (30) days of receipt of this report bring to the attention of the Chairperson of the Parliamentary Portfolio Committee on Correctional Services to take cognisance thereof, in line with the powers contemplated in section 55(2) of the Constitution.

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution and section 8(1) of the Public Protector Act.
- 1.2 This report is submitted in terms of sections 8(1) read with section 8(3) of the Public Protector Act, which empower the Public Protector to make known the findings of an investigation, to affected parties for such persons to note the outcome of the investigation and to implement the remedial action.
- 1.3 The report is submitted to the following persons:
- 1.3.1 Minister of Correctional Services, Dr Groenewald;
 - 1.3.2 National Commissioner of Correctional Services, Mr Thobakgale;
 - 1.3.3 National Commissioner of the South African Police Service, General FS Masemola;
 - 1.3.4 Judicial Inspectorate for Correctional Services (JICS) Inspecting Judge, Justice Edwin Cameron;
 - 1.3.5 Speaker of the National Assembly, Ms Didiza;
 - 1.3.6 Former Deputy Minister of Correctional Services, Mr Holomisa; and
 - 1.3.7 The Complainant.
- 1.4 This report relates to an investigation into alleged improper conduct by officials of the DCS regarding the escape of Mr Bester from the MCC, as well as allegations of failure by Mr Holomisa to intervene regarding the incident.

2. THE COMPLAINT

- 2.1 The complaint was reported to the Public Protector on 28 March 2023 by Mr Elias Muller (the Complainant), who alleged, *inter alia* that:

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- 2.1.1 According to his observations and based on several media reports, the DCS might have acted in breach of its legal obligation and in violation of the Constitution in the handling of the incident that led to Mr Bester's escape from prison;
- 2.1.2 The DCS did not do an "*admirable*" job, following the fire that occurred in Mr Bester's prison cell;
- 2.1.3 The DCS' failure to investigate the incident properly and urgently, exposed Mr Bester's victims to possible fear for their lives and also exposed the public to Mr Bester's "*violent and fraudulent conduct*";
- 2.1.4 The manner in which the DCS handled this incident is embarrassing and the DCS acted in breach or violation of section 237 of the Constitution, which requires all Constitutional obligations to be performed diligently and without any delay; and
- 2.1.5 The DCS seemingly only became aware of Mr Bester's escape from prison during the month of March 2023.
- 2.2 The Complainant also requested the Public Protector to investigate allegations about Mr Holomisa, who was allegedly informed by a prison official about Mr Bester's prison escape during the previous year (2022), but apparently did nothing with the information that was shared with him by the prison official.
- 2.3 According to the Complainant, his complaint emanates from media reports, as outlined below:

GroundUp Article, dated 15 March 2023¹

- 2.4 The report by GroundUp, titled *“Facebook rapist: Deputy Minister was informed by warder that Thabo Bester escaped”* stated amongst others that:
- 2.4.1 *“On 11 June 2022, a prison warder at Mangaung Correctional Centre sent an email to the Deputy Minister of Correctional Services, Phathekile Holomisa, asking: “Are you aware that the inmate who ‘allegedly’ burnt to death at Mangaung Correctional Centre was supposedly assisted to escape by the Mangaung Correctional Centre & Department of Correctional Services’ officials at the prison to escape?”*
- 2.4.2 *The prisoner in question was Thabo Bester, known as the ‘Facebook rapist’, who was serving a life sentence for murder and a series of rapes.*
- 2.4.3 *The Department of Correctional Services reported that Bester died in Mangaung Correctional Centre at about 3:35 am on 3 May 2022. The official version was that Bester set himself alight in his cell. The facility is managed by a multinational security company, G4S.*
- 2.4.4 *GroundUp has since reported evidence indicating that the body found in the cell was not Bester’s and that Bester in fact escaped. He has been spotted in public several times since the supposed date of his death. The body in the cell has not been identified, and that person who died suffered blunt force trauma before being set alight, according to a coroner’s report. A police docket related to the case was changed from suicide to murder.*

¹ Damons M and Steyn D *“Did the Facebook Rapist die in his Cell or Did he Escape From Prison Cell”*. Available on <https://groundup.org.za> accessed on 05 May 2023.

- 2.4.5 *Months after his June email, on 8 November, the warder sent another email to Holomisa: “Good Day Sir, I informed you of the Thabo Bester escape [in] my previous email ... your office & ... the DCS [have] ignored my emails notifying you of this”. It appears no action was taken following the warder’s emails.*
- 2.4.6 *Yet, according to Justice Ministry spokesperson, Chrispin Phiri, the deputy minister is unable to locate the emails in question, but they’re doing all they can to track them.*
- 2.4.7 *The warder said that after reporting the alleged “cover up” to the deputy minister, he was victimised and later transferred from the facility.*
- 2.4.8 *It’s not the first incident that I’ve reported. I sent him [deputy minister] a number of emails about the gang stabbings, corruption and treatment of inmates,” the warder told GroundUp.*
- 2.4.9 *Holomisa had previously replied to an email sent to him by the warder on 19 April 2022. That email dealt with conditions at the prison.*
- 2.4.10 *The warder added that it was an “open secret” that the body in Cell 35, was not that of Bester and “I informed the [deputy] minister ... the way the whole [crime scene] thing was handled, no protocol was followed. There [were] too many red flags and we [colleagues] suspect this was an inside job from night shift [staff].”*
- 2.4.11 *Claims made by the warder about the events of the night of Bester’s escape corroborate with other sources we spoke to. GroundUp is piecing together a timeline of the events of 3 May and intends to publish it in due course”. (sic)*

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- 2.5 The Complainant requested the Public Protector to investigate the following:
- 2.5.1 Whether the functionaries of the DCS acted in breach or violation of section 237 of the Constitution in attending to the fire at Mr Bester's prison cell;
- 2.5.2 Whether Mr Holomisa acted in a manner that is inconsistent with the office he occupies relating to the escape of Mr Bester; and
- 2.5.3 Whether the functionaries of the DCS failed in their legal obligations to properly investigate the incident which led to Mr Bester's prison escape.

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 of the Republic of South Africa, 1996 (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. The Public Protector's powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4. The DCS is an organ of state in terms of section 239 of the Constitution and the conduct of its Executive Authority and functionaries amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

4. ISSUES IDENTIFIED FOR INVESTIGATION

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

4.1.1. Whether there was undue delay and/or omission by the functionaries of the Department of Correctional Services to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act, and

4.1.2. Whether there was undue delay and/or omission by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa, to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from Mangaung Correctional Centre, if so, whether such conduct is improper

as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to investigate with due regard to the circumstances of each case.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation, consideration and application of the relevant laws, regulatory framework, and prescripts.

5.2.2 The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, or other improper conduct?
- (d) In the event of a violation, what action should be taken?

- 5.2.3 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 case, the factual enquiry principally focused on whether the alleged conduct by the Executive Authority and functionaries of the DCS was inconsistent with the applicable process.
- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Executive Authority and functionaries of the DCS in dealing with the escape of Mr Bester from MCC.
- 5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and undue delay.

5.3 The Investigation Process

- 5.3.1 The investigation process included an exchange of correspondence with the National Commissioner of the DCS, Mr Thobakgale; the Inspecting Judge of the Judicial Inspectorate for Correctional Services (JICS), Mr Justice Edwin Cameron (Justice Cameron); the former Minister of Justice and Correctional Services, Mr Ronald Lamola (Mr Lamola); the former Deputy Minister of Correctional Services, Mr Holomisa; the National Commissioner of the South African Police Service (SAPS), General Fanie Masemola (Gen Masemola), the former Chairperson of the Parliamentary Portfolio Committee on Justice and Correctional Services, Mr Bulelani Magwanishe (Mr Magwanishe) as well as G4S Bloemfontein Correctional Services (Pty) Ltd (G4S), who are in possession of information which has a bearing on the investigation of this matter.

5.3.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action to address the improper conduct and undue delay of the DCS.

5.4 Key sources of information

5.4.1 Correspondence exchanged

5.4.1.1 Complaint letter received by the Public Protector from Mr Elias Muller, dated 28 March 2023;

5.4.1.2 Allegations letter from the Public Protector to the former Minister of Justice and Correctional Services, Mr Lamola, dated 05 May 2023;

5.4.1.3 Allegations letter from the Public Protector to the former Deputy Minister of DCS, Mr Holomisa, dated 05 May 2023;

5.4.1.4 Allegations letter from the Public Protector to the National Commissioner of DCS, Mr Thobakgale, dated 05 May 2023;

5.4.1.5 Allegations letter from the Public Protector to the JICS' Inspecting Judge, Justice Cameron, dated 05 May 2023;

5.4.1.6 Allegations letter from the Public Protector to the former Chairperson of the Parliamentary Portfolio Committee on Justice and Correctional Services, Mr Magwanishe, dated 05 May 2023;

5.4.1.7 A response letter from the JICS' Inspecting Judge, Justice Cameron to the Public Protector, dated 12 May 2023;

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- 5.4.1.8 A response letter from National Commissioner of DCS, Mr Thobakgale to the Public Protector, dated 07 June 2023;
 - 5.4.1.9 A response letter from the former Deputy Minister for DCS, Mr Holomisa to the Public Protector, dated 07 June 2023;
 - 5.4.1.10 Allegations letter from the Public Protector to the National Commissioner of the SAPS, Gen Masemola, dated 16 August 2023;
 - 5.4.1.11 A response letter from the National Commissioner of the SAPS, Gen Masemola to the Public Protector, dated 30 August 2023;
 - 5.4.1.12 Letter from the Public Protector to the National Commissioner of DCS, Mr Thobakgale requesting further information, dated 22 December 2023;
 - 5.4.1.13 Letter from the Public Protector to G4S' Head of MCC, Mr Joseph Monyate (Mr Monyate), dated 06 January 2024;
 - 5.4.1.14 Response letter from National Commissioner of DCS, Mr Thobakgale to the Public Protector, accompanied by affidavits from MCC Controller, Mr Mahonono and the Director Contract Management, Ms Phahlane, dated 22 January 2024;
 - 5.4.1.15 Letter from the Public Protector to the National Commissioner SAPS, Gen Masemola requesting further information, dated 23 January 2024;
 - 5.4.1.16 Response letter from the National Commissioner of SAPS, Gen Fanie Masemola to the Public Protector, dated 06 February 2024;

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- 5.4.1.17 Response letter from the former Minister of Justice and Correctional Services, Mr Lamola to the Public Protector, dated 13 February 2024;
- 5.4.1.18 Response letter from G4S' Head of Mangaung Correctional Centre, Mr Joseph Monyate to the Public Protector, dated 26 February 2024;
- 5.4.1.19 Letter from the Public Protector to the National Commissioner SAPS, Gen Masemola requesting further information, dated 07 March 2024;
- 5.4.1.20 Response by SAPS to the Public Protector in a form of an affidavit by Lieutenant Colonel, Mr Tieho Jobo Flyman (Lt Col Flyman), dated 14 March 2024;
- 5.4.1.21 Letter from the Public Protector to the Head of the Office: Deputy Minister of Correctional Services, Mr Daniel Malatji seeking further clarification, dated 25 April 2024;
- 5.4.1.22 Email from Mr Killian, Director Code Enforcement at DCS attaching Notification of Disciplinary Hearing and final written warning for Mr Mahonono and Ms Phahlane, dated 02 May 2024;
- 5.4.1.23 Letter from the former Deputy Minister for DCS, Mr Holomisa to the Public Protector accompanied by an affidavit from the Chief Deputy Commissioner and Government Information Technology Officer, Mr Maponya, dated 16 May 2024;
- 5.4.1.24 Letter from the Public Protector to the National Commissioner of the SAPS, Gen Fanie Masemola requesting further information, dated 22 May 2024;

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- 5.4.1.25 Letter from the Public Protector to the National Commissioner of the DCS, Mr Thobakgale requesting further information, dated 22 May 2024;
- 5.4.1.26 Response letter from National Commissioner Department of the DCS, Mr Thobakgale to the Public Protector accompanied by affidavits from Mr Mahonono and Ms Matebogo Patricia Setlai, dated 11 June 2024;
- 5.4.1.27 Letter from the Public Protector to the JICS' Inspecting Judge, Justice Cameron requesting further information, dated 13 June 2024;
- 5.4.1.28 Response Letter from the National Commissioner of the SAPS, Gen Masemola to the Public Protector, dated 16 June 2024; and
- 5.4.1.29 Response letter from JICS' Inspecting Judge, Justice Cameron to the Public Protector, dated 19 June 2024.
- 5.4.2 **Documents received**
- 5.4.2.1 DCS' briefing presentation to the Portfolio Committee on Justice and Constitutional Development, dated 12 to 13 April 2023;
- 5.4.2.2 DCS' investigation report, together with its annexures, approved on 22 November 2022;
- 5.4.2.3 G4S' investigation report together with its annexures, dated 31 January 2023; and
- 5.4.2.4 JICS' investigation report, dated 17 May 2023.

5.4.3 Legal framework

5.4.3.1 Constitution of the Republic of South Africa, 1996;

5.4.3.2 Correctional Services Act, 1998;

5.4.3.3 Inquest Act, 1959;

5.4.3.4 DCS' Standard Operating Procedures (SOP), dated 11 March 2021;

5.4.3.5 G4S' Emergency Order No. 2 on Escape/Attempted Escape, dated April 2020;
and

5.4.3.6 Delegation of Authority, dated 18 August 2019

5.4.4 Case Law

5.4.4.1 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017);

5.4.4.2 *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021); and

5.4.4.3 *The Public Protector v Mail & Guardian Ltd and Others* (2011 (4) SA 420 (SCA)) [2011] ZASCA 108; 422/10 (1 June 2011).

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

5.4.5 On 18 July 2024, Notices in terms of section 7(9)(a) of the Public Protector Act (Notices) were issued to the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed findings and remedial action:

5.4.5.1 Mr Thobakgale;

5.4.5.2 Dr Groenewald;

5.4.5.3 Mr Holomisa; and

5.4.5.4 Ms Didiza.

5.4.6 Responses received to the Notice issued in terms of section 7(9)(a) of the Public Protector Act

5.4.6.1 Responses to the Notice were received by the Public Protector as follows:

- (a) Ms Didiza, dated 23 July 2024;
- (b) Mr Holomisa, dated 24 July 2024;
- (c) Mr Mahonono, dated 28 July 2024;
- (d) Ms KA Ramolobeng, Parliamentary Chairperson of the Portfolio Committee on Correctional Services, dated 29 July 2024;
- (e) Ms Phahlane, dated 01 August 2024;
- (f) Dr Groenewald, dated 05 August 2024; and
- (g) Mr Thobakgale, dated 07 August 2024.

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

6.1 Whether there was undue delay and/or omission by the functionaries of the Department of Correctional Services to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act

Common cause

6.1.1. In terms of a written agreement concluded between DCS and the Bloemfontein Correctional Contracts (Pty) Ltd, (BCC) on 24 March 2000 (the concession contract), BCC operates MCC as a Public-Private Partnership (PPP) Correctional Centre.

6.1.2. G4S Bloemfontein Correctional Services (Pty) Ltd (G4S), is a security company and is part of a wider consortium subcontracted by BCC to run MCC custodial services. MCC is a private prison opened on 01 July 2001 and is located in Bloemfontein.

6.1.3. According to his criminal profile, Mr Bester was serving multiple sentences at MCC for various serious criminal offences at the time of his escape.

Issue in dispute

- 6.1.4. The issue for the Public Protector’s determination is whether the functionaries of the DCS exercised their duties and functions in line with the relevant legal framework, on receipt of information relating to the escape of Mr Bester from MCC.

Complainant’s version

- 6.1.5. The Complainant contended that the DCS acted in breach of its legal obligation and in violation of the Constitution in the handling of the incident that led to Mr Bester’s escape from prison. He believes that the DCS did not do an “*admirable*” job, following the fire which broke out at Mr Bester’s prison cell.
- 6.1.6. According to the Complainant, the DCS’ failure to investigate the incident properly and urgently, exposed Mr Bester’s victims to possible fear for their lives and exposed the public to Mr Bester’s “*violent and fraudulent conduct*”.
- 6.1.7. The Complainant asserted that the way in which the DCS managed this incident, is “*embarrassing*” and was in breach or violation of section 237 of the Constitution, which requires all constitutional obligations to be performed diligently and without any delay.

DCS’ response, dated 07 June 2023

- 6.1.8. The Public Protector raised the allegations with the National Commissioner of the DCS, Mr Thobakgale through a letter dated 05 May 2023 and he responded in a letter, dated 07 June 2023, stating, *inter alia*, the following:

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- 6.1.8.1 The escape of Mr Bester is currently an ongoing criminal investigation by SAPS under Bloemspruit CAS 316/01/2023;
- 6.1.8.2 It is in the public domain that several G4S officials have been arrested along with Dr Nandipha Magudumana (Dr Magudumana) and her father, for assisting the offender, Mr Bester to escape. This was after the initial case of Inquest was opened into the alleged suicide of the offender, Mr Bester under Bloemspruit CAS 26/05/2022. The DCS will provide information on this matter as far as possible, while being conscious that there is an ongoing criminal investigation and court proceedings;
- 6.1.8.3 DCS has served a notice of termination of the contract to BCC on 02 May 2023, with a ninety (90) days' notice period;
- 6.1.8.4 He received a copy of the investigation report commissioned by the DCS Controller at the MCC, Mr Mahonono, submitted to the Director: Contract Management, Ms Phahlane at the DCS' National Head Office, on 25 November 2022. The investigation report indicated that Mr Bester had escaped;
- 6.1.8.5 He then instructed his office to follow up with the region regarding whether Mr Mahonono opened a criminal case for the escape. Mr Mahonono reported that the SAPS initially refused to open a criminal case, but eventually did so on 12 January 2023;
- 6.1.8.6 The DCS was also provided with the investigation report conducted by G4S on 31 March 2023;
- 6.1.8.7 The DCS could not investigate the circumstances of the charred body itself since it was SAPS' investigation, except to open a criminal case upon becoming aware of the escape;

6.1.8.8 The chain of events was outlined in the DCS' presentation to the Parliamentary Portfolio Committee on Justice and Correctional Services and indicated *inter alia* that:

- (a) On 09 May 2022, Mr Mahonono appointed DCS' investigators (Ms MP Setlai and Mr MP Moshoeshe) to conduct an investigation into the unnatural death of the offender, Mr Bester, following the incident of fire on 03 May 2022 at cell 35;
- (b) The DCS investigators signed the investigation report on 18 November 2022;
- (c) Mr Mahonono signed the investigation report on 22 November 2022;
- (d) The report was submitted by hand on 25 November 2022, to Ms Phahlane for finalisation and submission to the National Commissioner;
- (e) The National Commissioner received a copy of the investigation report on the same day from the Director Regional Commissioner (DRC) DCS and requested the Executive Support Management in the office of the National Commissioner to follow up with the DRC Free State regarding whether a criminal case was opened; and
- (f) On 12 January 2023, Mr Mahonono opened a case of escape with SAPS as per Bloemspruit CAS 316/01/2023.

Documentary evidence from DCS

6.1.9. On 15 May 2023, the Directors of the National Commissioner' office, Mr P Kilian and Ms P Kekana, met with the Public Protector's Investigation Team

(Investigation Team) and submitted hard copies of supporting documents relating to the escape of Mr Bester from MCC. The documentation included the following:

DCS' Investigation Report dated 22 November 2022

- 6.1.10. The DCS investigation was jointly conducted by two (02) investigating officers namely, Ms Setlai and Mr Moshoeshoe, who both signed the report on 18 November 2022. The report highlighted and found, *inter alia*, the following:
- 6.1.10.1 Mr Bester made the first application for own safety on 15 April 2022 and cancelled it after two (02) days (17 April 2022) and went back to the same unit where he feared for his life, and nothing happened to him at Wolds Unit. It is evident that the plan for escape was not yet finalised because both permanent night duty security supervisors (Mr Bartman and Mr Choki) were not on leave, and it was not possible for Mr Sehone Matsoara (Mr Matsoara) the day duty security supervisor to work at night;
- 6.1.10.2 Mr Bester made a second application for own safety on 30 April 2022. It is evident that Mr Bester might have been informed by Mr Matsoara to proceed with an application for own safety again to Broadway as he knew that both night duty supervisors will be on leave, and he requested to work night duty on 02 May 2022. It is evident that the second application for own safety of Mr Bester was not approved by the DCS' MCC Controller in writing before he was transferred to cell 35, except the WhatsApp message sent by Mr Christo Kruger to DCS' MCC Controller, Mr Mahonono notifying him of the application and the transfer of the inmate to Broadway. In this instance, the G4S was supposed to submit an application to Mr Mahonono for approval before the transfer of the inmate;

- 6.1.10.3 The Close Circuit Television (CCTV) cameras were not functioning in Broadway Administration Building, which poses a risk to house block security through failure to monitor all activity areas in those units. The G4S submitted false records regarding the defects specific to security system;
- 6.1.10.4 The camera defects were not reported to the DCS MCC Controller, to the night supervisor and again to the technician on standby while the Central Control Room (CCR) officials (Mr Makhotsa and Ms Jansen) were aware that there is no recording at Broadway Administration Building and sally port areas;
- 6.1.10.5 The video recording system malfunctioned and stopped recording at 19:38 on 02 May 2022 and restarted itself at 04:11 on 03 May 2022, critically selective of time. As a result, the security system failed to record the incident that took place at the Broadway Administration Building, and it is evident that there was human interference on the functioning of the security system;
- 6.1.10.6 The chief postmortem findings revealed the body of an adult male with blunt force trauma to his head including a skull fracture with extensive burn wounds and charring of the whole body, with no signs of smoke inhalation. The cause of death is blunt force trauma to the head;
- 6.1.10.7 There were signs consistent with the use of fire accelerant, which correlates with the positive findings of the K9 dog unit and information in the affidavit from one of the witness offenders indicating that there was a smell of petrol;
- 6.1.10.8 The G4S failed to locate the family (next of kin) of Mr Bester but handed over the corpse to the alleged girlfriend, Dr Magudumana within three (03) days after the incident. In terms of the affidavit of Ms Blerk, tracing of the family members can take up to two (02) months to be concluded. It should be noted that the body which was handed over to Dr Magudumana after submitting an affidavit stamped in Polokwane, but she was in Bloemfontein shows an

element of criminality, as the SAPS official who commissioned it was dismissed in January 2022, four (04) months before the incident;

- 6.1.10.9 The forensic analysis was conducted because the deceased was alone in the cell, was not attacked, never screamed, no signs of smoke inhalation, blunt force injury on the head and the abdomen and pancreas showed spleen with early signs of decomposition during postmortem. The Deoxyribonucleic acid (DNA) Forensic Analysis revealed that there is no match between the body (BDR393/2022) found in cell 35 Segregation Unit and biological mother of Mr Bester, which clearly confirms that the body found in the cell was not that of offender Mr Bester. This is evident that no one died in cell 35 Broadway, Segregation Unit, instead a dead body was brought inside the facility;
- 6.1.10.10 In terms of circumstantial evidence, Mr Matsoara planted a corpse at Broadway and set it alight using accelerant. It is evident that an emergency door was used to bring a body of a deceased in cell 35 and it was used as an escape route for Mr Bester, since there was no single offender who saw all the movements in the unit. A corpse was brought into cell 35 and burnt to create an impression that Mr Bester died in the fire. There was criminal activity at cell 35 Broadway unit;
- 6.1.10.11 A person who identified himself as the father to Dr Magudumana was at MCC the morning of the incident of 03 May 2022 to collect the body, even though the G4S official in her affidavit indicated that they could not locate the next of kin. It is evident that he was informed by Mr Matsoara that the mission is accomplished, which also shows that the alleged father was already in Bloemfontein. It is again evident that Dr Magudumana and her alleged father fully participated in the plan of assisting Mr Bester to escape from detention;

6.1.10.12 The G4S handed over a dead body and the belongings of Mr Bester to Dr Magudumana after receiving a phone call from the alleged girlfriend, who indicated that Mr Bester does not have any family member. It is a concern of how the alleged girlfriend became aware that G4S is trying to locate the family members of Mr Bester. It is evident that the G4S officials and Dr Magudumana were involved in misleading the official who was responsible to locate family members of Mr Bester;

6.1.10.13 The Contractor (G4S) breached most of the operational contractual clauses which show clearly that the prison was not fully operational hence an aided escape took place which compromised the security of the prison. There is a serious breach of contract by the Contractor which threatens the relationship between the two parties (DCS and G4S); and

6.1.10.14 It is evident that the Contractor cannot be trusted with safe custody and rehabilitation of offenders, and it is proven beyond reasonable doubt that this type of conduct by the Contractor has damaged the relationship between the two parties (DCS and G4S) and the relationship is irretrievably broken. **(Misled DCS: Unnatural Death instead of Escape).**

6.1.11. This report further recommended that the DCS MCC Controller should open a criminal case with SAPS for **escape, murder, and arson**, which was approved by Mr Mahonono on 22 November 2022 and the remarks made by the Director: Contract Management, Mr Phahlane on an even date indicated that a case of escape has already been opened based on the postmortem and DNA reports.

G4S Investigation Report dated 31 January 2023

6.1.12. The G4S investigation was conducted by Mr Rudi Mathe (Mr Mathe), who signed the report on 31 January 2023. The investigation found, *inter alia*, that:

- 6.1.12.1 Mr Bester applied for his own safety for detention in a single cell other than normal accommodation² while in Wolds Street, 02 Cell 16 on 30 April 2022, with the reason that he is going to be stabbed by high-ranking gang members because he no longer could pay for protection from them. After assessment, Mr Bester was declared fit to be segregated in accordance with the Correctional Services Act, 1998;
- 6.1.12.2 Mr Bester was last seen alive in cell 35 Segregation Unit at 19:23 on 02 May 2022. The Night Patrol Officer reported smoke at the back of Broadway Administration Building at 03:00 on 03 May 2022. Security Supervisor, Mr Matsoare stated that he instructed the Night Patrol Officer to check the bottom cells one by one up until cell 35 in Segregation Unit where he observed smoke marks on the door frame;
- 6.1.12.3 Security Supervisor, Mr Matsoare stated that he requested the Night Patrol Officer to call for back up and the other Night Patrol Officers came in numbers and the fire was put out. Mr Matsoare did not check for any sign of life as the inmate was burned badly, but he declared the cell a crime scene;
- 6.1.12.4 The nurse arrived at Broadway Administration Building and took over the scene. Dr CO Matshediso was called, and she arrived at the scene at about 05:10 on 03 May 2022. The inmate (supposedly Mr Bester) was examined and found to be unresponsive. Dr Matshediso declared the inmate (supposedly Mr Bester) dead and she referred the body for a post-mortem;
- 6.1.12.5 The SAPS was also called by Ms Jansen to the scene as the death was treated as an unnatural death which occurred in the housing unit. A case of death of

² In accordance with section 30(1)(a) of Correctional Services Act, 1998.

inmate was opened at SAPS Bloemspruit as per CAS 26/05/2022. The JICS was also informed;

- 6.1.12.6 A forensic *postmortem* examination was conducted on the body of the inmate on 04 May 2022 by Dr Jacobus Hendrik Fouche (Dr Fouche) who stated that the cause of death was still under investigation, as foul play was suspected;
- 6.1.12.7 The exact cause of death could not yet be established as G4S awaited the *postmortem* report after which the report and the outcome will be included in the investigation;
- 6.1.12.8 Dr Magudumana, the partner of inmate Mr Bester, who was also registered as a contact and visitor of Mr Bester requested to cremate the corpse at own cost. The cremation of the inmate was stopped by the SAPS' Organised Crime Investigation following the report that the postmortem concluded that cause of death was head injury resulting in brain injuries and that foul play is suspected in the alleged death of Mr Bester; and
- 6.1.12.9 The report also highlights in the recommendations that several G4S officials were charged and subsequently found guilty and dismissed for misconduct, negligence in the performance of their duties and security breaches related to the incident of Mr Bester's escape from MCC.

DCS' response, dated 22 January 2024

- 6.1.13. On 22 December 2023, the Investigation Team sent another letter to DCS seeking further information and clarity on certain aspects of this matter, which were not adequately addressed in the initial response of 07 June 2023. Mr Thobakgale responded through a letter dated 22 January 2024 and stated *inter alia*, the following:

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- 6.1.13.1 The allegation that the DCS only reported the escape to the SAPS two (02) months after the report was submitted is incorrect. Mr Mahonono attempted to open a criminal case on 28 November 2022 as indicated in his affidavit. The SAPS did not want to open a criminal escape case at the time as confirmed by Mr Mahonono in his affidavit. DCS then insisted that a criminal case be opened, which finally happened on 12 January 2023, but because the SAPS system was not functioning on the day, it reflects as 16 January 2023. An affidavit of Mr Mashamba was also attached;
- 6.1.13.2 The Head of the Correctional Centre must open a criminal case of escape. It must be noted that sections 107 and 108 of the Correctional Services Act, 1998 stipulate that the Director appointed by the Contractor has the same powers, duties and functions as the Head of the Correctional Centre subject to the restrictions contained in the Act and the contract;
- 6.1.13.3 As soon as G4S became aware of the escape, they were supposed to report to the SAPS. DCS attempted to report the matter to the SAPS when it became aware after the internal investigation, as stated in the affidavit of Mr Mahonono;
- 6.1.13.4 The Director appointed by the Contractor in terms of section 107 of the Correctional Services Act had the responsibility to report the escape; and
- 6.1.14 No corrective action was taken against any DCS official for delaying the reporting of the escape to the SAPS, as there was no evidence to suggest such transgression. Disciplinary action was instituted against two (02) officials for other misconduct.
- 6.1.15 The following mitigating measures were put in place:

- 6.1.15.1 It was initially contemplated that Mr Mahonono should be suspended, but he was then alternatively placed during the disciplinary process and the placement was made final after the finalisation of the disciplinary hearing into his misconduct;
- 6.1.15.2 The Director of G4S/BCC was removed, and a temporary manager was appointed as provided for in section 112 of the Correctional Services Act; and
- 6.1.15.3 Ms Phahlane was suspended for sixty (60) days and an acting Director was appointed in the post, following the charge against her of misconduct for prejudicing the administration and the efficiency of the DCS. The decision on the alternative placement of the official will be finalised after the disciplinary process is completed.

- 6.1.16 Mr Thobakgale also attached the following documents to his response:

Affidavit of Mr Mahonono, dated 15 January 2024

- 6.1.17 In his affidavit dated 15 January 2024, Mr Mahonono confirms amongst other things that he is a Deputy Director in the DCS also appointed as a Controller at MCC. He further stated that:
- 6.1.17.1 On 28 November 2022 at about 17h00, a meeting was held with the SAPS on his request, because he wanted to open a criminal case after realising from the DCS' internal investigation report of 22 November 2022 that inmate Mr Bester had escaped;
- 6.1.17.2 From the DCS' side, the meeting with SAPS was attended by him, the Deputy Controller, Mr Makhoane and the area coordinator for Grootvlei, Mr Mdakane. From the SAPS' side, the meeting was attended by the late Brigadier

Mkhaulesi and Lt. Col Flyman. The meeting was held at the Grootvlei Area Commissioner's office.

- 6.1.17.3 During the meeting, he requested that the SAPS should open an escape case, but the late Brigadier Mkhaulesi said they should rather open a case of corruption, because the SAPS was already investigating a case of homicide and that an escape case would '*disturb*' their investigation into the homicide. He stated that he did not agree because the SAPS had already changed the alleged suicide to a homicide investigation and in his view, the SAPS could investigate corruption under that case; and
- 6.1.17.4 After interaction with the DRC, Mr Mashamba, Mr Mahonono was advised to go back to the SAPS and to insist that a criminal case of escape be opened, which happened on 12 January 2023 at the Bloemspruit police station. He further stated that the SAPS system was offline, as a result DCS only got the confirmation on 16 January 2023 that a case was opened.

Affidavit of Mr Mashamba, dated 17 January 2024

- 6.1.18 In his affidavit, dated 17 January 2024, Mr Mashamba confirms amongst other things, that he was the DRC of the DCS for the Free State and Northern Cape Regions at the time of the escape of Mr Bester. He further stated that:
- 6.1.18.1 On 24 November 2022, he received an internal investigation report into the escape of Mr Bester from Mr Mahonono. He perused the report and ordered that the report be hand delivered to office of the Director: Contract Management at Head Office;
- 6.1.18.2 He was aware that Mr Mahonono requested a meeting with SAPS on 28 November 2022 to open a criminal case of escape against Mr Bester. He

indicated that Mr Mahonono reported back to him that SAPS did not want to open the case of escape as they were still busy with their investigations;

6.1.18.3 In January 2023, he called Brigadier Mkhalesi and Lt Col Flyman about SAPS' refusal to open a case of escape on the basis that they still had some leads to follow; and

6.1.18.4 He told Mr Mahonono and the Area Commissioner to go back to the SAPS and open a case of escape irrespective of whether the SAPS has done their work or not. He indicated that he is aware that the criminal case was opened on 12 January 2023, but only registered on the system by the SAPS on 16 January 2023.

Affidavit of Ms Phahlane, dated 15 January 2024

6.1.19 In her affidavit, dated 15 January 2024, Ms Phahlane confirms *inter alia* that she was employed by DCS as Director Contract Management at the time of Mr Bester's escape from MCC. She further stated that:

6.1.19.1 She is currently placed by DCS at an alternative site;

6.1.19.2 She received the internal investigation report on 25 November 2022 into the alleged suicide of Mr Bester from Mr Mahonono;

6.1.19.3 She cannot comment on the reporting of the escape of Mr Bester to the SAPS as according to her knowledge it is the responsibility of the Director of MCC employed by G4S, (who is the *de facto* head of the centre) as provided for in section 108 of the Correctional Services Act and G4S Emergency Order 2 relating to "*escape/attempted escape*"; and

6.1.19.4 She later learned that Mr Mahonono opened a criminal case of escape.

Affidavit of Ms Setlai, dated 06 March 2024

- 6.1.20 In her affidavit dated, 06 March 2024, Ms Setlai states that she is the Head of the Uppington Correction Centre and that she is part of the DCS Team that was appointed on 09 May 2022 to investigate the incident of unnatural death at MCC in May 2022. She stated *inter alia* that:
- 6.1.20.1 The team was made aware by the SAPS' Lt Col Flyman that the Inquest investigation of unnatural death has been changed to murder after the SAPS received the *postmortem* report in May 2022;
- 6.1.20.2 They were also informed in June 2022 by Lt. Col Flyman that the DNA test results of the alleged mother (of Mr Bester) do not match that of the deceased;
- 6.1.20.3 Lt. Col Flyman promised to give them (DCS investigation team) copies of the *postmortem* and DNA reports, but that never happened. JICS also informed DCS that they have the *postmortem* and DNA reports, however, they could not give it to DCS without the permission of the SAPS;
- 6.1.20.4 JICS arranged a meeting on 28 October 2022, which was attended by DCS, the SAPS and JICS. During the meeting SAPS gave JICS permission to share the *postmortem* and DNA reports with DCS; and
- 6.1.20.5 The SAPS never gave the *postmortem* and DNA reports to DCS, and it was JICS who gave the two (02) reports to DCS with the permission of the SAPS.

Email from Ms Setlai, dated 08 March 2024

- 6.1.21 On 07 March 2024, the Investigation Team sent an email to Mr Kilian requesting him to explain whether the scope of the DCS' investigation covered

the escape of Mr Bester or whether it was confined to unnatural death. In an email dated 08 March 2024, Ms Setlai clarified the scope of DCS' investigation and stated amongst other things, the following:

“We were appointed to investigate unnatural death of offender Thabo Bester at Mangaung Correctional Centre in May 2022.

On the 28 October 2022 we were provided with a DNA test results by JICS. The DNA of the alleged mother didn't match with the one of the deceased.

Because of the information we gathered through the sworn statements from both officials and offenders; offender didn't scream during the burning of the cell, there was a smell of petrol, offender was alone in the cell and including the DNA test results, we were convinced that offender Thabo Bester escaped from prison. We probed into all the evidence to prove the escape of offender Thabo Bester.” (sic)

Undated Letter signed by Mr Mahonono

6.1.22 According to an undated letter signed by Mr Mahonono, received by the Public Protector through an email on 08 March 2024 from the Director of DCS, Mr Kilian, Mr Mahonono clarified the scope of DCS' investigation and stated *inter alia* that:

6.1.22.1 On 09 May 2022, he appointed investigators to conduct an investigation, and the scope was *'unnatural death'* only and that the issue of escape only came up when the appointed investigators received the DNA report on 28 October 2022; and

6.1.22.2 The DNA forensic analysis revealed that there is no match between the body found in cell 35 and the biological mother of the inmate, Mr Bester and that is where the issue of escape started to be entertained by the investigators.

Disciplinary Charges instituted against DCS' officials

6.1.23 On 24 April 2024, the Investigation Team sought further clarity from DCS regarding the nature of the disciplinary charges instituted and the outcomes thereof against Mr Mahonono and Ms Phahlane. On 04 May 2024, Mr Kilian responded to the Investigation Team through an email and indicated that both Ms Phahlane and Mr Mahonono were subjected to disciplinary hearings. Mr Kilian further indicated that both received the sanction of final written warnings and that they were further transferred and placed alternatively.

6.1.24 In his response, Mr Kilian attached the following documentation:

Charge Sheet and the Sanction for Ms Phahlane

6.1.24.1 The charge sheet for Ms Phahlane reveals that she was charged for misconduct of prejudicing the administration and the efficiency of the DCS in that: *“On or about 25 November 2022 and March 2023, after being provided with the investigation report into the alleged unnatural death of Mr Bester, who was incarcerated at MCC and undertaking to study the report on the weekend of 25 to 27 November 2022, she failed to ensure that the incident is acted upon with the urgency it deserved”.*

6.1.24.2 On 21 February 2024, a sanction of a Final Written Warning was issued to Ms Phahlane by Mr Thobakgale for the aforementioned misconduct in terms of the Disciplinary Procedure for Senior Management Service (SMS), Chapter 7 of

the SMS Handbook and same was acknowledged by Ms Phahlane on 27 February 2024.

Charge Sheet and the Sanction for Mr Mahonono

- 6.1.24.3 The charge sheet for Mr Mahonono reveals that he was charged on two counts of misconduct to which he pleaded guilty, namely, Gross Negligence in the performance of his duties in that on or about 01 to 02 May 2022 at MCC, he neglected to revoke the transfer of the offender, Mr Bester to Broadway Segregation Unit, which resulted in the escape of Mr Bester. The second charge related to Dereliction of Duty in that on or about 01 to 02 May 2022 at MCC, he failed to visit Broadway Segregation Unit after being informed that Mr Bester was transferred with his approval as the Controller, which inaction resulted in the escape of Mr Bester.
- 6.1.24.4 On 27 July 2023, a sanction of a Final Written Warning was issued to Mr Mahonono by the chairperson of the disciplinary hearing, Director RG Lekata, and same was acknowledged by Mr Mahonono on the same date.

DCS' response, dated 11 June 2024

- 6.1.25 On 22 May 2024, the Investigation Team sent another letter to DCS seeking further information on the governance obligations of the DCS and the discharge thereof. Mr Thobakgale responded through a letter dated 11 June 2024 and stated *inter alia*, the following:
- 6.1.25.1 In a response dated 06 June 2023, the DCS provided the Public Protector with an outdated previous version of DCS' B-Order 3 Chapter 19 on Escapes due to an oversight and tendered its apology. DCS therefore attached the revised

B-Order 2 Chapter 10 Management of Security Incidents, which also covers Escapes.

6.1.25.2 The purpose of the revised B-Order 2 in Chapter 10 is self-explanatory and applies to all correctional centres under the control of DCS. However, MCC was and is still managed under a concession contract by BCC and in terms of the contract they have their own policy on escapes (**G4S Emergency Order 2 on Escapes/Attempted Escapes**), which was provided to the Public Protector.

6.1.25.3 In DCS' view, once proof was made available (the *postmortem* and DNA results) that it was not Mr Bester who died in the cell, DCS considered it an escape and handled it accordingly. It must be remembered that G4S insisted until its appearance in March 2023 before the Portfolio Committee that it was Mr Bester who died in the cell.

6.1.25.4 The affidavit of Ms Setlai in paragraphs 4-6 indeed refers to Lt Col. Flyman and the information provided by him. However, Lt Col. Flyman did not confirm what he indicated verbally, with proof. A supplementary affidavit of Ms Setlai was attached to the response, which explains her interaction with Lt Col. Flyman in detail and requires no further explanation.

6.1.25.5 According to DCS' officials, Lt Col. Flyman never indicated that the investigation by SAPS includes escape. DCS was not provided with proof that the SAPS investigated escape and DCS needed certainty that the escape was investigated. The criminal case opened with SAPS under Bloemspruit CAS 316/01/2023 was based on the information provided by JICS (what they received from SAPS) to DCS. The attached supplementary affidavit of Mr Mahonono serves as confirmation.

6.1.26 Mr Thobakgale attached the following documents to his response:

Affidavit of Ms Setlai, dated 03 June 2024

6.1.26.1 In her affidavit dated 03 June 2024, Ms Setlai states *inter alia* that:

- (a) As part of the team that was appointed to investigate the unnatural death of Mr Bester in May 2022 at MCC, they were informed by Lt Col. Flyman that an inquest investigation into the death of Mr Bester has been changed to homicide and the change was informed by the *postmortem* report;
- (b) Lt Col. Flyman promised to give them a copy of the *postmortem* report after finalisation of the DNA test. In June 2022, she made a follow up with regard to the DNA test results and Lt Col. Flyman reported that the DNA test results of the alleged mother do not match with the one of the deceased, however, SAPS' intention was to conduct further DNA tests and comparisons. Lt Col. Flyman promised to give the DCS the reports after receiving all the DNA results;
- (c) On 23 June, 14 July, 20 July, 08 August, 24 August, 01 September, 14 October and 18 October 2022, she communicated with Lt Col. Flyman with regard to DNA test results and he indicated that he was struggling to get results from the relevant section but could not tell why DCS could not be provided with those reports already in the possession of the SAPS; and
- (d) DCS later became aware that JICS was in possession of the DNA and *postmortem* reports, but JICS could not provide DCS with same without the permission of the SAPS. JICS arranged a meeting with SAPS and DCS on 28 October 2022 and the two reports were handed over to DCS during that meeting by JICS.

Affidavit of Mr Mahonono, dated 04 June 2024

6.1.26.2 In his affidavit dated 04 June 2024, Mr Mahonono states *inter alia* that:

- (a) He was appointed Controller at MCC during the time when inmate Mr Bester escaped. In May 2022, the SAPS was investigating the inquest, not escape. In June 2022 his office was informed in writing by G4S that the inquest investigation into the death of inmate Mr Bester was amended to a homicide investigation by SAPS, because they found that the person who died in the cell was not killed by smoke. In June 2022 the SAPS was investigating homicide and not escape, as a result DCS knew nothing about the escape at that time;
- (b) DCS could not open a case of escape because at the time the DCS' Investigation Team was probing unnatural death. Furthermore, it was not going to be easy for DCS to investigate the escape because G4S never reported the escape to the DCS. The other reason why DCS could not open an escape case, is because the DCS' Investigation Team was waiting for DNA test results from SAPS, as DCS do not have capacity of accessing forensic reports, except to rely on SAPS;
- (c) Any escape of an inmate out of custody must be reported to the SAPS by the institution that was assigned to keep the inmate in safe custody. MCC was keeping Mr Bester in safe custody, on behalf of the DCS, hence it was necessary for the DCS to report the matter to SAPS; and
- (d) SAPS never informed DCS that they are investigating an escape, until DCS' Investigation Team got the DNA test results on 28 October 2022. It was then that the criminal escape case was opened by DCS on 16 January 2023 as per Bloemspruit CAS 316/01/2023. No new or different

information was given to SAPS by DCS when opening the case of escape in January 2023.

SAPS' response, dated 30 August 2023

- 6.1.27 The Investigation Team sent a letter dated 16 August 2023 to the National Commissioner of the SAPS, Gen Masemola to request confirmation of investigations by SAPS, the relevant case numbers, nature of offences investigated and related information. Gen Masemola responded per letter dated 30 August 2023 and stated the following:
- 6.1.27.1 A criminal case docket relating to the contravention of section 115 of the Correctional Services Act, for aiding an inmate to escape from a correctional centre, was opened. The case is being investigated by the Provincial Task Team established by Free State Provincial Crime Detection Office in Bloemfontein;
- 6.1.27.2 The matter under investigation has been registered as Bloemspruit CAS 316/01/2023. The court case number for this matter is 20A/113/23. Mr Mahonono of DCS is the Complainant in the matter on behalf of DCS; and
- 6.1.27.3 No members of the DCS or Executive Authority are under investigation by SAPS, however, multiple employees of G4S have been identified as subjects under investigation. In view of the ongoing nature of the investigation, there is a possibility that more arrests may be effected as various leads are further explored.
- 6.1.27.4 Gen Masemola also attached a confirmatory letter signed by the Provincial Commissioner of the SAPS in Free State, Lt Gen Motswenyane, as well as the cover page of the case docket, Bloemspruit CAS 316/01/2023 and the affidavit of Mr Mahonono, who is the Complainant in the case.

Documentary evidence received from SAPS

Complainant's statement supplied by Mr Mahonono on Bloemspruit CAS 316/01/2023

6.1.28 According to the sworn statement supplied by Mr Mahonono to SAPS, it was stated amongst other things, that the incident emanates from the murder Bloemspruit CAS 26/05/2022 whereby on 03 May 2022 at MCC, the inmate Mr Bester committed suicide by burning himself.

6.1.29 Mr Mahonono stated further that the incident was investigated internally by DCS, and the investigation revealed that Mr Bester whom they believed had committed suicide, was likely assisted to escape from the prison cell. According to Mr Mahonono, the decision was taken by DCS to open an escape case.

6.1.30 In terms of the certification by the Commissioner of Oaths, the statement by Mr Mahonono was taken, attested to under oath and signed on 16 January 2023 at 15h20 in Bloemfontein and the docket cover shows the same date.

SAPS' response, dated 06 February 2024

6.1.31 On 23 January 2024, the Investigation Team sent another letter to SAPS seeking further information and to clarify issues raised by DCS. Gen Masemola responded through a letter dated 06 February 2024 and stated *inter alia* that:

6.1.31.1 Brigadier Mkhalesi tragically passed on and the confirmation of events that took place at the meeting held between officials of DCS and SAPS could only be confirmed by Lt Col. Flyman, who was also in attendance at the meeting;

- 6.1.31.2 Lt Col. Flyman is also the investigating officer of a murder docket in which it was alleged that Mr Bester was killed;
- 6.1.31.3 The SAPS categorically denies any allegation that the SAPS as represented by Brigadier Mkhalesi and Lt Col. Flyman refused or did not allow DCS or Mr Mahonono to open an escape case;
- 6.1.31.4 In fact, the investigation by the SAPS into the alleged murder of Mr Bester as conducted by Lt Col. Flyman revealed that Mr Bester was not the person who died in the cell at MCC. Brigadier Mkhalesi and Lt Col. Flyman informed the officials of DCS about the outcome of the investigation and advised the officials of DCS to open an escape case docket; and
- 6.1.31.5 It should be emphasised that Mr Mahonono did not personally report to Bloemspruit police station to open a case docket, but he submitted a statement to Lt Col. Flyman at the Correctional Centre. Lt Col. Flyman commissioned the statement and proceeded to Bloemspruit police station to register the case and opened a docket.
- 6.1.32 Gen Masemola further attached an affidavit by Lt Col. Flyman as part of his response to the Public Protector.

Affidavit by Lt Col. Flyman, dated 29 January 2024

- 6.1.33 In his affidavit dated 29 January 2024, Lt Col. Flyman stated *inter alia that*:
- 6.1.33.1 He is a member of the SAPS and the investigating officer of Bloemspruit CAS 289/05/2022, which was originally registered as a murder case that occurred on 03 May 2022 at G4S MCC in Bloemfontein. It was alleged that a prisoner was killed;

- 6.1.33.2 During the investigation it appeared that the body in the cell was not that of the inmate, Mr Bester. The person found in the cell did not die because of the fire. During the investigation, it was established that Mr Bester conspired with several accomplices to stage his death and had in fact, escaped. The offences that are investigated are fraud, arson, escape from lawful custody and corruption;
- 6.1.33.3 There were several meetings held with DCS, whereby SAPS provided feedback and discussed a way forward in relation to the matter of Mr Bester;
- 6.1.33.4 On 28 November 2022, he accompanied Brigadier Mkhalesi to a meeting at Grootvlei Correctional Services, where they discussed the progress in the matter of Mr Bester. They did not refuse to open a case docket as stated by Mr Mahonono. Instead, the SAPS investigation had revealed that the body found in the cell is not that of Mr Bester and they advised Mr Mahonono to open a case docket of escape; and
- 6.1.33.5 On 16 January 2023, he assisted Mr Mahonono to open and register a case docket. He completed the docket cover and commissioned the statement of Mr Mahonono. He took the docket to Bloemspruit police station to be registered on Case Administration System (CAS), but the system was offline, and he informed Mr Mahonono about the technical problem. The docket was later registered as Bloemspruit CAS 316/01/2023 and he informed Mr Mahonono about the case number.

Additional Affidavit by Lt Col. Flyman, dated 14 March 2024

- 6.1.34 On 07 March 2024, the Investigation Team sent a letter to Gen Masemola seeking confirmation of the date on which the SAPS received the DNA report and shared same with DCS, amongst other things. Lt Col. Flyman responded

on behalf of SAPS through an additional affidavit dated 14 March 2024 and stated *inter alia* that:

- 6.1.34.1 The SAPS received the Biology or DNA report with Lab number 3285554/22 from the Forensic Science Laboratory (FSL) on 05 July 2022. The DNA report was handed in by Brigadier Mkhalesi during the JICS meeting, with SAPS, DCS to Ms Motsumi from JICS, Ms Setlai and Mr Mokgoane of DCS on 28 October 2022;
- 6.1.34.2 The findings of the DNA report were communicated to Mr Mokgoane and Ms Setlai of DCS prior to the meeting of 28 October 2022. Ms Setlai and Mr Mokgoane had regular meetings with Brigadier Mkhalesi and Lt. Col Flyman as they were conducting an internal investigation on the matter for DCS;
- 6.1.34.3 The SAPS became aware that the person who perished in the cell in MCC was not Mr Bester after the receipt of the DNA report and started investigating the possibility of the escape of Mr Bester; and
- 6.1.34.4 It was necessary to open the Bloemspruit CAS 316/01/2023 as a separate matter for investigation as per normal practice, however, the cases were joined for investigation purposes.

SAPS' response, dated 14 June 2024

- 6.1.35 On 22 May 2024, the Investigation Team sent another letter to SAPS seeking further information on the discharge of statutory obligations of the SAPS in connection with this matter as a result of the escape of Mr Bester. Gen Masemola responded through a letter dated 14 June 2024 and stated *inter alia*, the following:

- 6.1.35.1 The initial investigation was dealt with as an inquest docket. However, following the findings of the initial investigation, the investigation was changed to a murder investigation after the postmortem report indicated that the deceased suffered injuries on the skull;
- 6.1.35.2 Efforts to trace the escapee, Mr Bester were then discharged by SAPS. Efforts by SAPS included searching for him, circulating Mr Bester on the SAPS system and on the Interpol system as a wanted suspect. Eventually, Mr Bester was traced in Tanzania and deported to the Republic of South Africa;
- 6.1.35.3 The evidential documents to prove all the steps taken by SAPS to trace Mr Bester form part of the court case and they are currently with the Director of Public Prosecutions³;
- 6.1.35.4 The SAPS could not stop or instruct DCS not to open the case of escape. It was necessary to open the case of escape, because the SAPS could not properly investigate the escape if the custodians of the inmate did not report or confirm the escape;
- 6.1.35.5 The DCS did not furnish the SAPS with any new information when they eventually reported the escape as per Bloemspruit CAS 316/01/2023;
- 6.1.35.6 The denial of possible escape of Mr Bester by the custodians of the inmate did hamper or delay efforts by SAPS to expedite the investigation confirming the escape, thereby delaying registration of the case docket;
- 6.1.35.7 The role played by the SAPS in this matter and the timeline of events is as follows:

³ Gen Masemola furnished the Public Protector with a computer system printout indicating that the dockets for Bloemspruit CAS 289/05/2022 and 316/01/2023 are at court and remanded to 24 July 2024.

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- (a) On 03 May 2022, a fire broke out at MCC cell 35 where Mr Bester allegedly died in the blaze. The matter was reported at Bloemspruit police station, and an inquest docket was registered as per Bloemspruit CAS 26/05/2022 and the crime scene was processed;
- (b) On 15 May 2022, a *postmortem* report was received, and the initial docket of inquest was changed to murder, as the *postmortem* report revealed that the deceased suffered head injuries. With this information being available to SAPS, the possibility of escape could not be ruled out. The suspicion was that the prison officials might have murdered the inmate, hence the injuries on the skull. What complicated the matter was the denial by G4S that Mr Bester had escaped and insistence that the charred remains belonged to Mr Bester;
- (c) The prison video footage did not show what happened. The SAPS then requested the company, Integritron, that electronically operates cameras at MCC to avail the video footage. G4S was served with a notice in terms of section 205 of the Criminal Procedure Act, 1977, to avail the computer printouts reflecting the activities at Cell 35 on the night of the incident. This information was never availed to SAPS, because it was allegedly not available;
- (d) On 06 May 2022, after the *postmortem*, the body was released to the family of Mr Bester who kept it at Sopema Funeral Undertakers (the Funeral Undertaker) in Gauteng. SAPS continued tracing Mr Bester's biological family in order to verify the suspicion of foul play through DNA testing. The family was traced while in the process of preparing to bury the purported remains of Mr Bester. The mother and the family were requested to stop arrangements pending confirmation of identity. The possible biological mother's DNA did not match those of the remains;

- (e) The SAPS arranged with the Funeral Undertaker to keep the remains until the investigation was finalised. On 20 May 2022, the alleged customary marriage wife of Mr Bester, Dr Magudumana, served the funeral undertaker with a letter of demand to release the body to her. The application was set for 24 May 2022 at North Gauteng High Court and later postponed to 02 June 2022;
- (f) On 20 May 2022, at 12h00 the SAPS was made aware of the motion application by Dr Magudumana to request the release of the remains. However, on 02 June 2022, the Court determined the matter in favour of the SAPS to continue with the DNA testing;
- (g) The matter was handled with confidentiality to avoid leaking of information. The manhunt at this stage had not started, because the SAPS' investigation was gathering evidence confirming the escape;
- (h) Upon the return of Mr Bester from Tanzania to South Africa, his DNA samples in the forensic database matched with the samples taken from him. Mr Bester's DNA also matched with his biological mother. The DNA of the charred body identified as Katleho Bereng, did not match Mr Bester' biological mother. This confirmed that the charred body was not Mr Bester; and
- (i) During the process of establishing the facts, a meeting between SAPS, JICS and DCS was held. SAPS shared the information on possible foul play in good faith with stakeholders, with the hope that the involvement of the judge would ease the challenges experienced to obtain information from G4S. Documents shared with the judge were surprisingly shared with GroundUp and reports started circulating that the incident was uncovered by GroundUp, while the foul play was discovered and investigated by SAPS.

JICS' response, dated 12 May 2023

6.1.36 The Public Protector sent a letter dated 05 May 2023 to the Inspecting Judge for JICS, Justice Cameron, relating to his investigation into the matter. Justice Cameron replied through a letter dated 12 May 2023 and indicated, *inter alia*, that:

6.1.36.1 JICS will avail the investigation report to the Public Protector in seeking to aid her investigation. JICS' final report on the Bester "*fiasco*" includes a finding that DCS failed to report the escape timeously; and

6.1.36.2 In addition, the JICS report concludes that DCS was aware of the escape for an extended period before officially reporting it.

Documentary evidence from JICS

JICS' Report dated 17 May 2023

6.1.37 On 04 July 2023, the Investigation Team received *via* email from the office of Justice Cameron, the final report for JICS dated 17 May 2023, signed by JICS' Manager Inspections/Investigations, Mr L De Souza.

6.1.38 This report draws on evidence obtained by JICS during its internal investigation, including information shared by SAPS, DCS and G4S, amongst others. The report also references pertinent media reports. Visual material from public sources, crime scene photos and stills from CCTV video footage, are included in the report.

6.1.39 Amongst some of the findings noted from the report were the following:

“7.15. As early as 18 November 2022, when DCS investigators signed their internal report, DCS was aware that the burnt body found in cell 35 was not that of inmate Bester and therefore that inmate Bester had escaped.

7.16. Once it became clear that inmate Bester had escaped, DCS acted with undue delay by not officially reporting an escape immediately.

7.17. DCS Director of Contract Management R Phahlane did not sign the DCS internal report immediately, but did so only several months later, on 22 March 2023.

7.18. By doing so, she caused undue delay and possible endangerment to the public”.

6.1.40 The report makes several recommendations regarding accountability for Mr Bester’s escape and for preventing similar occurrences.

JICS’ response, dated 19 June 2024

6.1.41 The Public Protector sent a letter dated 13 June 2024 to JICS, requesting clarity amongst other things on when and how JICS alerted the DCS and SAPS to the suspicion of Mr Bester’s escape from MCC. Justice Cameron replied through a letter dated 19 June 2024, and indicated *inter alia* that:

6.1.41.1 JICS first alerted DCS to its early suspicions during a meeting between JICS investigator, Ms Dineo Mocumi and the DCS’ investigation team, on 08 August 2022;

6.1.41.2 JICS communicated these suspicions to SAPS in a meeting on 10 August 2022, however, at this point SAPS was already aware of the risk that Mr Bester

had escaped. SAPS requested that JICS give it time to gather sufficient evidence to effect the arrest. This is reflected in the chronology of events JICS shared with the Parliamentary Portfolio Committee,⁴ which reflects that as early as 25 May 2022, SAPS' investigating officer Lt Col. Flyman issued a sworn statement recording suspicion about the circumstances surrounding Mr Bester's alleged death;

- 6.1.41.3 In follow up correspondence and meetings, JICS reiterated these concerns and urged DCS, SAPS and G4S to treat the matter as an escape, inform and warn the public and take appropriate steps to re-apprehend inmate Mr Bester;⁵
- 6.1.41.4 SAPS furnished JICS with the *postmortem* and DNA results during a meeting on 10 August 2022;
- 6.1.41.5 DCS initially struggled to obtain the *postmortem* and DNA results from SAPS. JICS intervened and with SAPS permission, shared copies of the results with DCS on 28 October 2022; and
- 6.1.41.6 JICS also handed the evidence to G4S' Mr Renso Smit (Mr Smit) during a meeting on 02 February 2023. Despite receiving this information, G4S maintained that the body in the cell was that of Mr Bester.

⁴ JICS' timeline of events was shared with the Public Protector.

⁵ JICS communicated these suspicions in writing to the Mr Lamola on 26 October 2022 and again on 16 March 2023, Mr Holomisa on 23 March 2023 and Mr Thobakgale on 9 February 2023. Follow up meetings with DCS took place on 15 August 2022, 18 October 2022, 04 November 2022, and 09 March 2023. Meetings with SAPS took place on 15 August 2022, 18 October 2022, 07 February 2023. Meetings with G4S took place on 15 August 2022, 19 October 2022, 02 February 2023, 07 February 2023.

Response by the Parliamentary Portfolio Committee on Justice and Correctional Services

6.1.42 The Public Protector sent a letter dated 05 May 2023 to Mr Magwanishe, to enquire whether they were investigating this matter as reported in the media. Mr Magwanishe replied through a letter dated 18 September 2023 and confirmed that they are investigating the matter and further indicated *inter alia* that:

6.1.42.1 The Committee is of the view that the processes by the Public Protector and the Committee are different. As an independent institution, the Public Protector is empowered to carry out its investigations and these do not have to be in conjunction with that of the Committee.

Response by G4S Correctional Services (Bloemfontein) (Pty) Ltd, dated 26 February 2024

6.1.43 On 06 February 2024, the Public Protector sent a letter to G4S' Head or Director of MCC, Mr Joseph Monyante (Mr Monyante) requesting his submission or response pertaining to the escape of Mr Bester. Mr Monyante responded per letter dated 26 February 2024 and stated *inter alia* that:

6.1.43.1 G4S is the operating sub-contractor of the MCC and is contractually and statutorily precluded from disclosing information relevant to MCC, except as required by law or where such information is in the public domain. It is on this basis that G4S provides responses to questions raised by the Public Protector;

6.1.43.2 The first time that G4S was made aware of the suspicion that Mr Bester had escaped was on 02 February 2023 during a meeting, when JICS provided G4S with copies of the *postmortem* and DNA analysis reports, alleging that Mr

Bester had escaped and at which time JICS informed G4S that it had requested DCS to report a case of escape with the SAPS;

6.1.43.3 G4S reported the case of suicide to SAPS when it called SAPS and the DCS Controller to the scene of the fire in the cell occupied by Mr Bester at the MCC on 03 May 2022. Initially, Mr Bester was thought to be dead (by suicide) owing to his bedding and other effects in his cell being set alight and human remains found in his cell;

6.1.43.4 G4S understands that independent investigations into the incident were commenced by both SAPS and DCS. G4S commenced its own investigation into the circumstances surrounding the cell fire to identify any contractual or procedural failings on the part of MCC and to institute the necessary disciplinary action. G4S concluded that several of its employees had breached their contractual obligations. These employees were initially suspended and ultimately dismissed. G4S accordingly concluded its investigation on 31 January 2023;

6.1.43.5 G4S did not report the escape of Mr Bester to SAPS, because no information had previously been shared with G4S by either SAPS or DCS following their respective investigations;

6.1.43.6 Apart from the evidence that it had already shared with SAPS in 2022, G4S was not in possession of any different or additional evidence which suggested that an escape had taken place. JICS had in any event informed G4S that they had requested DCS to report a case of escape with SAPS. G4S now knows that the SAPS Bloemspruit had at that stage registered an escape investigation, namely CAS 316/01/2023;

- 6.1.43.7 It is correct that the Director of the MCC is the Head of the Correctional Centre in terms of section 107 of the Correctional Services Act and that his/her duties are set out in section 108 of the Correctional Services Act, however, the G4S could not have reported an escape that it was not aware of; and
- 6.1.43.8 By the time G4S learned of the escape of Mr Bester, the SAPS had already registered an escape investigation as per Bloemspruit CAS 316/01/2023.

Applicable law

Constitution of the Republic of South Africa, 1996

- 6.1.44 Section 7(2) of the Constitution imposes a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights.
- 6.1.45 In terms of section 12(1)(c) of the Constitution everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.
- 6.1.46 Section 41(1) of the Constitution expressly provides that all organs of State must work collaboratively, to ensure an effective, transparent, coherent, and accountable government.
- 6.1.47 Section 205(3) indicates that the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.

Correctional Services Act, 1998

- 6.1.48 Section 15(1) stipulates that where an inmate dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of the Correctional Centre must in terms of section 2 of the Inquest Act, 1959 report such death.
- 6.1.49 Section 103 states that the Minister may, subject to any law governing the award of contracts by the State, with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre.
- 6.1.50 In terms of section 105, the National Commissioner of the DCS must appoint a DCS Controller for every public-private partnership correctional centre.
- 6.1.51 Section 106 highlights the powers, functions, and duties⁶ of the DCS Controller and states that the Controller must monitor the daily operation of the public-private partnership correctional centre and report to the National Commissioner.
- 6.1.52 Section 107(1) and (2) states that with the prior approval of the National Commissioner, the Contractor must appoint a Director to serve as the Head of the public-private partnership correctional centre and the Director is a custodial official.⁷
- 6.1.53 Section 108 sets out the powers, functions and duties of the Director and stipulates that the Director of every public-private partnership correctional

⁶ Which includes conducting search, separate detention of certain class of sentenced offenders, applying approved mechanical restraints, use of force and other non-lethal incapacitating devices etc.

⁷ Custody official means an employee of a Contractor who is certified to carry out custodial duties at a public-private partnership correctional centre and may include an employee of a subcontractor who is so certified.

centre is responsible for its operations and has the same powers, duties, and functions as the Head of the Correctional Centre. This section further indicates that in case of urgency, the Director may authorise the temporary application of the measures contemplated in section 106(2) if he or she reasonably believes that the delay in obtaining such authorisation would defeat the objects of that section and must report as soon as possible to the Controller on any such action.

6.1.54 Section 115 provides amongst other things that any person who conspires with or incites any inmate to escape, assists an inmate in escaping or attempting to escape from any correctional centre or from any place where he or she may be in custody, is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding ten years or to such incarceration without the option of a fine or both.

6.1.55 Section 117 states that any person who escapes from custody or conspires with any person to procure his or her own escape, is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding ten years or to incarceration without the option of a fine or both.

Inquest Act, 1959

6.1.56 Section 2 states that any person who has reason to believe that any other person has died and the reason for death was due to other than natural causes, shall as soon as possible report to a police official, unless she/he has a reason to believe that the report has been or will be made by another person.

6.1.57 Section 3 enjoins any police official who has reason to believe that any person has died and the reason for death is other than natural causes to investigate or cause to be investigated the circumstances of death or alleged death.

**Standard Operating Procedures Safety and Security Administration for
Department of Correctional Services, dated 11 March 2021 (the SOP)**

- 6.1.58 The purpose of the SOP is to ensure that DCS meets its primary aim of providing a safe and secure environment, preventing escapes, rehabilitating of offenders by setting out the security standards and compliance measures required in all correctional services facilities.
- 6.1.59 The scope of the SOP applies to all correctional centres' facilities, community corrections facilities including administration office blocks. Correctional centres and community corrections facilities must implement and ensure compliance of all safety and security principles.
- 6.1.60 According to section C of the SOP a "*Correctional Centre*" means any place established under the Correctional Services Act as a place for reception, detention, confinement, training, or treatment of persons liable to detention in custody or to placement under protective custody and all land or outbuildings and premises adjacent to any such place or places to which such persons have been sent for the purpose of incarceration and for the purposes of section 115 and 117 includes every place used as a police cell or lock up.
- 6.1.61 The SOP defines the inmate and/or an offender as any person, whether convicted or not who is detained in custody in any correctional centre.
- 6.1.62 Chapter 10 of the SOP is titled "*Management of Security Incidents*" and sets amongst other things the following:
- 6.1.62.1 Paragraph 10.7 specifically deals with the procedure to be followed in the event of an Escape and states in subparagraph 10.7.1 that it is the primary duty of every correctional official of the DCS to keep all inmates entrusted to his/her care in safe custody. Furthermore, it is expected of the correctional official to

apply all legal means at his /her disposal to prevent an inmate from escaping from his/her custody and should he/she still escape, to effectuate his/her capture;

- 6.1.62.2 Subparagraph 10.7.2 states that every possible forum must be utilised to sensitise personnel regarding the implications of escapes in order to inculcate security awareness in all officials as far possible;
- 6.1.62.3 Subparagraph 10.7.3 states that correctional officials must take cognisance of the fact that it is a criminal offence to aid an inmate to escape or to remove an inmate from a Correctional Centre without authorisation;
- 6.1.62.4 Subparagraph 10.7.4 states that when it is suspected that a correctional officials(s) may possibly be guilty of such an offence, the matter must immediately be reported to the SAPS for investigation. It must also be investigated departmentally;
- 6.1.62.5 Subparagraph 10.7.5 states that progress in respect of the mentioned investigation must regularly be followed-up with the SAPS by the Area Commissioner/Head of Correctional Centre;
- 6.1.62.6 Subparagraph 10.7.6 states that whenever an escapes/attempted escapes occurs such must be reported to the different reporting structures outlined in paragraphs 10.9.5, 10.9.6 and 10.10, **which includes reporting to SAPS.**;
- 6.1.62.7 Subparagraph 10.7.7 states that the written report must be accompanied by a preliminary report, which briefly gives an overview or a description of the incident. The preliminary report must give a brief and clear description of the incident and include actions already taken to prevent the recurrence of similar incidents as well as, where applicable steps, already taken against correctional

officials involved (e.g. suspension). If no steps have been taken against correctional officials this must be clearly indicated with reasons;

- 6.1.62.8 Subparagraph 10.7.8 indicates that all escapes/attempted escapes must be investigated departmentally;
- 6.1.62.9 Subparagraph 10.7.9 indicates that particulars of the escapee must be entered into the A&R system immediately;
- 6.1.62.10 Subparagraph 10.7.10 states that all escapes/attempted escapes must be reported to the SAPS;
- 6.1.62.11 Subparagraph 10.7.11 indicates that if available, the fingerprint number, CR number of SAPS' Criminal Record Centre number must also be submitted to the police, as well as the addresses of his/her next-of-kin, and/or any scars, tattoo marks or physical features which may be of assistance to the police in tracing the fugitive, the record of visitors who visited the fugitive must be provided to the law enforcement agencies;
- 6.1.62.12 Subparagraph 10.7.12 states that where there is a strong suspicion, or where it is evident that assistance was in fact actually afforded by a correctional official or any other person to the escapee, the matter must be reported to the SAPS by the Head Correctional Centre/Area Commissioner Regional Commissioner without delay for further investigation;
- 6.1.62.13 Subparagraph 10.7.13 requires that if the Director of Public Prosecution declines to prosecute in such a case, the Area Commissioner/Regional Commissioner must consider departmental action;

- 6.1.62.14 Subparagraph 10.7.15 states that when an inmate is to stand trial on a charge of escape, it will be necessary to prove that the inmate was legally in custody. As the warrant for imprisonment remains in possession of the Head of Correctional Centre in terms of the stipulations of the Correctional Services Act, certified copies of the warrants should be made for submission to the court in terms of the stipulations of the Criminal Procedure Act;
- 6.1.62.15 Subparagraph 10.9.5 sets out the relevant reporting structures, which include the Area Commissioner, Area Coordinator Corrections, Regional Commissioner, Regional Head Corrections, JICS, SAPS and other law enforcement agencies for assistance as well as opening of the criminal case;
- 6.1.62.16 Paragraph 10.10 sets out the Reporting Timelines and states *inter alia* at subparagraphs 10.10.1 to 10.10.2 that security incidents emergencies must be reported within 15 minutes after the incident via SMS after the initial telephonic reporting to the next level of reporting as outlined in subparagraph 10.9.5; and
- 6.1.62.17 Subparagraph 10.10.3 states that a written report must be submitted within 24 hours after the incident by means of the security incident reporting template to the next level of reporting as outlined in subparagraph 10.9.5.
- 6.1.63 Chapter 20 of the SOP is titled “*Investigations*” and indicates that Investigations for the purpose of this SOP will focus amongst other things, on the following:
- “20.2.1 *Alleged offences committed by officials which are security related.*
 - 20.2.2 *Alleged offences committed by inmate.*
 - 20.2.3 *Transgressions by/against service providers which are security related.*
 - 20.2.4 *Escapes, attempted escapes and erroneous release investigations”.*

G4S' Emergency Order No. 2 on Escape/Attempted Escape, dated April 2020 (G4S Emergency Order)

- 6.1.64 The G4S Emergency Order sets out the responsibilities of its employees in various emergency situations and it stipulates *inter alia* that upon receiving information of an escape/attempted escape, the responsible official must:
- 6.1.64.1 *Take command (until relieved by Director);*
 - 6.1.64.2 *Ensure all emergency procedures are completed in accordance with the Emergency Orders;*
 - 6.1.64.3 *Inform the Centre Director (if applicable);*
 - 6.1.64.4 *Inform the Controller;*
 - 6.1.64.5 *Inform Managing Director;*
 - 6.1.64.6 *Liaise with the Police and other relevant Emergency Services if necessary;*
 - 6.1.64.7 *Ensure an Emergency Services Liaison Officer is appointed;*
 - 6.1.64.8 *If situation is protracted ensure that all visitors leaving the Centre are positively identified before exit;*
 - 6.1.64.9 *If escape/attempted escape is outside the Centre obtain the inmates file and supply the SAPS with all relevant details. Determine the necessity to mobilize support employees;*
 - 6.1.64.10 *At completion, Initiate Critical Incident debriefing procedures as required;*
 - 6.1.64.11 *Ensure all requirements of the Operational Instructions on Incident Reporting are complied with, including written reports from all employees involved and*
 - 6.1.64.12 *Appoint an investigating officer”.*

Responses to Notice in terms of section 7(9)(a) of the Public Protector Act

DCS' response

- 6.1.65 On 07 August 2024, the Investigation Team received a response from Mr Thobakgale, who acknowledged the preliminary findings and remedial actions.
- 6.1.66 In response to the Public Protector' remedial action regarding the establishment of a hotline, he advised that the Public Service has a centralised anonymous Anti-Corruption Hotline in the Office of the Public Service Commission (OPSC) and any reports received from this hotline are forwarded to DCS for further handling.

Response by Mr Mahonono

- 6.1.67 Mr Mahonono responded to the Notice through a letter dated 28 July 2024 and stated that he noted the interim report, and he agrees with the intended findings and remedial actions of the Public Protector. He further confirmed that the DCS has taken disciplinary action against him in July 2023, which led to a Final Written Warning and alternative placement being imposed on him.

Response by Ms Phahlane

- 6.1.68 Ms Phahlane responded to the Notice through a letter dated 01 August 2024 and stated that the interim report has been read and the findings thereof were noted.

Response by the Speaker of the National Assembly

- 6.1.69 The Speaker of the National Assembly, Ms Didiza responded to the Notice through a letter dated 23 July 2024 and stated that she has taken note of the contents of the Notice and accordingly referred it to Chairperson of the Portfolio Committee on Correctional Services.

Response by the Parliamentary Chairperson of the Portfolio Committee on Correctional Services

- 6.1.70 The Chairperson of the Portfolio Committee on Correctional Services, Ms KA Ramolobeng responded to the Notice through a letter dated 29 July 2024 and stated that the Committee notes the contents of the Notice and will await the final report.

Response by the Minister of Correctional Services

- 6.1.71 Dr Groenewald responded to the Notice through a letter dated 05 August 2024 in which he acknowledged the preliminary findings and further expressed his appreciation for the thorough investigation with practical and appropriate remedial recommendations.

Analysis

- 6.1.72 The evidence before the Public Protector indicates that on 03 May 2022, a fire occurred in prison cell 35, at MCC where Mr Bester was incarcerated. The incident was initially attended to by G4S officials who then alerted the SAPS and upon the arrival of the SAPS at the scene, G4S pointed out the charred body, believed to be that of Mr Bester.

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- 6.1.73 Evidence before the Public Protector further reveals that on the same day, G4S officials also notified the DCS' Controller, Mr Mahonono, who attended the scene.
- 6.1.74 An inquest docket was opened by the SAPS and the matter was initially treated as a case of suicide by an inmate in the prison cell, under Bloemspruit CAS 26/05/2022.
- 6.1.75 On 04 May 2022, a forensic *postmortem* examination was conducted by Dr Fouche, who subsequently indicated that there was suspicion of foul play, because there were no signs of smoke inhalation or soot found in the trachea pipes and that the cause of death was a fracture of the skull. This resulted in further investigations by SAPS which led to the inquest case being replaced with Bloemspruit CAS 289/05/2022 for murder.
- 6.1.76 Notwithstanding the DCS being informed of the escape by the SAPS during the June 2022 meeting and by JICS in August 2022, it took no less than 06 months for the DCS to report the case as one of escape. Furthermore, it took the DCS approximately 55 calendar days post its investigation report dated 18 November 2022, to report the matter to the SAPS on 12 January 2023. This is contrary to the provisions of paragraph 10.10 of the SOP which sets out the reporting timelines for such incidents, to the relevant reporting structures stipulated in paragraphs 10.7.4 and 10.9.5, including the SAPS.
- 6.1.77 DCS' internal investigation report makes no findings relating to their own inefficiencies but rather focuses on contractual lapses and breaches by G4S. It is clear that the outcome of DCS' investigation had no bearing on reporting the matter to the SAPS.

- 6.1.78 Considering the criminal profile of Mr Bester, the functionalities of DCS should have acted swiftly and discharged their legal duty as provided for in section 12(1)(c) read with section 7(2) of the Constitution, which required DCS to act positively and prevent the potential harm or risks posed by the escape of Mr Bester to the public by *immediately* reporting to SAPS upon becoming aware as contemplated in Paragraph 10.7 of the SOP.
- 6.1.79 However, evidence at the disposal of the Public Protector reveals that DCS did not act expeditiously despite receiving information and leads, even after the conclusion of their own investigation on 18 November 2022.
- 6.1.80 The entrenchment of the right to be free from violence in section 12(1)(c), read with section 7(2) of the Constitution are indicative of a legal duty resting on the State to act positively to protect everyone from violent crimes by taking active steps to prevent violation of this right and to ensure physical safety of the public.
- 6.1.81 The evidence before the Public Protector indicates that the incident was only reported to the National Commissioner, Mr Thobakgale on 25 November 2022 through a report he received from the Director: Contract Management, Ms Phahlane. It was hereafter that Mr Thobakgale instructed his office to follow up with the region to determine whether the criminal case was opened. Even after this instruction, it is evident that Mr Mahonono still did not open a criminal case, until 12 January 2023.
- 6.1.82 This was in contrast with section 106 of the Correctional Services Act, which requires the DSC Controller to monitor the daily operations at MCC and report to the National Commissioner. This was also in contravention of subparagraph 10.7.6 of the Standard Operating Procedure: Safety and Security, which requires that whenever an escape/attempted escapes occurs such must be

reported to the different reporting structures outlined in paragraphs 10.9.5, **which includes reporting to SAPS.**

- 6.1.83 Mr Mahonono's version that he reported to SAPS during meetings held between the two institutions does not constitute reporting, as it is SAPS which informed DCS of the progress in investigations. Mr Mahonono had to report the incident to SAPS in order to satisfy the obligation that DCS had to prove that the inmate was in lawful custody as contemplated in subparagraph 10.7.15 of the SOP which states that when an inmate is to stand trial on a charge of escape, it will be necessary to prove that the inmate was legally in custody.
- 6.1.84 Mr Mahonono's version that they did not receive any proof of the escape from SAPS or a report from the G4S is immaterial in that the investigations into the escape was reported to the DCS in the meetings held with SAPS and JICS.
- 6.1.85 Furthermore, Mr Mahonono's version that there was a refusal by the SAPS to open a case in the meeting held in November 2022, is improbable. It is clear from the evidence that the meetings held by SAPS, which commenced prior to June 2022 were to provide progress on the investigation into the matter. If the Public Protector were to believe Mr Mahonono's version, it is then concerning why he would not have reported the matter in June but waited for almost 06 months. The conduct of Mr Mahonono does not meet the standard that would be expected of the reasonable DCS' Controller, considering that Mr Bester had brought two applications, known to Mr Mahonono, to be moved to a single cell which resulted in him approving the first application through a text message.
- 6.1.86 The Public Protector notes with concern from Mr Mahonono's affidavit, that he advised that he attempted to open a case on 28 November 2022, approximately 05 months after being alerted of the possible escape of Mr Bester.

- 6.1.87 Following G4S investigation into the matter, several of their officials were charged, found guilty of misconduct and dismissed.
- 6.1.88 The Public Protector noted with concern the assertion by Ms Phahlane, the Director: Contract Manager, that it is the responsibility of the Director of MCC employed by G4S to report the escape of Mr Bester. By making this assertion, it is clear that Ms Phahlane had relinquished her responsibility to manage the contract, and this is evident from the focus of the investigation report on the deficiencies by G4S and not on any lapse from DCS' side.
- 6.1.89 The Public Protector considered the response to the section 7(9) notice, from Mr Thobakgale regarding his submission that a hotline was established and is centralised with the OPSC. However, the Public Protector is of the view that guidelines should be developed and published to guide persons on the process to follow when lodging complaints and ensuring they are attended to.

Conclusion

- 6.1.90 Based on the evidence and information obtained, the Public Protector concludes that despite becoming aware of the escape of Mr Bester, the functionaries of DCS delayed acting on the matter with the urgency it deserved and to report the escape of Mr Bester to the SAPS as contemplated by paragraph 10.7 and subparagraph 10.9.5 of the SOP, thus exposing society to the risk of Mr Bester committing further offences.
- 6.1.91 Evidence further reveals that the DCS started the investigation six days after the date of the incident (03 May 2022) and took a period of about six (06) months (09 May 2022 to 18 November 2022) and thus delayed completing its internal investigation. Mr Mahonono approved the DCS' investigation report on 22 November 2022 and subsequently gave it to Ms Phahlane on 25

November 2022. However, Ms Phahlane delayed considering or acting on the investigation report for almost four (04) months, and only signed it on 22 March 2023.

6.1.92 The delay by the functionaries of the DCS in the circumstances namely, Ms Phahlane and Mr Mahonono, does not align with the prompt reporting duty envisaged by Paragraph 10.7 of the SOP. As a result, the Public Protector concludes that the allegation that the functionaries of DCS breached their legal obligations following the escape of Mr Bester's the prison.

6.2 Whether there was undue delay and/or omission by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa, to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act

Common Cause

6.2.1 An email was sent to the former Deputy Minister of DCS, Mr Holomisa, on 11 June 2022 by a whistleblower from MCC, asking Mr Holomisa if he was aware that the inmate who “*allegedly*” burnt to death at MCC was assisted to escape by the MCC & DCS' officials.

Complainant's version

6.2.2 The Complainant stated that Mr Holomisa, having been informed by a prison official about Mr Bester's prison escape, did nothing with the information that

was shared with him. He requested the Public Protector to investigate if Mr Holomisa acted in a manner that is consistent with the office he occupies.

Issue in dispute

6.2.3 The issue for the Public Protector's determination is whether Mr Holomisa acted upon information received regarding the escape of Mr Bester from MCC.

Response by the DCS

6.2.4 The Public Protector raised the allegations with Mr Thobakgale through a letter dated 05 May 2023. He responded through a letter, dated 07 June 2023, and stated, *inter alia*, the following:

6.2.4.1 It is confirmed that Mr Holomisa received the email in respect of the matter. In terms of normal practice, the Deputy Minister would have sent the email/s to the National Commissioner or other senior official in the DCS to handle. In this case Mr Holomisa did not send it since he was aware that the matter is being attended to and that there was an internal investigation being conducted by the DCS; and

6.2.4.2 According to Mr Thobakgale, he frequently holds discussions (in person or telephonically) with the Deputy Minister and the Minister to address queries, enquiries, and complaints, but such discussions are not formal and are therefore not recorded. Mr Thobakgale indicated that it would be difficult to specify the dates of such discussions.⁸

⁸ At page 3 of the letter dated 22 January 2024 from Mr Thobakgale.

JICS' response, dated 12 May 2023

- 6.2.5 The Public Protector sent a letter dated 05 May 2023 to the Inspecting Judge, Justice Cameron, to seek clarity regarding whether the JICS' scope of the investigation also covered the alleged conduct of the Deputy Minister. Justice Cameron replied as per a letter dated 12 May 2023 and indicated that JICS is not aware of any provision that empowers it to investigate the Minister or the Deputy Minister.

JICS' response, dated 19 June 2024

- 6.2.6 The Public Protector sent a letter dated 13 June 2024 to JICS, requesting clarity on amongst other things, when and how JICS alerted the DCS and SAPS to the suspicion of Mr Bester's escape from MCC. Justice Cameron replied through a letter dated 19 June 2024 and indicated that in March 2023 he was forwarded the tip off emails by journalists who had been sent the emails by a whistleblower. On 23 March 2023, JICS wrote to Mr Holomisa requesting his personal attention to the Bester matter.

Response by Mr Holomisa

- 6.2.7 The Public Protector raised the allegations with Mr Holomisa through a letter dated 05 May 2023. He responded through a letter, dated 07 June 2023, and stated, *inter alia*, the following:

- 6.2.7.1 The Correctional Services Act, as amended, provides certain powers to the Minister of Justice and Correctional Services (the Minister) and the National Commissioner of DCS. Section 97(1) of the Correctional Services Act provides that the Minister may delegate his powers to the National Commissioner of

DCS. There is no provision in the Correctional Services Act to delegate any powers from the Minister to the Deputy Minister;

6.2.7.2 The Minister, however, did assign certain responsibilities to him in his capacity as Deputy Minister of the DCS (the supporting letter of Delegation of Powers dated 18 August 2019 was attached as annexure);

6.2.7.3 He confirmed receipt of the e-mails referred to and as he did with others, in line with normal practice, he would refer the contents of such e-mails, telephonically or electronically to the National Commissioner of DCS or other relevant functionaries within the DCS, to attend to;

6.2.7.4 Having been advised that there was an on-going internal investigation conducted by DCS, with the National Commissioner being kept informed of any developments, he was satisfied that the matter was receiving the necessary attention; and

6.2.7.5 He has always regarded the Thabo Bester incident in a serious light and has indicated as such whenever he discussed it with the National Commissioner of DCS.

Additional response by Mr Holomisa

6.2.8 On 25 April 2024, the Investigation Team sent a letter to the office of Mr Holomisa requesting further information such as the copies of the emails he received in connection with the matter. A letter dated 15 May 2024, signed by Mr Holomisa was received by the Investigation Team, in which he stated *inter alia* the following:

6.2.8.1 He could not retrieve from his laptop the “*tip off*” emails sent to him regarding the escape of Mr Bester. He requested DCS’ Information Technology branch

to assist him, but they were also unable to retrieve the emails. However, being aware that JICS had included the said emails in their report to Parliamentary Portfolio Committee, he requested them to provide him with copies of same and it was attached to his letter;

- 6.2.8.2 He could not remember the details of the handling of such emails because he receives numerous emails, however, he normally refers such emails. It is unfortunate that he could not trace the emails, which could have assisted him to remember or provide proof of how he handled them;
- 6.2.8.3 The information in the first email was very scant and would not have assisted. It is also known that DCS only became aware that Mr Bester escaped after receiving the *postmortem* and DNA report in October 2022. Even if the information on the emails was followed up, it would have had to await the availability of these reports;
- 6.2.8.4 He cannot recall who or when he was made aware that there was an ongoing internal investigation conducted by DCS, but it was likely to be the National Commissioner since he does have regular interactions with him that are not always recorded;
- 6.2.8.5 He was not aware of the scope of the internal investigation and that his office was not part of the investigation as it was handled by DCS under the control of the National Commissioner;
- 6.2.8.6 As he already stated in his first response, he was satisfied that the matter was receiving the necessary attention because the National Commissioner was being kept informed of all the developments in the internal investigation conducted by DCS. He emphasised that he had and has confidence in the Accounting Officer of DCS and his team; and

6.2.8.7 There was no duty on him or obligation in terms of DCS Orders as the Deputy Minister to alert the Head of Prison about the information of the escape of Mr Bester for purposes of criminal investigation when he received the email on 11 June 2022. Such duty lies with the management of the DCS.

Documentary Evidence received from Mr Holomisa

Letter of Delegation of Powers dated 18 August 2019

6.2.9 Mr Lamola issued a letter dated 18 August 2019 to Mr Holomisa delegating powers, assigning functions, and allocating responsibilities in his capacity as Deputy Minister for DCS. Mr Holomisa signed the same letter on 22 August 2019. In terms of the delegation letter, Mr Holomisa was to assist the Minister with, amongst other things, the following:

6.2.9.1 Implementation of the remand of detainees in terms of Chapter V of the Correctional Services Act;

6.2.9.2 Incarceration Chapter iii, iv and v of the Correctional Services Act, security, offender management and overcrowding;

6.2.9.3 Care-based services for personal wellbeing of all inmates in the DCS' custody, health and hygiene, nutritional services, and personal wellbeing;

6.2.9.4 Implementation of JICS;

6.2.9.5 Oversee certain allocated Community Correction Programmes; and

6.2.9.6 Administration such as Public Service Act and Regulations, Public Finance Management Act, Treasury Regulations read with the relevant Correctional Services Act, Human Resources and Strategic Management.

Affidavit by Mr Maponya, dated 13 May 2024

- 6.2.10 Mr Maponya confirms amongst other things in his affidavit that he is employed by DCS as the Chief Deputy Commissioner: Government Information Technology Officer (GITO). He states that he was requested by the office of the Deputy Minister to locate two emails dated 11 June 2022 and 08 November 2022 sent from a specified email address.⁹ He stated that GITO branch was unable to locate copies of the requested emails and that DCS lacks a reliable backup solution which has hindered efforts to retrieve the requested information, because archiving was not previously implemented within DCS. GITO is in the process of rectifying this lack of reliable backup solutions to prevent such occurrences in future and the project has already commenced.

Copies of “tip off” emails dated 11 June 2022 and 08 November 2022

- 6.2.11 The Investigation Team was furnished with copies of the emails sent to Mr Holomisa on Saturday, 11 June 2022 at 19h11, and Tuesday, 08 November 2022 at 11h34, respectively. The copies are those used by the Inspecting Judge of JICS. Neither of the emails identify the sender as an official of the DCS and both were sent from a “gmail” account. The first email of 11 June 2022 reads as follows:

“Good Day Hon Minister Holomisa

Are you aware that the inmate who allegedly burnt to death at Mangaung Correctional Center was supposedly assisted to escape by Mangaung Correctional Center & Department of Correctional Services officials at the prison to escape? The body at the scene is not that of Mr Bester”. (sic)

⁹ Email address withheld by the Public Protector for security reasons.

6.2.12 The second email of 08 November 2022 reads as follows:

“Good Day Sir

I informed you of the Thabo Bester escape on my previous email. I am sure you are aware that he has been found & your office & both the DCS has ignored my emails notifying you of this”. (sic)

Response by former Minister of Justice and Correctional Services, Mr R Lamola

6.2.13 The Public Protector raised the matter with Mr Lamola through a letter, dated 05 May 2023. He responded through a letter, dated 13 February 2024, and stated, *inter alia*, that:

6.2.14 The responses provided to the Public Protector by the National Commissioner DCS and Deputy Minister of Justice and Correctional Services already gave detailed responses in relation to the issues raised;

6.2.15 As already indicated by the Deputy Minister of Justice and Correctional Services, section 3(6) of the Correctional Services Act provides for the powers of the Minister and the National Commissioner;

6.2.16 Section 97(1) of the Correctional Services Act provides that the Minister may delegate powers to the National Commissioner, which he did accordingly;

6.2.17 As the appointed Minister, he has political oversight over DCS to ensure that policies of government are implemented;

6.2.18 He confirms that he was informed of Mr Bester’s escape. He also stated that he holds briefing meetings with his colleague, the Deputy Minister and with the

accounting officer of DCS, the National Commissioner, who constantly inform him of urgent matters. He has similar briefings with the Inspecting Judge, the Head of JICS;

6.2.19 He submits that either of them may have informed him of the incident relating to inmate Mr Bester and that formally the National Commissioner informed him as indicated in his letter;

6.2.20 As he has responded to the Portfolio Committee on Justice and Correctional Services, he regards the matter of Mr Bester as very serious. As the Public Protector may be aware, the matter is currently the subject of court proceedings, which should be respected and not compromised by parallel processes; and

6.2.21 His office is willing to hold meetings with the office of the Public Protector should it be required.

Responses to Notice in terms of section 7(9) of the Public Protector Act from Mr Holomisa

6.2.22 Mr Holomisa responded to the Notice through a letter dated 24 July 2024, noting the content of the Public Protector's intended findings and remedial action.

Applicable law

The Constitution of the Republic of South Africa, 1996

6.2.23 Section 93(1) stipulates that the President may appoint any number of Deputy Ministers from among the members of the National Assembly; and no more

than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet and may dismiss them. Subsection (2) states that Deputy Ministers appointed in terms of subsection (1)(b) are accountable to Parliament for the exercise of their powers and the performance of their functions.

6.2.24 Section 92(2) states that members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. Subsection (3) indicates that members of the Cabinet must—

- (a) act in accordance with the Constitution; and
- (b) provide Parliament with full and regular reports concerning matters under their control.

Letter of Delegation of Powers, dated 18 August 2019

6.2.25 The former Minister of Justice and Correctional Services, Mr Lamola, issued a letter dated 18 August 2019 to Mr Holomisa delegating powers, assigning functions, and allocating responsibilities on his capacity as Deputy Minister for DCS. Mr Holomisa signed the same letter on 22 August 2019.

6.2.26 In terms of the delegation letter, Mr Holomisa was to assist the former Minister with amongst other things the following:

6.2.26.1 Implementation of the remand detainees in terms of Chapter V of the Correctional Services Act, 1998;

6.2.26.2 Incarceration Chapter iii, iv and v of the Correctional Services Act, 1998, security, offender management and overcrowding;

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- 6.2.26.3 Care-based services for personal wellbeing of all inmates in the DCS' custody, health and hygiene, nutritional services, and personal wellbeing;
 - 6.2.26.4 Implementation of JICS recommendations;
 - 6.2.26.5 Oversee certain allocated Community Correction Programmes; and
 - 6.2.26.6 Administration such as Public Service Act and Regulations, Public Finance Management Act, Treasury Regulations read with the relevant Correctional Services Act, 1998, Human Resources and Strategic Management.

Analysis

- 6.2.27 On 11 June 2022, Mr Holomisa received the first email from a whistleblower, alerting him about the escape of Mr Bester from MCC. On 08 November 2022, Mr Holomisa received the second email from the same whistleblower, reminding him about the first email.
- 6.2.28 Evidence placed before the Public Protector reveals that when Mr Holomisa received the first email from the whistleblower on 11 June 2022, alerting him about the escape of Mr Bester, DCS had already commenced with an internal investigation on 09 May 2022.
- 6.2.29 Mr Holomisa asserted that he was aware that the matter is being attended to and that there was an internal investigation being conducted by the DCS. Mr Holomisa stated that he was not part of DCS' investigation and although he was not aware of the scope of DCS' internal investigation, he had confidence in the National Commissioner and his team.

- 6.2.30 In terms of the information placed at the disposal the Public Protector, no evidence could be found to indicate that Mr Holomisa acted and forwarded the said emails to the functionaries of DCS, SAPS or other law enforcement agencies to be attended.
- 6.2.31 Instead, evidence reveals that Mr Holomisa was satisfied that the matter was receiving attention, while it is apparent that he was not aware of the actual scope of the DCS' internal investigation. Based on his apparent satisfaction, Mr Holomisa did not forward it to the relevant authorities to test or handle further.
- 6.2.32 Mr Thobakgale often holds informal discussions (in person or telephonic) with the Deputy Minister and the Minister to address queries, enquiries, and complaints. Unfortunately, such discussions are not recorded. As a result, Mr Thobakgale was unable to specify the dates of such discussions, but he confirmed to the Public Protector that the matter was already receiving attention within DCS, when the Deputy Minister got the tip-off email.
- 6.2.33 Mr Holomisa as former Deputy Minister of DCS was not a member of the Cabinet, however he had a positive obligation and delegated powers to assist the Minister of DCS/Cabinet Member as contemplated in terms of the Delegation Letter dated 18 August 2019 signed by Mr Lamola, to perform executive functions over the DCS. This responsibility was accepted by Mr Holomisa in the same letter on 22 August 2019.
- 6.2.34 Mr Holomisa stated that there was no duty or obligation on him as the Deputy Minister in terms of the **DCS' Orders and SOPs** to report information relating to the escape of Mr Bester to the Head of Prison for the purpose of criminal investigation. He submitted that such duty lies with the management of the DCS. Mr Holomisa further asserted that even if the information stated in the

email was followed, it would have to wait until the availability of *postmortem* and DNA reports.

- 6.2.35 It is noted that the DCS' investigation report was finalised on 18 November 2022 and approved by Mr Mahonono on 22 November 2022. The DCS report concluded amongst other things that Mr Bester escaped from MCC, after considering postmortem and DNA reports.

Conclusion

- 6.2.36 Based on the evidence and information obtained, the Public Protector concludes that Mr Holomisa did not act in contravention or in violation of any legal prescript.
- 6.2.37 At the time of receipt of the email tipping him off about Mr Bester's escape on 11 June 2022, Mr Holomisa was aware that the DCS had already commenced an internal investigation on 09 May 2022.

7. FINDINGS

Having regard to the evidence received, the regulatory framework determining the standard that the DCS should have complied with and the impact thereof, the Public Protector makes the following findings:

- 7.1. **Whether there was undue delay and/or omission by the functionaries of the Department of Correctional Services to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay or**

omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act

- 7.1.1 The allegation that there was undue delay by the functionaries of the DCS to act in compliance with the regulatory prescripts and procedural requirements on information received regarding the escape of Mr Bester from MCC, **is substantiated.**
- 7.1.2 The investigation revealed that in the early hours of 03 May 2022, a fire broke out at MCC Cell 35, where Mr Bester was incarcerated.
- 7.1.3 The incident was attended by G4S' officials who then alerted the SAPS and upon the arrival of the SAPS at the scene, G4S pointed out the charred body, believed to be that of Mr Bester.
- 7.1.4 The evidence before the Public Protector further reveals that on the same day, G4S' officials also notified the DCS' Controller, Mr Mahonono, who attended the scene.
- 7.1.5 Initially, the incident was treated as a case of suicide by an inmate in the prison cell, and an inquest docket was registered by SAPS as per Bloemspruit CAS 26/05/2022. However, following the forensic postmortem examination conducted by Dr Fouche on 04 May 2022 on the deceased found in the cell, a suspicion of foul play was raised by Dr Fouche.
- 7.1.6 The suspicion by Dr Fouche was based on the fact that there were no signs of smoke inhalation or soot found in the trachea pipes of the deceased and that the cause of death was consistent with the fracture of the skull. This resulted in further investigations by SAPS, which led to the inquest docket being replaced with Bloemspruit CAS 289/05/2022 for the murder case.

- 7.1.7 Although the DCS was informed of the escape by the SAPS during the June 2022 meeting and by JICS in August 2022, it took no less than 06 months for the DCS to report the case as one of escape. Furthermore, it took the DCS approximately 55 calendar days post its investigation report dated 18 November 2022, to report the matter to the SAPS on 12 January 2023. This is contrary to the provisions of paragraph 10.10 of the SOP which sets out the reporting timelines for such incidents, to the relevant reporting structures stipulated in paragraphs 10.7.4 and 10.9.5, including the SAPS.
- 7.1.8 DCS' internal investigation report makes no findings relating to their own inadequacies and delays but rather focuses on contractual lapses and breaches by G4S. It is clear that the outcome of DCS' investigation had no bearing on reporting the matter to the SAPS.
- 7.1.9 Taking in consideration the criminal profile of Mr Bester, the functionaries of DCS should have acted swiftly and discharged their legal duty as provided for in section 12(1)(c) read with section 7(2) of the Constitution, which required DCS to act positively and prevent the potential harm or risks posed by the escape of Mr Bester to the public by immediately reporting to SAPS upon becoming aware as contemplated in Paragraph 10.7 of the SOP.
- 7.1.10 However, evidence at the disposal of the Public Protector reveals that DCS did not act expeditiously despite receiving information and leads, even after the conclusion of their own investigation on 22 November 2022. Mr Mahonono took a casual approach and only opened the criminal case as per Bloemspruit CAS 316/01/2023, to report the escape of Mr Bester to SAPS on 12 January 2023.
- 7.1.11 The entrenchment of the right to be free from violence in section 12(1)(c), read with section 7(2) of the Constitution are indicative of a legal duty resting on the

State to act positively to protect everyone from violent crimes by taking active steps to prevent violation of this right and to ensure physical safety of the public.

- 7.1.12 The evidence before the Public Protector indicates that the incident was only reported to the National Commissioner, Mr Thobakgale on 25 November 2022 through a report he received from the Director: Contract Management, Ms Phahlane. It was hereafter that Mr Thobakgale instructed his office to follow up with the region to determine whether the criminal case was opened. Even after this instruction, it is evident that Mr Mahonono still did not open a criminal case, until 12 January 2023.
- 7.1.13 This was in contrast with section 106 of the Correctional Services Act, which requires the DSC Controller to monitor the daily operations at MCC and report to the National Commissioner. This was also in contravention of subparagraph 10.7.6 of the Standard Operating Procedure: Safety and Security, which requires that whenever escapes/attempted escapes occur such must be reported to the different reporting structures outlined in paragraphs 10.9.5, which includes reporting to SAPS.
- 7.1.14 Mr Mahonono's version that he reported to SAPS during meetings held between the two institutions does not constitute reporting, as it is SAPS which informed DCS of the progress in investigations. Mr Mahonono had to report the incident to SAPS in order to satisfy the obligation that DCS had to prove that the inmate was in lawful custody as contemplated in subparagraph 10.7.15 of the SOP which states that when an inmate is to stand trial on a charge of escape, it will be necessary to prove that the inmate was legally in custody.
- 7.1.15 It was further necessary for DCS to report the escape of Mr Bester to SAPS, as expressly required by Subparagraph 10.7.10 of the SOP to have

substantive proof that investigation for escape was indeed underway and to provide SAPS with the key evidence regarding the matter, profile information related to the fugitive such as fingerprint number, addresses of his/her next of kin, physical features of the fugitive including scars, tattoos and photographic images, which may be of assistance to the SAPS in tracing the fugitive.

- 7.1.16 Mr Mahonono's version that they did not receive any proof of the escape from SAPS or a report from the G4S is immaterial in that the investigations into the escape was reported to the DCS in the meetings held with SAPS and JICS.
- 7.1.17 Furthermore, Mr Mahonono's version that there was a refusal by the SAPS to open a case in the meeting held in November 2022, is improbable. It is clear from the evidence that the meetings held by SAPS, which commenced prior to June 2022 were to provide progress on the investigation into the matter.
- 7.1.18 Evidence revealed further that Ms Phahlane, the Director: Contract Manager, relinquished her responsibility to the Director of MCC employed by G4S to report the escape of Mr Bester. This was clear from her own assertion that Ms Phahlane considered reporting the escape to be the duty of the Director of MCC employed by G4S and not hers. This is further evident from the focus of the DCS' investigation report on the security breaches committed by G4S and not on any failures or delays by DCS.
- 7.1.19 Following G4S investigation into the matter, several of their officials were charged, found guilty of misconduct and dismissed.
- 7.1.20 The delay by the functionaries of DCS to report the escape case to SAPS in the circumstances does not align with the prompt action envisaged by the reporting obligations set out by the Paragraph 10.7 and Subparagraph 10.9.5 of the SOP, which regulate escapes in prisons.

- 7.1.21 In the circumstances, the functionaries of the DCS namely, Ms Phahlane and Mr Mahonono unduly delayed complying with the regulatory prescripts imposed on them by Paragraph 10.7 and Subparagraph 10.9.5 of the SOP in reporting the escape of Mr Bester to SAPS for the purposes of enforcing sections 106, 115 and 117 of the Correctional Services Act.
- 7.1.22 Accordingly, the Public Protector finds that the conduct of the DCS' MCC Controller, Mr Mahonono and DCS' Director Contract Management, Ms Phahlane, constitute improper conduct as contemplated in terms of section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.
- 7.2. **Whether there was undue delay and/or omission by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa, to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from Mangaung Correctional Centre, if so, whether such conduct is improper as contemplated in section 182(1)(a) of the Constitution and amounts to undue delay and/or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act**
- 7.2.1 The allegation that there was undue delay and/or omission by Mr Holomisa to take appropriate intervening measures upon receiving a tip-off relating to Mr Bester's escape from MCC, **is unsubstantiated.**
- 7.2.2 The evidence at the disposal of the Public Protector, shows that Mr Holomisa received the first email from a whistleblower on 11 June 2022, tipping him off about the escape of Mr Bester from MCC. On 08 November 2022, Mr Holomisa received the second email from the same whistleblower reminding him about the first email.

- 7.2.3 On 09 May 2022, the DCS had already commissioned an internal investigation and Mr Mahonono had issued letters appointing investigators namely, Ms Setlai and Mr Moshoeshe to commence the DCS' internal investigation.
- 7.2.4 Evidence presented before the Public Protector, reveals that at the time of receipt of the email tipping him off about Mr Bester's escape on 11 June 2022, Mr Holomisa was aware that the DCS had already started with an internal investigation on 09 May 2022.
- 7.2.5 Although he was not aware of the scope of the investigation, Mr Holomisa was satisfied and confident that the matter was receiving the necessary attention by the National Commissioner and his team. Furthermore, evidence reveals Mr Holomisa was being kept informed by the National Commissioner of the developments regarding the internal investigation conducted by DCS, through informal discussions (in person or telephonic) he often holds with Mr Thobakgale.
- 7.2.6 It was noted that the DCS' investigation report was finalised on 18 November 2022 and approved by Mr Mahonono on 22 November 2022. The DCS' report ultimately concluded amongst other things that Mr Bester escaped from MCC, after considering the postmortem and DNA reports.
- 7.2.7 As a result, the Public Protector could not find that the conduct Mr Holomisa constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, undue delay and/or omission as envisaged in section 6(4)(a)(ii) and (v) of the Public Protector Act, 1994.

8. REMEDIAL ACTION

- 8.1. The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct upon the conclusion of an investigation where adverse findings are made.
- 8.2. 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.
- 8.3. Having regard to the evidence and the regulatory framework determining the standard the functionaries of DCS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Minister of Correctional Services

- 8.3.1 Must take note of the findings of improper conduct against the DCS functionaries as highlighted in this report, in connection with the allegation that there was undue delay by implicated officials of the DCS, namely Mr Mahonono and Ms Phahlane to act according to the prescripts and protocol on information received in as far as the escape of Mr Bester from Mangaung Correctional Centre is concerned in line with the authority, powers and functions of the Minister contemplated in section 92(2) of the Constitution.

The National Commissioner of DCS


- 8.3.2 Within **ninety (90)** calendar days from the date of receipt of this report, develop an appropriate DCS' Escape Prevention Strategy and Guidelines for the MCC facility within the statutory powers vested to the National Commissioner in terms of sections 95(3) and 112 of the Correctional Services Act, indicating monitoring mechanisms, proper systems to be put in place or steps directing how the functionaries of the DCS and Contractors must effectively prevent and manage escapes of inmates within MCC, including all other correctional facilities.
- 8.3.3 Within **one hundred and twenty (120)** days from the date of receipt of this report ensure that DCS has a Documented Guideline which communicates how Anonymous Anti-Corruption Reports from the centralised OPSC's Hotline and other sources will be attended to by DCS, in line with the purpose and the objects of the Protected Disclosures Act, 2000 and other relevant prescripts.
- 8.3.4 Take cognisance that since DCS has already taken disciplinary action against Mr Mahonono and Ms Phahlane, therefore the Public Protector will not be taking any further remedial action in this regard.

The Speaker of the National Assembly

- 8.3.5 Within thirty (30) days of receipt of this report bring to the attention of the Chairperson of the Parliamentary Portfolio Committee on Correctional Services to take cognisance thereof, in line with the powers contemplated in section 55(2) of the Constitution.

9 MONITORING

- 9.1 The National Commissioner of DCS to submit an action plan to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV Kholeka GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE:30 SEPTEMBER 2024

Assisted by: Mr Vusumuzi Dlamini
Provincial Representative, Gauteng