

**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**



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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION IN CONNECTION WITH THE PAUPER'S BURIAL OF THE
LATE MR NHLAKANIPHO SIBUSISO GOQO WITHOUT NOTIFYING HIS FAMILY
MEMBERS**

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LIST OF ACRONYMS

Baragwanath Hospital	Chris Hani Baragwanath Academic Hospital
CEO	Chief Executive Officer (Baragwanath Hospital)
Circular 35 of 2017	Baragwanath Hospital Circular 35 of 2017, Guidelines for dealing with the accommodation and disposal of corpses of patients and other persons
Complainant	W A Mpanza and Associates, attorneys
Constitution	The Constitution of the Republic of South Africa, 1996
EMS	Emergency Medical Services
PA	Personal Assistant
PRO	Public Relations Officer
Public Protector Act	Public Protector Act 23 of 1994
SAPS	The South African Police Service
SOP	Baragwanath Hospital Standard Operating Procedure

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of 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, 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 allegations of maladministration and improper conduct by the Chris Hani Baragwanath Academic Hospital (Baragwanath Hospital) in connection with the pauper's burial of the late Mr Goqo, without notifying his family members.
- (iii) The complaint was lodged with the Public Protector by Ms Maza Mpanza of Mpanza and Associates (the Complainant) in her capacity as legal representative of Mr Bukani Lungisani Goqo, the brother of the late Mr Goqo on 07 July 2020.
- (iv) In the main, the Complainant alleged that:
 - (a) During November 2019, Ms Lindiwe Mqwabi (Ms Mqwabi), the aunt of the now late Mr Goqo who resided in Lawley Extension 2, drove him to the local fire station in Lawley to get an ambulance to escort him to the Lenasia South Clinic as he was ill;
 - (b) Mr Goqo was driven in an ambulance from the local fire station to the Lenasia South Clinic, where he was referred to and subsequently admitted at the Chris Hani Baragwanath Hospital (Baragwanath Hospital) for further treatment. A few days later, Ms Mqwabi and Mr Mxolisi Shange (Mr Shange), the cousin of Mr Goqo, called him to enquire as to which hospital ward he was admitted to;

- (c) During the telephone call with Ms Mqwabi and Mr Shange, Mr Goqo advised them that he was admitted to ward Z2 at the Baragwanath Hospital. In December 2019, Mr Shange went to the Baragwanath Hospital to visit Mr Goqo but he was informed that no one by the name of Mr Nhlakanipho Sibusiso Goqo had been admitted there and further, that there is no ward Z2 at the Baragwanath Hospital;
- (d) In January 2020, Mr Shange went to the Lenasia South Clinic to enquire about the whereabouts of Mr Goqo because the Baragwanath Hospital indicated that there was no record of such a person being admitted there. The Lenasia South Clinic informed Mr Shange that according to their records, Mr Goqo was referred to the Baragwanath Hospital. They wrote on a piece of paper a list of wards, namely: 12, 13 and 16 at the Baragwanath Hospital for Mr Shange to check if Mr Goqo was not placed in one of those wards;
- (e) Mr Shange went to the Baragwanath Hospital in March 2020 to check wards 12, 13 and 16 and he discovered that Mr Goqo was admitted in ward 16, bed number 3, but was deceased. Even though Mr Shange did not find Mr Goqo's body in the ward, he found the cellphone and medication that belonged to him in the ward. That is how he could identify that Mr Goqo was admitted at the Baragwanath hospital;
- (f) Mr Shange also discovered that Mr Goqo was buried on 04 February 2020, by Homeward Bound Funeral Home. He noticed a mortuary document that contained the Lawley address, without a street name, and the officials at the mortuary informed him that the South African Police Service (the SAPS) went to the said address to report the death. Furthermore, Ms Mqwabi stated that the SAPS did not inform her about the passing of the late Mr Goqo; and
- (g) The above-mentioned averments by both Mr Shange and Ms Mqwabi were verified through a telephone call between them on 20 July 2020.

- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) Whether the Baragwanath Hospital failed to notify the family of Mr Goqo of his death and thereafter gave him a pauper's burial, and if so, whether it amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4)(a)(i) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
- (vii) On 14 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Chief Executive Officer (CEO) of the Baragwanath Hospital, Dr Nkele Lesia, to provide her with an opportunity to respond to the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector are to be allowed the opportunity to make representations regarding same.
- (viii) A response was received from Dr Lesia on the same day on 14 December 2022. The response and information/evidence submitted in response to the notice in terms of section 7(9)(a) of the Public Protector Act, were duly considered by the Public Protector in relation to the substance of any allegations against the hospital or the grounds for adverse comments or findings against or remedial action involving them.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the Baragwanath Hospital should have complied with, the following findings are made:

(a) Whether the Baragwanath Hospital gave the late Mr Goqo a pauper's burial without notifying his family members, and if so, whether such conduct amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

- (aa) The allegation that the Baragwanath Hospital arranged a pauper's burial for the late Mr Goqo without notifying his family members, is substantiated.
- (bb) It was established that the late Mr Goqo was admitted on 14 November 2019 and was deceased on 23 November 2019 but his family was never notified of his death and subsequent burial, because of incomplete details regarding his residential address.
- (cc) The evidence indicates that the body of the late Mr Goqo remained in the hospital mortuary for more than 30 days before he was buried. The Baragwanath Hospital however failed to comply with the provisions of Baragwanath Hospital Circular 35 of 2017 in terms of compiling and publicising the death notice of the late Mr Goqo in local newspapers via the office of the Public Relations Officer (PRO), Mr Mazibuko, as a means of notifying his family, next of kin and/or the community regarding his death.
- (dd) There is no evidence that the hospital made a list of unclaimed bodies available to Mr Mazibuko, the PRO, for media publication.
- (ee) Although the Baragwanath Hospital Management indicated that it has since put measures in place, it was established that no formal process existed at the time of Mr Goqo's death as prescribed by Circular 35 of 2017.
- (ff) The CEO, Dr Lesia endorsed the practice by which the Logistics Director, Mr van der Westhuizen, supervised and signed off on the

pauper's burial process as the Health Officer although there was no formal delegation in this regard.

- (gg) The conduct of the Baragwanath Hospital constitutes maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, relating to the failure to publicise the notice of death as required by Circular 35 of 2017.
- (x) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

The CEO of the Baragwanath Hospital:

- (a) To within **ninety (90)** calendar days after the issuing of this report, to facilitate the process of exhumation and reburial of the body in consultation with the family of the late Mr Goqo, and also obtain authorisation from the local government in whose jurisdiction the exhumation and reburial will be conducted in accordance with Regulation 26 of the National Health Act 61 of 2003;
- (b) To within **ninety (90)** calendar days after the issuing of this report, to review and align Circular 35 of 2017 under the heading "*the procedure for dealing with pauper and indigent corpses*" with Regulation 10(1) of the Regulations published in terms of the National Health Act, 2003 relating to the timeframes for pauper's burials; and
- (c) The Public Protector has taken cognisance of the fact that the Baragwanath Hospital has already acknowledged the oversight in adherence to Circular 35 of 2017 in that it did not publish the pauper's burial list, and as a result the Hospital has put measures in place to rectify these processes by drafting a SOP for Mortuary Services and also to design a quality improvement plan.

1. INTRODUCTION

- 1.1 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) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The 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 (including the Complainant) for such persons to note the outcome of the investigation and to implement the remedial action, where applicable.
- 1.2.1 Dr Lesia, as the CEO of the Baragwanath Hospital.
- 1.3 A copy of the report is also provided to Ms Maza Mpanza of W A Mpanza and Associates, who lodged the complaint.
- 1.4 The report relates to an investigation into allegations of maladministration by the Chris Hani Baragwanath Academic Hospital (Baragwanath Hospital) in connection with the pauper's burial of the late Mr Goqo, without notifying his family members.

2. COMPLAINT

- 2.1 The complaint was lodged with the Public Protector South Africa by Ms Maza Mpanza of W A Mpanza and Associates (the Complainant), on 07 July 2020. The Complainant, in the main, alleged that:
- 2.1.1 During November 2019, Ms Lindiwe Mqwabi (Ms Mqwabi), the aunt of the now late Mr Goqo who resided in Lawley Extension 2, drove him to the local fire station in Lawley to get an ambulance to escort him to the Lenasia South Clinic as he was ill;

- 2.1.2 Mr Goqo was driven in an ambulance from the local Fire Station to the Lenasia South Clinic, where he was referred to and subsequently transferred to the Chris Hani Baragwanath Hospital (Baragwanath Hospital) for further treatment. A few days later, Ms Mqwabi and Mr Mxolisi Shange (Mr Shange), the cousins of Mr Goqo, called him to enquire as to which hospital ward he was admitted to;
- 2.1.3 During the telephone call with Ms Mqwabi and Mr Shange, Mr Goqo advised them that he was admitted to ward Z2 at the Baragwanath Hospital. In December 2019, Mr Shange went to the Baragwanath Hospital to visit Mr Goqo but he was informed that no one by the name of Mr Nhlakanipho Sibusiso Goqo had been admitted there and further, that there is no ward Z2 at the Baragwanath Hospital;
- 2.1.4 In January 2020, Mr Shange went to the Lenasia South Clinic to enquire about the whereabouts of Mr Goqo because the Baragwanath Hospital indicated that there was no record of such a person admitted there. The Lenasia South Clinic informed Mr Shange that according to their records, the late Mr Goqo was transferred to the Baragwanath Hospital. They wrote on a piece of paper a list of wards, namely: 12, 13 and 16 at the Baragwanath Hospital for Mr Shange to ascertain whether Mr Goqo was not placed in one of those wards;
- 2.1.5 Mr Shange went to the Baragwanath Hospital in March 2020 to enquire at wards 12, 13 and 16 and he discovered that Mr Goqo was admitted to ward 16, bed number 3, but was deceased. Even though Mr Shange did not find Mr Goqo's body in the ward, he found the cellphone and medication that belonged to him in the ward. That is how he could identify that Mr Goqo was admitted at the Baragwanath hospital;
- 2.1.6 Mr Shange also discovered that Mr Goqo was buried on 04 February 2020, by Homeward Bound Funeral Home. He noticed a mortuary document that contained the Lawley address, without a street name, and the officials at the

mortuary informed him that the South African Police Service (the SAPS) went to the said address to report the death. Furthermore, Ms Mqwabi stated that the SAPS did not inform her about the passing of the late Mr Goqo; and

- 2.1.7 The above-mentioned averments by both Mr Shange and Ms Mqwabi were verified through a telephone consultation held with them on 20 July 2020.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The investigation was conducted in terms of section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives the Public Protector the powers to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act 23 of 1994 (Public Protector Act), which regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

- 3.2 The Baragwanath Hospital is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and sections 6(4) of the Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

- 4.1.1 Whether the Baragwanath Hospital failed to notify the family of Mr Goqo of his death and thereafter gave him a pauper's burial, and if so, whether it amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

- 4.2 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.
- 4.3 Evidence indicating that Mr Goqo was buried as a pauper and that his family subsequently was not notified, was found, and since the Public Protector did not receive further evidence that refutes the evidence in its possession, the Public Protector has made adverse findings against the Baragwanath Hospital and has taken appropriate remedial action in order to place the Complainant as close as possible to where she is likely to have been had the Baragwanath Hospital acted properly.

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 resolve a dispute of alleged improper conduct or maladministration.

5.2 Approach to the investigation

- 5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and 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 amounts 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 particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

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 Baragwanath Hospital.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration; what it would take to remedy the wrong or, where appropriate, to place the Complainant as close as possible to where she/he would have been, but for the improper conduct or maladministration.

5.3 **The Investigation Process**

5.3.1 The investigation process commenced with correspondence to the Baragwanath Hospital on 24 July 2020 wherein the institution was informed of the investigation, the legislation in terms of which the investigation was conducted, as well what information is required and the format thereof.

5.3.2 The format and the procedure followed in conducting the investigation included:

- a) Exchange of email communication and letters;
- b) Interview meetings held with Ms Lucky Mohomane, the Mortuary Supervisor and Mr Leon van der Westhuizen, the Director for Logistics as persons reasonably believed to have information relevant to the investigation; and
- c) Obtaining records or documents relevant to the investigation which were in the possession or under control of a state institution.

5.4 **Key sources of information**

Documents and e-mail correspondence

- 5.4.1 Allegation letter from the Public Protector, dated 24 July 2020;
- 5.4.2 Response letter from the Baragwanath Hospital, dated 14 August 2020;
- 5.4.3 Copy of the Application for Transfer of Patient and Emergency Medical Services Patient Report Form, dated 13 November 2019;
- 5.4.4 Copy of the patient registration form, dated 14 November 2019;
- 5.4.5 Copy of the death report indicating the date of death being 23 November 2019;
- 5.4.6 Copy of a purchase order, dated 04 February 2020;
- 5.4.7 Copy of the call register, date stamped 07 February 2020;
- 5.4.8 Copy of email correspondence from Dr Lesia to the Public Protector, dated 05 October 2020;

- 5.4.9 Copy of email correspondence from Ms Selaelo Masote of the Baragwanath Hospital (Ms Masote) to the Public Protector, dated 03 June 2021;
- 5.4.10 Copy of email correspondence from Ms Masote to the Public Protector, dated 04 June 2021;
- 5.4.11 Copy of email correspondence from Dr Lesia to the Public Protector, dated 09 July 2021;
- 5.4.12 Copies of newspaper publications, namely the Soweto Urban Newspaper dated 02 November 2020 and The Telegram Newspaper, dated 02 – 15 July 2021;
- 5.4.13 Copy of email correspondence from Ms Masote to the Public Protector, dated 14 July 2021;
- 5.4.14 Copy of email correspondence from Mr Beevens Hlungwane to Mr Van der Westhuizen, dated 14 July 2021;
- 5.4.15 Copy of the Mortuary SOP, dated 14 July 2021;
- 5.4.16 Copy of email correspondence from Colonel Lekalakala to the Public Protector, dated 02 August 2021;
- 5.4.17 Copy of the National Instruction 6 of 2017 report and Affidavit by Sergeant Gafane;
- 5.4.18 Copy of email correspondence from Ms Ntombifuthi Zuma, PA to Mr Van der Westhuizen at the Baragwanath Hospital to the Public Protector, dated 26 November 2021;
- 5.4.19 Copy of email correspondence to the Public Protector, dated 02 December 2021 inclusive of the submission letter from Mr Abram Mofokeng Assistant Director Patient Affairs at the Baragwanath Hospital;

- 5.4.20 Copy of email correspondence from Mr Malose Ledwaba, Deputy Director: Patient Affairs at the Baragwanath Hospital to the Public Protector, dated 02 December 2021;
- 5.4.21 Copy of follow up email correspondence from Mr Abram Mofokeng, Assistant Director: Patient Affairs to the Public Protector, dated 03 December 2021;
- 5.4.22 Copy of follow up email correspondence from Mr Malose Ledwaba, Deputy Director: Patient Affairs to the Public Protector, dated 03 December 2021;
- 5.4.23 Copy of follow up email correspondence from Mr Malose Ledwaba, Deputy Director: Patient Affairs to the Public Protector, dated 07 December 2021;
- 5.4.24 Copy of email correspondence from Mr Nkosiyethu Mazibuko, Public Relations Officer at the Baragwanath Hospital to the Public Protector, dated 08 December 2021;
- 5.4.25 Copy of Affidavit from Sister Gcuze of the Baragwanath Hospital, dated 15 May 2022;
- 5.4.26 Response from Dr Lesia to the section 7(9)(a) Notice, dated 14 December 2022;
- 5.4.27 Letter dated 19 December 2022 sent to Dr Lesia via email correspondence supplementing remedial action contained in the section 7(9)(a) Notice issued on 14 December 2022; and
- 5.4.28 Email response from Dr Lesia to the Public Protector in relation to the supplementary remedial action, dated 21 December 2022.

Legislation and other prescripts

- 5.4.29 Regulations published in terms of the National Health Act 61 of 2003;
- 5.4.30 Baragwanath Hospital Circular 35 of 2017; and
- 5.4.31 City of Johannesburg Metropolitan Municipality Cemeteries and Crematoria By-Laws dated 21 May 2004.

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

- 5.4.32 On 14 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to Dr Lesia, the CEO of the Baragwanath Hospital, to provide her with an opportunity to respond to the likely adverse findings and proposed remedial action.
- 5.4.33 Sections 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- 5.4.34 A written response was received, dated 14 December 2022. The response to the notice in terms of section 7(9)(a) of the Public Protector Act, was duly considered and it concurred with the findings and remedial action by the Public Protector.

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 the Baragwanath Hospital failed to notify the family of Mr Goqo of his death and thereafter gave him a pauper's burial, and if so, whether such conduct amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.**

Common cause issues

- 6.1.1 On 14 November 2019, Mr Goqo was admitted at the Lenasia South Clinic for medical care. He was subsequently transferred to the Baragwanath hospital as evident in the “*Application for transfer of patient*” form, where he was registered as patient number GT10823240 and allocated bed number 03 in ward 16. According to the death report, he was deceased on 23 November 2019, at the Baragwanath Hospital.
- 6.1.2 On 04 February 2020, Mr Goqo was buried by Homeward Bound Funeral Home as per the instruction of the Baragwanath Hospital.

Issue in dispute

- 6.1.3 The issue for determination by the Public Protector is whether the Baragwanath Hospital failed to inform the family of the late Mr Goqo of his death and thereafter gave him a pauper’s burial.

Complainant’s version

- 6.1.4 The Complainant alleged that the family of the late Mr Goqo was not notified about his death and subsequent burial by the Baragwanath Hospital.
- 6.1.5 She further submitted that Mr Shange went to the Baragwanath Hospital to enquire whether Mr Goqo was their patient, in line with information provided by the Lenasia South clinic, but by the time he could confirm that Mr Goqo was admitted in ward 16 bed number 3, Mr Goqo had already passed away.
- 6.1.6 According to the Complainant, even though Mr Shange did not find Mr Goqo’s body in the ward, he found his cellphone and medication in the ward. He stated that Mr Shange was able to confirm that Mr Goqo was admitted at the Baragwanath Hospital and that the medication belonged to him, in that the label on the medicine had Mr Goqo’s name on it.

- 6.1.7 He further stated that Mr Shange indicated that he was advised by Ms Lucky Mohomane (Ms Mohomane), the Mortuary Officer, that Mr Goqo was buried on 04 February 2020, by Homeward Bound Funeral Home. He also stated that at the mortuary, Mr Shange noticed a mortuary document that contained a Lawley extension address, without a street name and Ms Mohomane informed him that the SAPS went to said address to report the death of Mr Goqo. The Complainant further submitted that Ms Mqwabi stated that the SAPS did not inform her about the passing of Mr Goqo.

Dr Nkele Lesia's response

- 6.1.8 On 24 July 2020, a letter was sent to Dr Nkele Lesia (Dr Lesia), the Chief Executive Officer (CEO) of the Baragwanath Hospital, regarding the allegations. In a response letter dated 14 August 2020, Dr Lesia confirmed that the late Mr Goqo was transferred to the Baragwanath Hospital on 14 November 2019, from the Lenasia South Clinic. She further submitted that Mr Goqo was initially admitted to ward 20 and was later transferred to ward 16 at the Baragwanath Hospital.
- 6.1.9 According to Dr Lesia, Mr Goqo was deceased on 23 November 2019, at 13h19 and in terms of the Patient's Registration Form, the next of kin was captured as Mzwane (an unknown individual). She further submitted that the Professional Nurse at the Baragwanath Hospital, Sister Florence Lindiwe Gcuze (Sister Gcuze), contacted the next of kin on 23 November 2019, as per hospital protocol on the contact number that was provided to the hospital. However, Sister Gcuze could not reach Mzwane on the provided contact details.
- 6.1.10 Dr Lesia indicated that on 23 November 2019, Sister Gcuze contacted the SAPS on 10111 and spoke to Sergeant Pulane Annabel Gafane (Sergeant Gafane), in order to report the death of the late Mr Goqo and was provided with reference number 5613609.

- 6.1.11 Dr Lesia acknowledged that a family visit was not conducted by the hospital because the home address was incomplete on the patient registration form. She indicated that the address was captured as Ext 2 Lawley, without a house number and as a result, the internal security team could not be dispatched to the address. She indicated that it was therefore difficult to trace the family of the late Mr Goqo, owing to the incomplete information provided on the hospital admission form, including the fact that there was no record of any family visits for the duration of Mr Goqo's admission at the Baragwanath Hospital.
- 6.1.12 Dr Lesia further reported that Mr Goqo was admitted for eight (08) days until the time of his death and there was no record of any family visit or escort that accompanied him to the Baragwanath hospital.
- 6.1.13 She also indicated that Mr Goqo remained at the Baragwanath Hospital Mortuary for more than twenty-one (21) days. As a result, on 04 February 2020, the corpse was disposed of in terms of Circular 35 of 2017, which provides guidelines in dealing with the storage and disposal of corpses. According to Dr Lesia, Mr Goqo was buried in grave number 526 at the Olifantsvlei cemetery in Eldorado Park by a service provider, Homeward Bound Funeral Home.
- 6.1.14 Dr Lesia also indicated that an internal review of records and staff interviews did not point to any wrongdoing on the part of the Baragwanath Hospital.
- 6.1.15 According to a further response letter to the Public Protector, dated 05 October 2020, Dr Lesia conveyed that "*the batch of the pauper's burial list conducted in February 2020*" was not reported to the office of the Public Relations Officer (PRO) for publication by the hospital. She further indicated that there was no media publication made after the hospital struggled to trace the family of Mr Goqo.

- 6.1.16 In an email dated 03 June 2021, Ms Selaelo Masote (Ms Masote) on behalf of Dr Lesia, provided the Public Protector with the pauper list and a copy of purchase order 4250877466 for pauper funerals, dated 04 February 2020, officiated by Homeward Bound Funeral Home. According to the pauper list, it was noted that Mr Goqo was buried as a pauper and that he shares grave number 526 with two other people.
- 6.1.17 The Public Protector is in possession of the death report of the late Mr Goqo and the pauper list, which included his name, his position P3 as well as the grave number.
- 6.1.18 In an email response from Ms Masote, on behalf of Dr Lesia, received on 04 June 2021, it was clarified that the Mortuary Officer/Manager should provide the Public Relations Officer (PRO), Mr Nkosiyethu Mazibuko (Mr Mazibuko), with the list of deceased patients whose bodies are unclaimed so that the PRO can facilitate the publication in the local newspaper.
- 6.1.19 In a subsequent email response, dated 09 July 2021, Dr Lesia indicated that during the preparations of the pauper's burials, which included the late Mr Goqo, the hospital did not publish the list of paupers as recommended by Circular 35 of 2017 and she did not sign off the list earmarked for pauper's burials. She further indicated that at the time of Mr Goqo's burial, the pauper's burial process was supervised and signed off by the Logistics Director, Mr van der Westhuizen (Mr van der Westhuizen), and she endorsed that practice.
- 6.1.20 In her response, Dr Lesia further outlined the process followed during the February 2020 pauper's burial as follows:
- 6.1.20.1 The unclaimed bodies were identified and a list was compiled for the paupers' burial. The tracing of families was done through internal security, however, the family of the late Mr Goqo could not be traced, due to the incomplete address on his medical records;

- 6.1.20.2 Quotes for his burial were solicited from service providers and Homeward Bound Funeral Home was accepted as the preferred service provider;
- 6.1.20.3 In February 2020, identified bodies (Paupers) were removed by the service provider for the burial and the late Mr Goqo was buried as body no 352/CR; P3 (position 3 in the grave), at Olifantsvlei Cemetery, grave number 526;
- 6.1.20.4 Dr Lesia further indicated that the hospital has since implemented measures to ensure compliance with Circular 35 of 2017, wherein the CEO signs off on the publication of the paupers list in the local newspaper. The PRO publicises the pauper list and the actual burial of the paupers is approved by Dr Lesia. In support of this measure, Dr Lesia provided copies of publications for unclaimed bodies advertised in the *Soweto Urban Newspaper* on 02 November 2020 and in *The Telegram Newspaper* for 02-15 July 2021; and
- 6.1.21 Furthermore, Dr Lesia advised that Regulation 10(1) of the National Health Act 61 of 2003 regarding human tissue banks, Government Gazette No. 35099 of 2012, provides as follows: *“the body of a deceased person that is not buried, or claimed for burial within 30 days after the death of that person by the spouse, partner, major child, parent, guardian, major brother or major sister in the specific order mentioned or bona fide friend of the deceased, shall be at the disposal of the health officer in whose area the body is”*.
- 6.1.22 Dr Lesia was requested to provide the details of the designated health officer as referred to in the regulation above. In response, Dr Lesia advised that as the CEO of the hospital, she is the designated health officer in terms of Regulation 10(1).
- 6.1.23 On 14 July 2021, the Public Protector received an email from Ms Masote wherein she provided a copy of the application for transfer of the late Mr Goqo from the Lenasia South Clinic to the Baragwanath Hospital, including the Emergency Medical Services (EMS) Patient Report Form for the transfer.

Response by Colonel Lekalakala

- 6.1.24 On 02 August 2021, Colonel Lekalakala, of the Gauteng Provincial Inspectorate provided the Public Protector with a report in terms of the National Instruction 6 of 2017 (the report) including an affidavit deposed by Sergeant Gafane, who received the 10111 call from Sister Gcuze of the Baragwanath Hospital.
- 6.1.25 The report indicated that a call was logged by the hospital to the SAPS requesting them to visit the family of the late Mr Goqo in order for the SAPS to inform them about his passing. However, the address was incomplete due to lack of information, such as the detailed physical address. As a result the SAPS could not deliver the message as they did not know where to send the information.

Response by Sergeant Gafane

- 6.1.26 Sergeant Gafane submitted an affidavit, wherein she indicated that on 23 November 2019 she received a call from Sister Gcuze of Baragwanath Hospital's ward no 16 to deliver a message to the family of the late Mr Goqo, who passed away at the hospital. However, when the complaint was being registered, Sister Gcuze could not provide the physical address or street name of where the notification of death had to be delivered; and
- 6.1.27 Sister Gcuze was requested to provide the physical address or street name but she could not provide either because she only knew of Lawley Ext 2. Sister Gcuze indicated that this was the only information that she could obtain from the late Mr Goqo's file and there was nothing else. The call was logged, the reference was issued and the message was sent to the relevant channel for the SAPS to report the death to the family. Sergeant Gafane sent a message to Captain Devenhuis at the Ennerdale Police Station and the subsequent report from the Station was that the message could not be delivered to Mr Goqo, as there was no house number provided.

6.1.28 Based on the above, the Public Protector noted that the Baragwanath Hospital engaged the services of SAPS in an effort to make contact with the family of the deceased, but to no avail. The Baragwanath hospital, however, did not publicise the unclaimed body of the late Mr Goqo in the media as prescribed in terms of the Baragwanath Hospital Circular 35 of 2017.

Response from Ms Lucky Mohomane, the Baragwanath Hospital Mortuary Supervisor

6.1.29 The Public Protector held an interview with Ms Mohomane on 03 September 2021 at the Baragwanath Hospital. In the interview, Ms Mohomane clarified that Mr Shange visited the Baragwanath Hospital on 06 February 2020, which was two (2) days after the pauper's burial of the late Mr Goqo was conducted, on 04 February 2020. At this stage, the family of the late Mr Goqo was aware that he was already buried as a pauper.

6.1.30 Ms Mohomane submitted that she is responsible for paupers' burials at the Baragwanath Hospital and that entails checking for unclaimed bodies. She explained that before a body is brought to the mortuary, the nurses in the ward would normally contact the family of the deceased before the body is transferred to the mortuary. Thereafter, the SAPS would be contacted to trace the deceased's family, in cases where the nurses in the ward were unable to contact any family member.

6.1.31 Ms Mohomane explained that after seven (7) days of the Mortuary receiving the body, they are required to contact the family of the deceased and in this case, she contacted the cellphone number which was written on the late Mr Goqo's file several times without success. She gave the list to the internal security to trace the family of the late Mr Goqo. However, internal security wrote an incomplete address on the documents of the late Mr Goqo. She indicated that the house number was only discovered later when the hospital received the transferred file from the Lenasia South Clinic.

6.1.32 According to Ms Mohomane, the mortuary is required to keep unclaimed bodies for twenty one (21) days, but in this instance the body was kept longer than the prescribed time. She further stated that the Baragwanath Hospital thought the body would be claimed by the family, but it was never claimed. She also indicated that she compiled the list for paupers' burials and sent it to her Manager, Mr Abram Mofokeng (Mr Mofokeng), Assistant Director: Patient Registration, for further handling. She provided a copy of the list of paupers' burials, which included the name of Mr Goqo to the Public Protector on 10 September 2021.

Response from Mr Leon van der Westhuizen, Director: Logistics

6.1.33 The Public Protector Investigation Team (Investigation Team) held an interview at the Baragwanath Hospital with Mr Leon van der Westhuizen (Mr van der Westhuizen) on 03 September 2021, who indicated that he is responsible for patient registration, facilities and logistics and securities at the Baragwanath Hospital. He further explained that internal security receives a list of people that cannot be traced, such as missing patients from the ward or unclaimed bodies. According to his recollection, in respect of Mr Goqo, the comments from internal security was that the address was incomplete.

6.1.34 Mr Van der Westhuizen indicated that people give wrong or incomplete addresses on registration, as they do not want to be held accountable for the hospital bill.

6.1.35 Regarding the tracing of Mr Goqo, Mr van der Westhuizen submitted that a new security team was requested to trace his family based on the address that they discovered from the transfer file of the Lenasia South. He indicated that on 14 July 2021, the security team reported back to him and submitted that they visited 7079 Ext II Lawley, which is the address that was written on the transfer file by the Lenasia South Clinic.

- 6.1.36 According to the security team, the address belongs to the Ngema household and they found a child at the home by the name of Mr Siyabonga Ngema (Mr Ngema). According to Mr Van der Westhuizen, Mr Ngema indicated that he has no knowledge or information of anyone by the name of Goqo. Even the neighbours were not aware of anyone by the name of Goqo.
- 6.1.37 Mr Beevens Hlungwane (Mr Hlungwane) provided the Public Protector with an email, dated 14 July 2021, which he received from Mr van der Westhuizen, indicating that Mr Lawrence Nyembe (Mr Nyembe), Assistant Director: Security and Investigations, together with the Investigating Officer visited 7079 Ext II Lawley on 14 July 2021 to determine whether the address provided to them belongs to the Goqo family or next of kin. However, the outcome of their search was negative.
- 6.1.38 According to Mr Hlungwane, the family which occupies house number 7079 Ext II Lawley is the Ngema family and they met with Mr Ngema who indicated that he does not know any person by the name of Goqo and is not aware of any Goqo family living in their street. The security team also enquired from other residents/neighbours in the area if they know a Goqo or Goqo family, but the neighbours also indicated that the family or the surname Goqo is unknown to them.
- 6.1.39 He further stated that the security team was informed by another neighbour, the Langa family, that they have been residing near the Ngema family since they moved to the area and they do not know anyone by the name of Goqo.
- 6.1.40 Mr van der Westhuizen submitted that according to the death report of Mr Goqo, the sister (Sister Gcuze) who was in charge of the ward, called 10111 and spoke to Sergeant Gafane. Mr Van der Westhuizen indicated that he also personally verified if indeed the call was made from the ward by Sister Gcuze. He confirmed that the call was registered with the hospital switchboard and the contact numbers on the death reports were called without success.

- 6.1.41 A copy of the call register which indicates that Sister Gcuze made a call on 23 November 2019, was provided to the Public Protector and it confirmed that the call was made. Mr van der Westhuizen clarified that the hospital does not normally bury the deceased on day number twenty two (22), after the body has not been claimed. In most cases it takes longer to conduct a pauper's burial, due to the processes that must be followed, such as the supply chain management process and obtaining a purchase order. In other cases, while these processes are unfolding, Baragwanath Hospital hopes that families do visit and claim those unclaimed bodies.
- 6.1.42 According to Mr van der Westhuizen, in terms of the chain of command, Ms Mohomane, would send the pauper's burial list to Mr Mofokeng. Further that Ms Mohomane's role is completed once she submits the said list to Mr Mofokeng.
- 6.1.43 Thereafter, Mr Mofokeng would forward the said list to Mr Malose Ledwaba (Mr Ledwaba) Deputy Director: Patient Affairs for further handling.
- 6.1.44 Mr van der Westhuizen averred that in terms of the hospital processes, Mr Mofokeng and Mr Ledwaba are required to liaise with the PRO, in connection with the publication of a death notice in the newspaper, however in this case he confirmed that no advertisement was published.
- 6.1.45 Mr van der Westhuizen conveyed to the Public Protector that the hospital established that there was no list for pauper's burials sent to the PRO for advertising pauper's burials. He further indicated that in the past, the pauper's burial list never came to the CEO's office before the 21 days has lapsed, but since gaps were identified in the process, the system has now been refined by designing a quality improvement plan in November 2020 whereby they also established an SOP for the Mortuary services.
- 6.1.46 On 26 November 2021, Mr van der Westhuizen provided the Public Protector with a copy of the Baragwanath Hospital SOP for Mortuary, which was

approved on 14 July 2021 by Dr Lesia. The SOP outlines the responsibilities of the Assistant and Deputy Director: Patient Affairs, in respect of mortuary services, management of corpses, procedure for dealing with pauper and indigent corpses, as well as the collection of deceased's bodies by the funeral undertakers, etc.

- 6.1.47 Mr van der Westhuizen, further indicated that the SOP was compiled in line with Baragwanath Hospital Circular 35 of 2017, which deals with the accommodation and disposal of corpses of patients and other persons. As a result, the hospital has since implemented ways of ensuring that the CEO is the overall approver, and as such the CEO will sign the pauper's burial list, after the Director: Logistics has verified the correctness thereof.

Response received from Mr Mofokeng Assistant Director: Patient Affairs

- 6.1.48 The Public Protector received a letter through an email dated 02 December 2021, from Mr Mofokeng, wherein he outlined his duties at Baragwanath Hospital and his involvement in Mr Goqo's burial. Mr Mofokeng indicated that his role entails overseeing the registration and opening of new files for patients at registration department as well as the registration of follow up patients, the booking of appointments, keeping of records and overseeing of thirty four (34) clinics including a pharmacy and a mortuary department.
- 6.1.49 Mr Mofokeng indicated that Mr Goqo was amongst those named in the pauper's burial list received from Ms Mohomane. Further that in line with the process of declaring service for burial, the hospital had taken the necessary steps to exhaust all possible avenues before embarking on the pauper's burial.
- 6.1.50 According to Mr Mofokeng, the SAPS was used at ward level to inform the next of kin, and the pauper's burial was held on 04 February 2020. He also confirmed that the burial list was not published in the newspaper in order to trace Mr Goqo's family.

- 6.1.51 On 03 December 2021, the Public Protector sent an email to Mr Mofokeng seeking clarity on the following issues:
- 6.1.51.1 Whether he received the pauper's burial list from Ms Mohomane and/or any other person;
 - 6.1.51.2 What did he do with the said list and also to elaborate further on the steps taken as mentioned in his correspondence to the Public Protector; and
 - 6.1.51.3 Whether there is evidence that the SAPS notified the family of Mr Goqo's passing.
- 6.1.52 In a follow up response received by the Public Protector on 03 December 2021, Mr Mofokeng clarified that he received a list of the pauper's burials from Ms Mohomane and he enquired from her if the list was forwarded to the Security Management, to assist with the tracing Mr Goqo's family.
- 6.1.53 Further that his role was to check the list against the system Medicom, which is a system used by the hospital to verify if they have the correct registered address and also liaise with the security personnel for tracing of the next of kin. In this instance, Medicom was used to verify if Mr Goqo's home address is the same as the list from the mortuary.
- 6.1.54 He also indicated that the security department did not proceed to visit the address provided, as there was no house number and at the time, feedback was provided verbally between the security department and the mortuary section. However, the hospital is currently using electronic-mail (email) for purposes of communication.
- 6.1.55 Mr Mofokeng further averred that his role is also to check with the PRO whether they have received the list of unclaimed bodies and according to him, the list was handed over to the PRO's office. However, there was no specific person to sign for receipt of the list and e-mail communication was

not in use at the time. Further, to his knowledge there was no publication in this instance. Lastly, Mr Mofokeng stated that due to 21 days having lapsed, the unclaimed bodies were buried in line with Baragwanath Hospital Circular 35 of 2017.

Response received from Mr Ledwaba, the Deputy Director: Patient Affairs

6.1.56 The Public Protector is in possession of a submission dated 02 December 2021, from Mr Ledwaba, wherein he outlined his duties and involvement in Mr Goqo's burial. He indicated as follows:

6.1.56.1 As the Deputy Director, his role entails managing and overseeing the patient administration, inclusive of the mortuary services as well as the supervision of three (3) Assistant Directors within the Directorate, Patient Affairs. With regards to his involvement in the matter, he explained that he was appointed in September 2019 and therefore the list of pauper's burials pre-dated his appointment and was generated from the mortuary unit.

6.1.56.2 Mr Ledwaba indicated that he is aware of the list of paupers and that Mr Goqo's name was included therein. He also stated that to his knowledge, there was no media publication after the family could not be traced and the SAPS was used to contact the family after the hospital was unsuccessful in its attempt to contact the family.

6.1.57 On 03 December 2021, the Public Protector sent an email to Mr Ledwaba, seeking clarity on whether he received the pauper's burial list from Ms Mohomane and/or any other person and how he dealt with it.

6.1.58 In the subsequent communication received by the Public Protector on 07 December 2021, Mr Ledwaba clarified that in relation to unidentified persons, his role was to involve security for tracing and to facilitate the publication in the newspaper to be submitted to the PRO. The hospital's processes have

since been improved to ensure that tracing and facilitation of publication of death notices is complied with.

- 6.1.59 Mr Ledwaba further indicated that in this instance, the list containing the names of pauper's burials was not handed to his office and that the previous arrangement was that the list would be handed over to the PRO for publication, but there was no acknowledgement where someone signed for receipt thereof.
- 6.1.60 Mr Ledwaba advised that after the burial, which occurred in February 2020, the hospital has since improved its processes to ensure that documents are acknowledged by the recipients for future tracking. Further, the current process requires that the security tracing report and the publication thereof in newspapers are done through the PRO's Office. Formal letters to the Security Manager and Communications Manager are written by the relevant officials, who are requesting this service and that serves as future supporting evidence.

Response received from Mr Mazibuko, Deputy Director: Communications and Public Relations

- 6.1.61 In an email received by the Public Protector on 08 December 2021, Mr Mazibuko advised that he is a Deputy Director: Communications and Public Relations and has been with the Department of Health for just over ten (10) years. His responsibilities include internal and external communication services with the community and the "fourth estate".
- 6.1.62 Regarding Mr Goqo's matter, Mr Mazibuko, indicated that it was the responsibility of the Mortuary Unit to compile the list of paupers and bring it to the Communications unit for advertising to the media / newspapers. The internal processes were that the Logistics or Mortuary Unit would compile the list after they had completed the process of tracing the family and only

when they could not do so, would they send the list to Communications to publish in the respective newspapers.

- 6.1.63 Mr Mazibuko indicated that the Communications team only interacts with the list when it is provided to them, thereafter they engage the Supply Chain Management Unit to implement the process of sourcing quotations and creating a purchase order number for publication. All paupers' lists should be provided to the Communications team but in this case, he and his team did not receive the list containing Mr Goqo's name from the Logistics Unit for publication.

Response received from Sister Gcuze, Nurse at Baragwanath Hospital

- 6.1.64 The Public Protector obtained an affidavit dated 15 May 2022 from Sister Gcuze, who has since retired and the contents of her affidavit are consistent with the response received from Dr Lesia.
- 6.1.65 In the affidavit, Sister Gcuze indicated that on 23 November 2019, Mr Goqo was deceased and in terms of the protocol of Baragwanath Hospital, she called the family on the contact number written in the patient file. The contact number went to voicemail several times and as a result, she resorted to calling the SAPS on 10111 and spoke to Sergeant Gafane.
- 6.1.66 Sister Gcuze indicated that she was allocated reference number 5613609 by the SAPS, wherein she requested them to assist in informing the family of Mr Goqo of his death. The address of Mr Goqo's family was captured as extension 2 Lawley in the patient's file, with neither a house number nor a street name.

Additional evidence received from Dr Lesia

- 6.1.67 On 06 December 2022, the Public Protector received the following evidence from Dr Lesia:

- 6.1.67.1 A copy of the *admission policy on medical admission ward 20* compiled by the Clinical Standard Review Committee and signed by the Deputy Director Nursing;
- 6.1.67.2 The patient file for Mr Goqo which affirms that he was admitted on 14 November 2019 and his address was captured as Lawley, extension 2; and
- 6.1.67.3 The *bed letter* confirming that Mr Goqo was admitted in ward 20 and in terms of the informed consent form, Mr Goqo was later admitted to ward 16 on 18 November 2019.

Response to the section 7(9)(a) Notice by the CEO, Dr Lesia

- 6.1.68 In a letter dated 14 December 2022, Dr Lesia acknowledged and accepted the findings and remedial action as proposed in the section 7(9)(a) Notice.
- 6.1.69 Dr Lesia further indicated that she will work with the relevant institutions and the family of Mr Goqo to ensure that the process of exhumation and reburial of Mr Goqo is conducted in accordance with the relevant prescripts.
- 6.1.70 Dr Lesia also requested to be provided with the contact details of the next of kin who the Hospital will liaise with, in respect of the reburial of Mr Goqo.
- 6.1.71 She further affirmed that Baragwanath Hospital will continue to implement processes and actions that would ensure compliance with Circular 35 of 2017.
- 6.1.72 In essence, it is noted that Dr Lesia accepted the findings of the section 7(9)(a) notice and undertook to implement the remedial action.

Supplementary letter

- 6.1.73 On 19 December 2022, a supplementary letter was sent to Dr Lesia advising her that the Public Protector noted an inconsistency in the time frames provided for in the Regulations published in terms of the National Health Act, 2003 relating to the pauper's burials and Circular 35 of 2017. Regulation 10(1) provides that a pauper's burial may be carried out after a period of 30 days has lapsed where the family of the deceased cannot be traced, whereas, the Circular provides for a period of 21 days under the same circumstances. The Public Protector is of the view that this inconsistency may create disputes between families and the hospital in the future.
- 6.1.74 Furthermore, that in an effort to assist the Baragwanath Hospital to avert the above, the Public Protector seeks to advise the Baragwanath Hospital in the formal report as part of the remedial action to consider reviewing and aligning Circular 35 of 2017 under the heading *the procedure for dealing with pauper and indigent corpses* with Regulation 10(1) of the Regulations published in terms of the National Health Act, 2003 relating to the timeframes for pauper's burials.

Dr Lesia's response to the supplementary letter

- 6.1.75 On 21 December 2022, Dr Lesia committed in an email correspondence to the implementation of the remedial action regarding the review of the Circular 35 of 2017, so that it is aligned to the National Health Act to prevent the possibility of disputes between families and the public hospital in future.

Application of the relevant legal framework

Regulations published in terms of the National Health Act 61 of 2003

- 6.1.76 Regulation 10(1) of the Regulations published in terms of the National Health Act 61 of 2003 (National Health Act) regarding human tissue banks,

Government Gazette No. 35099, 2012, published under Government Notice R180, provides that:

“The body of the deceased person that is not buried or claimed for burial within 30 days after the death of that person by the spouse, partner, major child, parent, guardian, major brother or major sister in the specific order mentioned or bona fide friend of the deceased, shall be at the disposal of the health officer in whose area the body is.”

- 6.1.77 The above regulation, requires that, if after the death of a person, the body of the deceased person remains unburied or unclaimed for a period of 30 days, the health officer will make a determination in terms of the disposal of the deceased person. In this instance, Dr Lesia is said to be the health officer at Baragwanath Hospital where the deceased body was kept. Dr Lesia indicated that at the time of Mr Goqo’s burial, the pauper’s burial process was supervised and signed off by the Logistics Director, Mr van der Westhuizen (Mr van der Westhuizen) as per the practice at the time and this process was endorsed by Dr Lesia.

Baragwanath Hospital Circular 35 of 2017, Guidelines for dealing with the accommodation and disposal of corpses of patients and other persons.

- 6.1.78 Paragraph 3.2.1.1 provides as follows:

“All bodies of patients that died in the hospital must be kept in the hospital mortuary till family or next of kin are notified to come and identify and remove the corpse”.

- 6.1.79 According to the above-mentioned provision, Baragwanath Hospital has a responsibility to keep all bodies of patients that die in the Hospital Mortuary until a family or next of kin are notified to appear at the hospital to identify and remove the corpse. In this instance, Baragwanath Hospital was

unsuccessful in contacting the family of the late Mr Goqo despite all its efforts.

6.1.80 Paragraph 1.1 bullet number two (2) provides as follows:

“The family must be notified and the death report must indicate as prescribed how notification was done, i.e. (SAPS-REF number in cases where SAPS is used for notification)”.

6.1.81 Based on the above, it follows that the hospital had a duty to notify the family of Mr Goqo about his death. The evidence at the disposal of the Public Protector, in the form of a *death report* reflects that SAPS was indeed contacted through 10111 and a reference number was provided to Sister Gcuze by Sergeant Gafane. SAPS was however unable to trace the family due to the incomplete residential address of Mr Goqo.

6.1.82 Bullet number two under the heading *procedure for dealing with pauper and indigent corpses* provides as follows:

“The corpses that are not identified within first 7 days of storage must be identified and a list be sent to the internal Security for verification of address and next of kin.”

6.1.83 In this instance, the Baragwanath Hospital advised that internal security was not dispatched and they did not conduct a home visit owing to incomplete information, instead the SAPS was contacted in an effort to trace the family.

6.1.84 Bullet number three under the heading: *procedure for dealing with pauper and indigent corpses* provides as follows:

*“If 14 days elapse and the corpse is still in the hospital mortuary a list for media publications **must** be compiled and dispatched to the media for publication in local newspapers via the office of the PRO.”* (own emphasis)

- 6.1.85 In the circumstances, Baragwanath Hospital had an obligation to compile and dispatch the list of the unidentified corpses in the mortuary for publication in a local newspaper, however the evidence indicates that this was not done.
- 6.1.86 Dr Lesia acknowledged that there was no media publication for the unclaimed bodies as required by Circular 35 of 2017.
- 6.1.87 The publication in the newspaper would have alerted the family and or community to approach the hospital to enquire about the late Mr Goqo.
- 6.1.88 The Baragwanath Hospital Circular under the heading *procedure for dealing with pauper and indigent corpses* provides as follows:
- “The mortuary officer is duly delegated to ensure that within 21 days all corpses that still remain unclaimed, be buried as paupers.”*
- 6.1.89 It is evident that Mr Goqo remained in the mortuary unclaimed for more than 21 days, as such he qualified to be buried as a pauper.
- 6.1.90 The Public Protector has noted an inconsistency in the time frames provided for in the Regulations and the Circular 35 of 2017 in relation to the pauper’s burial. The Regulations for a pauper’s burial after a period of 30 days has lapsed whereas the Circular provides for a period of 21 days. The Public Protector is of the view that this inconsistency may create disputes between families and the hospital.

City of Johannesburg Metropolitan Municipality Cemeteries and Crematoria By-Laws, 2004

6.1.91 Section 7 of City of Johannesburg Metropolitan Municipality Cemeteries and Crematoria By-Laws¹ under the heading of Burial and Subsequent Burials provides as follows:

“(1) Burial may take place only in a grave allocated by the officer-in-charge.

(2)(a) Subject to paragraph (b), not more than two burials may be permitted in a grave;

(b) A third burial may be allowed only if-

(i) an application has been made to the officer-in-charge and written permission has been granted;

(ii) the grave has been deepened; and

(iii) a prescribed fee has been paid.”

6.1.92 In terms of the above, multiple burials in one grave is permissible.

Conclusion

6.1.93 Based on the evidence provided to the Public Protector, the submissions of Dr Lesia and other officials at the Baragwanath Hospital, including the report received from the SAPS, it can be concluded that the family of the late Mr Goqo could not be reached to be informed of the late Mr Goqo’s death and subsequent burial by the Baragwanath Hospital.

¹ Published Under Notice 824 In Gauteng Provincial Gazette Extraordinary No 179 Dated 21 May 2004.

- 6.1.94 Dr Lesia and the Baragwanath Hospital officials who were engaged in this investigation all conceded that there was no media publication for the pauper's burial of Mr Goqo, which was carried out in February 2020.
- 6.1.95 The Public Protector noted that there was no formal process in place in respect of the acknowledgement of receipt of the burial list to be published for unclaimed bodies by the PRO.
- 6.1.96 The Baragwanath Hospital officials indicated that their communication was mostly verbal and not formally documented, hence there is no email or written record which could be produced as evidence to confirm that the burial list was handed over to the PRO.
- 6.1.97 The Public Protector has however noted that Baragwanath Hospital has since improved its internal processes by designing a quality improvement plan and drafting an SOP on Mortuary services.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard the Baragwanath Hospital should have complied with and the impact on the Complainant, the Public Protector makes the following findings:

7.1 **Whether Baragwanath hospital gave the late Mr Goqo a pauper's burial without notifying his family members, and if so, whether such conduct amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

- 7.1.1 The allegation that Baragwanath hospital arranged a pauper's burial for the late Mr Goqo without notifying his family members, is substantiated.

- 7.1.2 It was established that the late Mr Goqo was admitted on 14 November 2019 and was deceased on 23 November 2019, but his family was not notified of his death and subsequent burial, because of the incomplete details regarding his residential address.
- 7.1.3 The evidence traversed above, indicates that the body of the late Mr Goqo remained in the hospital mortuary for more than 30 days before he was buried.
- 7.1.4 The Baragwanath Hospital, however failed to publish the death notice of the late Mr Goqo in the local newspapers via the office of the PRO, as provided for in Circular 35 of 2017.
- 7.1.5 There is no evidence that the hospital made a list of unclaimed bodies available to the PRO, for publication in the local media.
- 7.1.6 It was established that there was no formal process in place at the time of Mr Goqo's death as prescribed by Circular 35 of 2017, although Baragwanath Hospital Management indicated that it has since put measures in place.
- 7.1.7 Dr Lesia endorsed the practice wherein Mr van der Westhuizen supervised and signed off on the pauper's burial process as the health officer, although there was no formal delegation in this regard.
- 7.1.8 The conduct of Baragwanath Hospital constitutes maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, relating to the failure to publicise the notice of death as required by Circular 35 of 2017.

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 referred to in this report upon conclusion of an investigation where adverse findings are made.

8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

8.3 Having regard to the evidence, the regulatory framework determining the standard that the Baragwanath Hospital should have complied with and the impact on the Complainant, the Public Protector takes the following remedial action:

The CEO of the Baragwanath Hospital

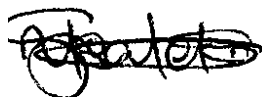
8.3.1 Within **ninety (90)** calendar days after the issuing of this report, to facilitate the process of exhumation and reburial of the body in consultation with the family of the late Mr Goqo, and also obtain authorisation from the local government in whose jurisdiction the exhumation and reburial will be conducted in accordance with Regulation 26 of the National Health Act 61 of 2003;

8.3.2 Within **ninety (90)** calendar days after the issuing of this report, to review and align Circular 35 of 2017 under the heading *the procedure for dealing with pauper and indigent corpses* with Regulation 10(1) of the Regulations published in terms of the National Health Act, 2003 relating to the timeframes for pauper's burials; and

8.3.3 The Public Protector has taken cognisance of the fact that the Baragwanath Hospital has already acknowledged the oversight in adherence to Circular 35 of 2017 in that it did not publish the pauper's burial list, and as a result the Hospital has put measures in place to rectify these processes by drafting an SOP for Mortuary Services and also to design a quality improvement plan.

9. MONITORING

- 9.1 Dr Lesia to provide a report to the Public Protector on the implementation of the remedial action within ninety (90) calendar days from the date of this report.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 30 DECEMBER 2022

Assisted by: Ms Maselaelo Manyathela
Provincial Representative: Gauteng