



PUBLIC PROTECTOR SOUTH AFRICA RELEASES REPORTS ON INVESTIGATIONS IT CONCLUDED IN THE SECOND QUARTER OF THIS YEAR

Tuesday, 01 October 2024: The Public Protector South Africa (PPSA) on 30 September 2024 issued its reports based on investigations conducted in the second quarter of the 2024/25 financial year.

During this period, the PPSA received 1,489 new complaints, of which 756 were early resolution, 641 related to a lack of service delivery, while 92 were in respect of allegations of maladministration and related improprieties in the conduct of state affairs.

The reports of the Public Protector are 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). The Public Protector Act provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her. Furthermore, 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 the conclusion of an investigation where adverse findings are made.

The Public Protector hereby publishes findings in respect of five investigations, amongst no less than 652 investigations concluded by the institution during the second quarter of the 2024/2025 financial year. The institution has also finalised 1,094 investigations by means of alternative dispute resolution (ADR) mechanisms.

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These can be classified under the following areas:

- Undue Delay;
- Maladministration;
- Abuse of Power;
- Conduct Failure;
- Corruption related in procurement; and
- Irregular appointments.

The PPSA's reports communicate the results of the Public Protector's investigations and provide accountability and transparency to the people of South Africa. The goal is to communicate the manner in which the PPSA has dealt with the various complaints brought before it.

Our investigations are approached using an enquiry process that seeks to determine what happened, what should have happened, is there a discrepancy between what happened and what should have happened, and does that deviation amount to improper conduct and/or undue delay? 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.

Report Number 18 of 2024/2025: Investigation into allegations of maladministration in the extended procurement of Set Top Boxes and related accessories in fulfilment of Government's Broadcast Digital Migration project and interference by the former Minister of Telecommunications to stop the Universal Service and Access Agency of South Africa (USAASA) to recruit and train local installers

The complaint was lodged with the Public Protector on 29 September 2020. The Complainant alleged, amongst other things, that during December 2015 and January 2016, following a procurement process, the Universal Service and Access Agency of South Africa (USAASA) appointed 26 Small, Medium and Micro Enterprises (SMMEs) and one listed company to install set-top boxes (STBs) and related accessories to indigent beneficiaries in fulfilment of Government's Broadcast Digital Migration (BDM) project. The parties entered into Service Level Agreements (SLAs) in December 2015 and January 2016, for a period of three years, expiring in December 2018 and January 2019, respectively.

The complainant also alleged that the USAASA made a written pricing offer to the installers, which provided for escalation rates to be determined annually in terms of the SLA, which was not

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implemented resulting in the referral of the matter to the Arbitration Foundation of South Africa (AFSA); and

The installers were supposed to install five million two hundred thousand (5 200 000) STBs, however, they only managed to install five hundred thousand (500 000) STBs over the three-year period. This was mainly due to logistical challenges from both the USAASA, the South African Post Office (SAPO) and the registration of beneficiaries. Before the expiry of the contracts in November 2018, the installers wrote a letter to the USAASA requesting an extension of their contracts, as they had only installed less than ten percent (10%) BTs;

On 12 December 2018, at the Bloemfontein Colloquium, the erstwhile Chief Executive Officer of the USAASA, Mr Lumko Mtimde, announced that the USAASA was in the process of extending the National Installer contracts to complete the installation of one million five hundred thousand (1 500 000) STBs procured by the USAASA. On 26 February 2019, the National Treasury issued a directive to the USAASA authorizing it to extend the contracts of the SMMEs on condition that the USAASA appoints the same 26 companies who did the initial installations. The addenda to the contracts were signed by the installers on 12 April 2019;

The installers were thereafter informed that the erstwhile CEO refused to countersign the addenda to the contracts, allegedly on instruction from the former Minister of Telecommunications, Ms Stella Ndabeni-Abrahams;

On 30 April 2020, the installers were informed that officials from the USAASA, the Department of Communications and Digital Technologies (DCDT) and SAPO went to the National Treasury to persuade them to retract the letter authorizing the 26 installation companies to continue with the installations, so that they could use *“local installers”*;

The National Treasury refused to retract the letters and informed the USAASA that they should continue with the 26 companies as per the submitted motivation. The USAASA was further informed that if they wanted to use local installers, the USAASA should issue a tender in line with the Public Finance Management Act (PFMA). The National Treasury also informed the USAASA that the 26 installation companies could sue the USAASA for damages;

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There had been no projects running since December 2018 and January 2019, whilst the USAASA was paying R5 500 000 per month to SAPO for the storage of the STBs which were becoming obsolete with no warranty, to the value of approximately R1 000 000 000;

In October 2019, the USAASA issued a tender for “*local installers*” in the Free State, the terms of reference were the same as the original tender in terms of which the USAASA appointed the 26 SMMEs. The response to the above tender was very poor. In February 2020, the USAASA issued letters for the extension of the validity of the tender for thirty days. The 30-day extension expired in March 2020 and after its expiry date, the USAASA neither communicated to bidders nor informed them whether it had decided to cancel the tender;

USAASA abandoned the project and after requesting a deviation from the National Treasury appointed Sentech SOC Ltd, which did not have the mandate to do installations. In June 2020, Sentech advertised a tender with the same terms of reference of the USAASA tender for the Free State and the following month for the Northern Cape and North-West Provinces. In September 2020, Sentech issued letters of award to 41 companies who tendered in the Free State, albeit most of them were not local, but based in Gauteng, which was contrary to the reasons put forward by Ms Ndabeni-Abrahams for not extending the contracts of the 26 SMMEs; and of the 41 companies awarded, 16 appeared to be no longer active.

Having regard to the evidence and the regulatory framework determining the standard that should have been complied with by the USAASA and its functionaries, the Public Protector makes the following findings:

The allegation that the contract management of the SMMEs for the installation of the STBs and the procurement of Sentech as the Installation Management Company for the installation of STBs, and the continued payment to SAPO for the storage of the STBs, were in contravention of the applicable legal framework, is substantiated;

The SMMEs were unable to complete the installations of the 1.5 million STBs in the three-year contract period, but the USAASA failed to notify the 26 SMMEs in writing that it was not satisfied with their performance during the course of the contract period and to provide the SMMEs with an opportunity to remedy its performance to the satisfaction of the USAASA;

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The USAASA failed to manage the SLA entered into with the 26 SMMEs and to ensure that the deliverables in terms of the contract were achieved;

What was intended to be a 3-year project for the installation of 1.5 million STBs at qualifying indigent households at an approximate cost of R500 million, has not been completed to date. The USAASA was still in the process of clearing the 1.5 million STBs procured in 2015. The project was costed at R500 million in 2015, but during the 2020/21 financial year the USAF had to avail an additional R578 700 000 to complete the project. At the time when the additional budget was availed, the USAASA was unable to indicate with certainty how many of the installations envisaged between the 2015 and 2018 contract period, had been completed;

The former Boards of the USAASA failed to ensure the efficient, economic and effective use of the USAASA's resources, and failed in its fiduciary duty to act with fidelity, honesty, integrity and in the best interests of USAASA in managing the financial affairs. This was in contravention of section 195(1)(b) of the Constitution and sections 50 and 51 of the PFMA;

The former CEO of the USAASA, failed to ensure that its financial management systems and internal controls are complied with, in contravention of section 195(1)(b) of the Constitution and section 57 of the PFMA;

The conduct of the USAASA constituted a violation of clause 24.1 of its SCM Policy MD Regulation 13(2) of the Preferential Procurement Regulations as well as clause 7 of the SLA entered into between the parties;

The conduct of the USAASA in the cancellation of the tender, constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(5)(a) of the Public Protector Act;

The USAASA only requested approval from the National Treasury for the deviation to appoint Sentech two months after conclusion of the Service Level Agreement with Sentech. Therefore, the conduct of the USAASA was in violation of clause 8.5 of National Treasury: Supply Chain Management Instruction Note 3 of 2016/17, which requires prior written approval of the National Treasury;

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The USAASA failed to procure the services of Sentech in accordance with a system that is cost effective in terms of section 217 of the Constitution, read with section 51(a)(iii) of the PFMA;

Furthermore, the final Management Report of the Auditor-General South Africa for the financial year ending 31 March 2021, found that Sentech only completed and project managed 1,659 installations at a cost of R23 060 040.34;

The USAASA's appointment of Sentech as the Implementing Agent indicates a lack of proper procurement oversight and due diligence, leading to questionable financial outcomes for the project and amounting to a failure to ensure value for money, as well as the efficient and economical management of public resources, as envisaged in sections 51(b)(ii), (iii) and 51(1)(c) of the PFMA;

The USAASA's failure to effectively manage contracts, notify SMMEs of performance issues, and the financial mismanagement related to STB storage and installation, amounts to maladministration as envisaged in section 6(5)(a) of the Public Protector Act.

The Public Protector further made the following observations during the course of the investigation:

The National Treasury did not ascertain from the USAASA how it intended to address the shortcomings which resulted in the approval of the deviation for the reappointment of the 26 SMMEs for a further 12-month period;

Instead, the National Treasury thereafter availed another R578 700 000 to the USAF during the 2020/21 financial year, for what was in essence, the same project, without ascertaining the reasons why the project was not completed and the budget was almost depleted; and

The conduct of the National Treasury was not aligned with section 6(1)(g) of the PFMA which requires the National Treasury to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of public entities.

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The Public Protector takes the following remedial action:

The Minister of Communications and Digital Technologies

Take cognizance of the report and the improprieties reported herein and ensure that the remedial action by the Public Protector is implemented in line concerned in line with the authority, powers and functions of the Minister contemplated in section 92(2) of the Constitution.

The Board of the USAASA

Within 120 calendar days, and in accordance with its fiduciary responsibilities to establish an effective, efficient and transparent system of financial and risk management and internal control, and its responsibility to manage the revenue, expenditure and liabilities of a public entity as required in sections 51(1)(a), (b) and (c) of the PFMA:

Trace all the Auditor-General South Africa management reports from the start of the project (2015) to date, and provide the Public Protector with proof of implementation of all the findings pertaining to the BDM project;

Deliberate, in consultation with the Office of the State Attorney and/or the SIU, whether the USAASA should, through a civil litigation claim, recover any expenditure paid in excess and/or in error from Sentech, for any financial loss identified by the Auditor General South Africa in its 2020/21 Management Report, in line with its responsibility set out in section 51(1)(b)(ii) of the PFMA.

The Acting CEO of the USAASA

Within 60 calendar days, and in accordance with his responsibility to establish a system of financial management and internal control as required in terms of section 57(a) of the PFMA:

Evaluate the effectiveness of the USAASA's internal controls on supply chain management and contract management processes and identify systemic deficiencies with a view to take corrective action to prevent a recurrence of the improprieties referred to herein;

Ensure that the USAASA adopts a monitoring tool to manage the continuous monitoring of the implementation of the project; and

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Ensure that the USAASA's Internal Audit Unit submits quarterly reports on the implementation of the project to the Audit Committee and the Board. The Audit Committee should report any matters of concern to the Executive Authority and the AGSA, as envisaged in Treasury Regulation 27.1.12.

This matter is also referred to the Directorate for Priority Crime Investigation (DPCI) in terms of section 6(4)(c)(i) of the Public Protector Act, 1994, to investigate the commission of any offence in this matter by any implicated party.

The Chairperson the Board of the USAASA, together with the Acting Chief Executive Officer of the USAASA, to submit an action plan to the Public Protector on the implementation of the remedial action referred to above, within 30 calendar days.

The Auditor General of South Africa

Take cognisance of this report and remedial action and in line with its mandate consider conducting a full audit of the BDM project.

Report Number 13 of 2024/2025: Investigation into allegations of improper conduct and maladministration relating to the irregular appointment of Mr Hasting Farrington Nel as a Project Manager: Key Infrastructure Projects by the functionaries of the Department of Transport, Safety and Liaison in the Northern Cape

The complaint was lodged by the Economic Freedom Fighters (EFF) (the Complainant) at the Northern Cape Provincial Office of the Public Protector, in Kimberley on 04 December 2020. The complainant among other things, alleged that:

In November 2018, the Department of Transport, Safety and Liaison in the Northern Cape (The Department) advertised the position of Project Manager: Key Infrastructure Projects with a closing date of 23 November 2018.

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The requirements for the post were:

A Bachelor's Degree in Civil Engineering, a related field in Project Management supplemented by seven or more years of experience in Project Implementation, and a related Master's degree will be an added advantage;

Professional Engineer or certified Project Manager; and

Certification in Project Management (CPM) or an equivalent project management credential.

The Complainant alleged that the appointed candidate did not have the required qualifications and relevant experience for the post as indicated in the advertisement.

There was extreme pressure to shortlist and appoint the candidate, who is *"the Premier's best childhood friend and business associate"*; and

The appointed candidate was the only person that was interviewed for the post. However, the erstwhile Head of the Department of the Northern Cape Department of Transport, Safety and Liaison, and the erstwhile Member of the Executive Council of Transport, Safety and Liaison proceeded with the appointment of the candidate against the advice from the Senior Legal Administration Officer not to appoint him since he was the only person interviewed for the post.

In essence, the Complainant alleged that the appointment of the candidate as Project Manager by the Department was not in accordance with the laws and prescripts regulating the appointment of public servants.

The evidence before the Public Protector indicates, among other things that, according to the undated long list, six applications were received by the Department. It is evident from the long list that none of the applicants complied with the basic criteria of the advertisement, as supporting documents were not attached. In respect of the appointed candidate, the long list also indicates that he did not attach relevant qualifications to his application.

The Department had a responsibility to make a determination on how to proceed in light of the non-compliance of all applicants with the basic criteria in terms of paragraph 9E(a)(i) of the

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Recruitment and Selection Policy (RSP) which provides that following the screening candidates who do not comply with the minimum advertised requirements may be eliminated with noting of reasons. There is no evidence to support how the Department elected to proceed to shortlist five candidates and eliminate one from the shortlist, taking cognizance of the overall non-compliance.

Furthermore, no evidence was provided to the Public Protector, such as the minutes of the shortlisting committee reflecting, how the shortlisting process was undertaken, or that approval of the shortlisted candidates by the executive authority was obtained. This casts doubt as to whether shortlisting took place in accordance with paragraph 9E(b)(vi) of the RSP which provides that the executive authority/delegated official must approve the shortlisted candidates.

The evidence before the Public Protector indicates that the Chairperson of the Interviewing Panel, was a director in the department, which is the same level as the post to be filled by the candidate they were interviewing, contrary to the provision of Paragraph 9E(iii) of the RSP which requires that the panel must be chaired by an employee of a grading higher than the post to be filled. In the circumstances, the panel was not properly constituted in accordance with clause 67(1)(a) of the Public Service Regulations.

The evidence further indicates that only appointed candidate was interviewed for the post on the basis that other candidates declined the invitation to the interviews.

The conduct of the interviewing panel in proceeding to only interview one candidate, was in conflict with the objectives of paragraph 7(b) of the Public Service Regulations, which provides that recruitment and selection must be done in a fair, efficient, effective, transparent, and equitable manner.

The erstwhile Member of the Executive Council (MEC) approved the recommendation without reservation, despite the obligations placed on her by section 195 to investigate and, if need be, to correct any unlawfulness when she was enlightened of a potential irregularity. The duty is premised on the principles of accountability and transparency in sections 195(1)(f) and (g) of the Constitution which enjoins public administration to maintain a high standard of professional ethics.

The Public Protector notes with concern the MEC's contention that she was not part of the technical administrative process and would also not interfere in same is contradictory to the

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obligations placed on her in terms of section 195 of the Constitution, which requires her as the executive authority to correct and redress any irregularity in the public administration within her oversight.

Under the circumstances, the Human Resources functionaries, the shortlisting and interviewing panel, the Head of Department (HoD) and the MEC had an obligation to ensure that they comply with the Public Service prescripts and the departmental policy in the recruitment process that resulted in the appointment of the candidate, who did not meet the inherent requirements of the post.

According to paragraph 9A of the RSP, departments must ensure that a funded vacant post shall be advertised within six months after becoming vacant and be filled within twelve months. In this instance, it took the department longer than the prescribed period to fill the post.

Regarding the allegation that there was extreme pressure to shortlist and appoint the candidate, as he was the Premier's best childhood friend and business associate, the evidence at the Public Protector's disposal indicates that as at 16 July 2024 the candidate and the Premier were in a business relationship. According to the evidence before the Public Protector, on 15 October 2018 the former Premier, Ms Lucas approved the request for the filling of the post for Project Manager: Key Infrastructure Projects additional to the establishment.

The post was advertised in November 2018 prior to the appointment of Dr Saul as Premier of the Northern Cape Province, on 22 May 2019. Therefore, the recruitment process had already commenced at the time Dr Saul assumed office.

Having considered the evidence before the Public Protector and the legal prescripts applicable thereto, it is concluded that the appointment of the candidate by the Department was irregular in that the recruitment process was flawed.

None of the candidates complied with the basic criteria for the advertised post, however, the Department proceeded with the shortlisting and interview of the candidate even though he did not meet the inherent minimum requirements for the post as outlined in the advertisement. In addition, the interviewing panel was not properly constituted as the Chairperson was on the same

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grade as the post to be filled, contrary to the Public Service Regulations, 2016 which require that he should be of a grade higher than the post to be filled.

Although the Public Protector made adverse findings against the HoD, the Director of Transport Regulations, Director in the Department and the Technical Specialist, any remedial action that the Public Protector might have taken against them, would serve no judicious purpose as the Head of Department and the Director of Transport Regulations have retired, the Director is deceased, and the Technical Specialist is no longer in the employ of the Department.

The Public Protector is taking the following remedial action in terms of section 182(1)(c) of the Constitution:

Premier of the Northern Cape

Take cognisance of the report and take appropriate action against the MEC for her role in the irregular appointment of the candidate as the Project Manager: Key Infrastructure Projects, in terms of section 132(2) of the Constitution.

Report Number 16 of 2024/2025: Investigation into allegations of undue delay by the functionaries of Emfuleni Local Municipality (ELM) to restore the provision of water to the community of Sebokeng Zone 3 in the Gauteng Province, following a prolonged water outage

The complaint was lodged on 19 September 2023. The Complainant alleged *inter alia*, that: At the time of lodgement of the complaint, the community of Sebokeng Zone 3 had been without water for seven months, and the Emfuleni Local Municipality (ELM) was not dispatching water tankers on a regular basis to supply water to the community. As a result, the community is left without water supply, which makes life difficult for them;

The Complainant raised the matter with the ELM as well as Rand Water on 07 September 2023, but no response was received by the community or affected residents;

Based on the totality of the evidence presented by ELM and received from other stakeholders, the Public Protector concludes that ELM did not provide the community of Sebokeng Zone 3 with

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a reliable supply of water and as a result, residents experienced inhumane conditions without access to water for a prolonged period of at least seven (07) months.

The conduct of the functionaries of the ELM is in breach of its Constitutional duties imposed by section 27(1)(b) and (2), as well as section 3(1) and (3) of the Water Services Act, which impose a duty on it to provide everyone with sufficient water.

Based on the exposition of the factual evidence stated above, the Public Protector concludes that the ELM did not adhere to its statutory obligations imposed by the Constitution, the Local Government Municipal Systems Act and the Water Services Act.

The allegation that the functionaries of the Emfuleni Local Municipality unduly delayed restoring the provision of water to the community of Sebokeng Zone 3, for over a period of seven months, is substantiated.

The lack of supply of water resulted in the community of Sebokeng Zone 3 being without access to water for a prolonged period of at least seven months, from September 2023 to May 2024. As a result, the residents, including elderly citizens were forced to spend hours laboriously collecting their daily supply of water from distant taps as well as from neighbouring areas such as Orange Farm.

The lack of water supply in high-lying areas, including Sebokeng Zone 3 was acknowledged by the functionaries of ELM during the course of the investigation.

The evidence obtained by the Public Protector reveals that the ELM's water supply network infrastructure is in a state of deterioration, thus it suffers water losses due to leaks, burst pipes and aging water infrastructure. The dilapidated condition of the ELM's water network infrastructure has caused *Metsi-a-Lekoa* to experience operational challenges, which affect its ability to efficiently supply water to the residents of Sebokeng Zone 3 and other affected precincts in its area of jurisdiction. These challenges are further compounded by the lack of sufficient resources required to effect maintenance such as vehicles and human capital.

The Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

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The MEC for CoGTA

Take cognisance of the findings and remedial actions contained in this report and exercise oversight over the implementation of this report in line with the provisions of section 133(1) of the Constitution.

The Municipal Manager of ELM

Within 120 calendar days, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct a full assessment to determine all the underlying causes of water supply challenges as identified in this report in Sebokeng Zone 3 and other affected areas in its jurisdiction.

Within 120 calendar days in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan with timelines for tabling before Council, setting out the measures to be undertaken and/or already undertaken in addressing the causes of water challenges identified in this report, within ELM.

The Executive Mayor of ELM

Within 60 calendar days table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council for ELM is to consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken and/or already taken to address underlying causes of water supply challenges identified in this report, in line with the obligations of municipalities contemplated in section 152(1)(b) of the Constitution;

Within 30 calendar days of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the underlying causes of water supply challenges, as identified in the report.

The Executive Mayor and Municipal Manager to submit action plans to the Public Protector within 30 calendar days from the date of this report on the implementation of the remedial.

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Report Number 15 of 2024/2025: Investigation into alleged abuse of power and state resources by President Cyril Ramaphosa to attend an ANC Letsema campaign

The complaint was lodged with the Public Protector on 20 October 2022, alleging that the President abused his powers and state resources when he used the SA National Defence Force (SANDF) helicopter to attend a campaign of the African National Congress (ANC), and thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution.

The trip was undertaken after the submission of the air travel request to the SA Air Force by the Presidency notifying them of the President's intended trip and to provide him with air transportation as required by the SA Air Force (SAAF) Instruction MRI020034.

The evidence in the Public Protector's possession indicates that the air travel request from the Presidency for the President's travel to and from the ANC Letsema campaign in Welkom was submitted and processed by the SAAF in accordance with Clause 14 of the Presidential Handbook.

Clause 14 regulates domestic transport for the President, and paragraphs 6.2, 6.3 and 6.5 of the SAAF Instruction place an obligation on the Ministry of Defence and Military Veterans and the Presidential Protection Unit of the SA Police Service (SAPS) to ensure the safety and security of the President from ground or air at all times.

On analysis of the air travel request, it is not required for the Presidency to divulge the purpose of the trip or to distinguish between private and public engagements. The SAAF is merely obligated to transport the President by air and ensure his safety and comfort until the SAPS takes over when he lands at the destination stated in the air travel request.

Therefore, as the Head of State and the Head of the National Executive in terms of section 83 of the Constitution and Commander-in-Chief of the SANDF, it is impractical to separate the President's official and private engagements for the purpose of providing safety and security. Therefore, the SANDF is mandated to ensure the safety and security of the President at all times, irrespective of the nature of the trip.

Accordingly, the fact that the President travelled by means of air transport belonging to the SAAF to attend a party-political event, did not suspend the obligations imposed by law on the SAAF.

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The President cannot relinquish his official *persona* whilst attending a meeting as leader of a political party. As Head of State, the President is entitled to comprehensive security, at all times.

The applicable prescripts do not distinguish between official and private engagements undertaken by the President and the SAAF and SAPS are obligated to always provide comprehensive safety and security.

Premised on the above, there is no evidence to conclude that the transportation of the President by the SAAF was at variance with the provision of sections 96 and 195(1) of the Constitution.

The allegation that the President abused his powers and state resources when he used the SANDF helicopter to attend an ANC campaign and thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, is not substantiated. Accordingly, the conduct of the President does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) of the Public Protector Act.

Report Number 11 of 2024/2025: Investigation into alleged improper conduct by officials of the Department of Correctional Services regarding the escape of Mr Thabo Bester from the Mangaung Correctional Centre, as well as allegations of failure by the former Deputy Minister of Correctional Services, Mr Phathekile Holomisa to intervene regarding the incident

The Complainant lodged the complaint on 28 March 2023, alleging *inter alia* that:

According to his observations and based on several media reports, the Department of Correctional Services (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;

The DCS did not do an "*admirable*" job, following the fire that occurred in Mr Bester's prison cell;

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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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

The DCS seemingly only became aware of Mr Bester's escape from prison during the month of March 2023.

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.

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.

Evidence before the Public Protector further reveals that on the same day, G4S officials also notified the DCS' Controller who attended the scene.

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.

On 04 May 2022, a forensic *postmortem* examination was conducted by a doctor, who indicated that there was suspicion of foul play, because there were no signs of smoke inhalation or soot found in the trachea pipes of the deceased 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 another docket for murder.

Notwithstanding the DCS being informed of the escape by the SAPS during the June 2022 meeting and by Judicial Inspectorate of Correctional Services (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 Standard Operating Procedure (SoP) which sets out the reporting timelines for such

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incidents, to the relevant reporting structures stipulated in paragraphs 10.7.4 and 10.9.5, including the SAPS.

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.

Considering 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.

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.

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.

The evidence before the Public Protector indicates that the incident was only reported to the National Commissioner, Mr Makgothi Thobakgale on 25 November 2022 through a report he received from the Director: Contract Management. 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 the DCS Controller did not open a criminal case, until 12 January 2023.

This was in contrast with section 106 of the Correctional Services Act, which requires the DCS 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

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

The DCS Controller'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. The DCS Controller 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.

The DCS Controller'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.

Furthermore, the DCS Controller'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.

The Public Protector notes with concern from the DCS Controller's affidavit, that he advised that he attempted to open a case on 28 November 2022, approximately five months after being alerted of the possible escape of Mr Bester. Following G4S' investigation into the matter, several of their officials were charged, found guilty of misconduct and dismissed.

The Public Protector noted with concern the assertion by the Director: Contract Manager (the Director), 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 the Director 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.

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

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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.

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 months (09 May 2022 to 18 November 2022) and thus delayed completing its internal investigation. The DCS Controller approved the DCS' investigation report on 22 November 2022 and subsequently gave it to the Director on 25 November 2022. However, the Director delayed considering or acting on the investigation report for almost four months, and only signed it on 22 March 2023.

The delay by the functionaries of the DCS in the circumstances namely, the Director: Contract Management and the DCS Controller 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.

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.

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.

On 09 May 2022, the DCS had already commissioned an internal investigation had issued letters appointing investigators to commence the DCS' internal investigation.

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.

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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 that Mr Holomisa was being kept informed by the National Commissioner of the developments regarding the internal investigation conducted by DCS, through informal discussions he often holds with Mr Thobakgale.

It was noted that the DCS' investigation report was finalised on 18 November 2022 and approved by the DCS Controller 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.

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.

The Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Minister of Correctional Services

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, 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

Within 90 calendar days, 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.

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Within 120 days 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.

Take cognisance that since DCS has already taken disciplinary action against the DCS Controller and the Director: Contract Management, therefore the Public Protector will not be taking any further remedial action in this regard.

The National Commissioner of DCS to submit an action plan to the Public Protector within 30 calendar days from the date of this report on the implementation of the remedial action referred to above.

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.

The Speaker of the National Assembly

Within 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.

Other reports released by the Public Protector during this period include:

- Report No. 12 of 2024/2025 - Undue delay by Maluti-a-Phofung Local Municipality to pay over the pension fund contribution refund,
- Report No. 14 of 2024/25 - Alleged breach of the Executive Ethics Code by former Police Minister Bheki Cele,
- Report No. 17 of 2024/2025 - Undue delay by the Solicitor General to respond to a complaint,
- Report No.19 of 2024/2025 - Closing report on an investigation by the Public Protector and matters incidental thereto (the Dr Gogwana matter), and

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- Report No. 20 of 2024/2025 - Public Protector review decision on an internal review in terms of rule 44(1) (the Mr. Sikweza matter).

Concluding Remarks

In light of the many challenges faced in South African society, as a consequence of the issues raised in the aforementioned investigations, it is our sincere hope that other state institutions and role players, will borrow lessons from these reports and where appropriate, commence with efforts to remedy similar matters that may exist within them.

Adv. Kholeka Gcaleka wishes to reiterate the binding nature of the Public Protector's remedial action. Accordingly, where adverse findings have been made and appropriate remedial action taken, she urges the relevant organs of state to implement the remedial action fully.

The implementation of the Public Protector's remedial action is an expression of a willingness by the state to ensure that justice is not only done but is seen to be done and enforces accountability.

The Public Protector is entrusted with *inter alia*, the duty to help the state identify shortcomings in its systems, and the remedial actions contained in the Public Protector's reports are intended to assist in correcting the identified inadequacies to prevent reoccurrence of the issues complained of in the future. Many of the issues which are the subject matter of the reports listed herein form part of crucial South African discourse.

We hereby express our gratitude for the increasing spirit of cooperation with the PPSA by organs of State, who have remedied the malfeasance internally, even prior to the conclusion of our investigations.

As we enter the month of October, we are reminded that it is the month during which the PPSA was established and it's an internationally recognised month of Good Governance. The PPSA during this month runs campaigns through awareness and education of its mandate. The aim of the campaign is to shed light on the value and importance of good governance in public administration, and where appropriate, to provide platforms to various commentators on their views on how good governance can be achieved.

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To this end, the PPSA in collaboration with the Department of Public Service and Administration, partnering with the European Union will host a Conference on the role of oversight and compliance bodies in achieving Good Governance which is aimed at promoting ethical governance and accountability from 30 – 31 October. The conference will be preceded by meetings with organisations that are committed to combating corruption and promoting ethical behaviour in both the private and public sectors. The PPSA will also host localised weekly Good Governance awareness and education outreach in all provinces.

We wish to emphasise our gratitude to the People of South Africa, who have continued to place their trust in this invaluable institution and have shown us that they have faith in the credibility of our work and continue to believe in the relevance of this constitutional institution by continuing to entrust us with their complaints.

Adv. Gcaleka further wishes to recognise and thank the committed and relentless staff of the PPSA, led by the CEO Ms. Thandi Sibanyoni and the COO Adv. Nelisiwe Nkabinde, who have all contributed to the work of the institution.

The full reports can be accessed on the PPSA website at www.pprotect.org

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