



AN OWN INITIATIVE INVESTIGATION REPORT INTO ALLEGATIONS OF TORTURE AND EXCESSIVE USE OF FORCE ON INMATES AT THE MASERU CENTRAL CORRECTIONAL INSTITUTION ON 22 DECEMBER 2023

NO JUSTIFICATION FOR THE UNJUSTIFIABLE

It might be appealing for some to dismiss inmates who are victims of excessive use of force as deserving of their fate; to assume the worst of them and the best of correctional officers. But it is important to remember that inmates, regardless of why they are confined, are human beings deserving of respect, dignity and humane treatment. They all individually have their own personal stories to tell...

INQUIRY NO. 1 OF 2023/2024

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FOREWORD

The Ombudsman, pursuant to her mandate as stipulated under section 9 of the Ombudsman Act No 9 of 1996, undertook an investigation into an alleged torture and human rights violations at the Maseru Central Correctional Institution (MCCI). The investigation was undertaken based on a huge outcry largely published in the media of inmates who had allegedly been beaten by correctional officers in training. This prompted the Ombudsman to commence investigations into the allegations with a view of establishing their veracity.

The Ombudsman wrote a letter to the Commissioner of Lesotho Correctional Institution on the 03rd January, 2024 to enquire on the allegations and further notified him of her decision to conduct an investigation. The Ombudsman and her investigations team visited the Maseru Central Correctional Institution and interviewed the management, correctional officers, inmates and sought to recover supporting documentation relevant to the matter under investigation.

This report was informed by the analysis of the information gathered and the examination of documents recovered in the process of the investigation. The Ombudsman has made recommendations to the Ministry of Law and Justice, the Director of Public Prosecutions (DPP) together with the Ministry of Local Government, Chieftainship, Home Affairs and Police for implementation. It is expected that full implementation of the recommendations will impact positively on eradicating the undesirable behavior by officers at the institution and nationwide.

Signed this 19th day of March, 2024



ADV TLOTLISO POLAKI

OMBUDSMAN

Table of Contents

Foreword	i
Acronyms	iii
Executive Summary	iv
1.0 Issues under investigation	v
1.1 Introduction to the investigation	1
1.2 Investigation process /Methodology	4
1.3 Legal Framework	5
2.0 Summary of evidence, Analysis.....	5
3.0 Findings	42
4.0 Recommendations	53
4.0 Conclusion	58

Acronyms

ACO	Acting Officer Commanding
ASP	Assistant Superintendent
CO	Chief Officer
CSTS	Correctional Staff Training School
DPP	Director of Public Prosecutions
LCS	Lesotho Correctional Service
LDF	Lesotho Defence Force
MCCI	Maseru Central Correctional Institution
MMH	Makoanyane Military Hospital
OC	Officer Commanding
QEII	Queen Elizabeth II Hospital
QMMH	Queen 'Mamohato Memorial Hospital
SGT	Seargent
SSP	Senior Superintendent

Executive Summary

This is an investigation report of the Ombudsman issued in terms of section 135 of the Constitution of Lesotho 1993 ('the Constitution') and published in terms of section 7(3) and section 7(4) of the Ombudsman Act No 9 of 1996 ('the Act') which enjoins the Ombudsman to first inform the complainant of the findings of her investigation or inquiry or any action that she may have taken, and secondly, to inform the specified authority of her findings and make such recommendations as she may deem fit.

The report communicates the findings and appropriate remedial action that the Ombudsman is recommending in terms of section 135 of the Constitution and section 7(5) and 7(6) of the Ombudsman Act, following an investigation into allegations of a violation of fundamental human rights of inmates at the Maseru Central Correctional Institution (MCCI) who, according to official sources, are alleged to have been beaten and tortured by recruits that were deployed at the institution for a general search operation held on the morning of the 22nd December 2023. It was alleged that inmates, in particular, the Lesotho Defence Force (LDF) members who have been incarcerated for the last six (6) years were generally recalcitrant and refused to be searched by correctional officers of the LCS on this particular occasion. Many inmates alleged to have systematically been punched, kicked and beaten with sjamboks, sticks, knobkerries and batons by the recruits and were later denied medical treatment. In some cases, their injuries were recorded in reports of medical examinations conducted or in photographs taken by their lawyers. During the Ombudsman's first engagement with inmates on 09th January 2023, several inmates showed lacerations on their bodies which were alleged to be the result of the torture.

The investigation further extended to establishing and enquiring into the alleged failure on the part of the LCS to provide adequate medical care to inmates following the torture and beating incidents and the death of one escapee, Bokang Tsoako. The outcry surrounding the alleged torture and beatings prompted the Ombudsman to conduct investigations with a view of establishing the veracity of the allegations. The Ombudsman wrote to the Commissioner of the Lesotho Correctional Services (LCS) on 3rd January 2024 to notify him of her decision to conduct the investigation. The investigation team visited the LCS and interviewed a number of officers and randomly selected inmates' complainants over a number of days. The inmates were requested to identify and appoint representatives from each one of the five (5) blocks affected to represent them in presenting their grievances because they were all grounded on the same cause with minuet variations. The investigation extended to interviewing cellmates of some of the inmates who had been brutally beaten, including the said LDF officers. The investigation covered a review of the CCTV video footage of the morning of the 22nd December 2023, documentary and relevant documents under investigation and the information was analyzed to inform the findings of the investigation.

Our review of the complaints by inmates revealed various standards breaches, including an apparent attempt on the part of correctional staff to shield questionable conduct from disclosure and failure on their part to report the incidents. The LCS senior security Commissioners initially adopted a defensive stance, particularly regarding the disclosure and review by the Ombudsman, of CCTV footage that confirmed that correctional officers had engaged in brutal assaults on inmates and used excessive force.

The investigation team carried out about forty (40) interviews with senior officers and management, including the LCS Commissioner, Deputy Commissioner, Assistant Commissioners, institution's superintendents, healthcare professionals, correctional officers, security officers, Commandant, management, recruit officers at the Correctional Staff Training School (CSTS) and inmates.

The investigation established that there was a ‘prison break’ or escape of six (6) inmates on the night of the 21st December 2023 at the MCCI and that at the time, there was already an arrangement reached between the Officer Commanding, Assistant Commissioner Tsoto Manaka and Commandant Lipholo Nthako at the CSTS to have recruit officers currently attending training thereat to undertake such general search under supervision. The recruit officers training at the CSTS are officers who have been in LCS’s service for many years but had not been exposed to correctional services training on appointment and are, as a consequence referred to as recruits. Further that when general search operations are undertaken, due to staff shortages, the MCCI resorted to using recruits undergoing training at the CSTS. It was established that their supervision was normally provided by the recruits’ immediate supervisor (instructors) at the training school, who had to ensure that the searches are undertaken in accordance with the law; while officers at the MCCI would, oversee the operation.

It was established that a similar operation had been undertaken some time in or around November 2023 and was a success as it was undertaken seamlessly with the observance of all standards and expectations. It was established that although allegations pointed to nine (9) of the inmates (LDF members) being totally uncooperative at the time of the search, and that they were the only ones affected as they were fighting the recruits, many inmates including those that are ordinary civilians were tortured, beaten up and whipped on this occasion as well. The inmates affected were all staying in different cells and blocks; it was established that of the 650 inmates incarcerated at MCCI at the time, not less than 300 inmates were afflicted and had been beaten up. The Ombudsman found that most of the beatings occurred particularly in areas without video surveillance cameras and were covered up by false reporting.

It was established without a doubt that inmates were beaten by officers unprovoked, slapped and aggressively searched to pick fights. The officers seem to have huddled up as recruits to get their stories straight and report with bogus scenarios justifying the abuse. The evidence pointed to a well-orchestrated plan to torture and ill-treat inmates, in particular, it was mainly targeted at members of the LDF who remain incarcerated to date but somehow affected all other inmates in different cells. Further, the ‘tacit acquiescence’ of senior officers (who were present at the time) to inmates administered abuse and punishment together with the alarming level of use of force directed at the inmates was particularly telling of the culture within the MCCI correctional facility.

Most inmates alleged to have been denied medical care and referral to medical doctors at the hospital on account of invisibility of injuries and wounds.

1.0 Issues under investigation

On the basis of the analysis of the allegations and complaints by inmates, the following issues were identified to inform and focus the investigation:

- (a) whether the general search and seizure exercise undertaken was in violation of applicable legal prescripts, relevant legislative frameworks, international protocols and treaties together with institutional policy guidelines and standards as applied;
- (b) whether inmates resisted to be searched by correctional officers on the morning of the 22nd December 2023 and if so, what triggered such conduct, and whether the actions and inactions of the officers were justified under the circumstances;

(c) whether or not the LCS officers' use of force was lawful, proportionate, reasonable and necessary in their attempts of searching inmates on the day in question; whether the LCS officers were in breach of their duties as caretakers entrusted by law to take care of inmates;

(d) whether inmates affected were provided with immediate, adequate medical attention and healthcare subsequent to the beatings;

(e) whether the torture occurrences were duly reported to relevant authorities including the LMPS so that they could initiate investigations in this regard; and

(f) what, if any practicable and sustainable interventions can be employed to curtail the violence and torture incidences in future.

The Ombudsman investigations established both systemic and human factors resulted in the torturous incidents of 22nd December 2023, which affected inmates negatively. The systemic factors identified included firstly, inadequate controls on ensuring that inmates are not violated, failure to invoke standards or guidelines associated with the processes and procedures governing the opening of cells and closure, searches and seizures and the practice of allowing CSTS recruits to undertake searches and seizures unsupervised by the MCCI supervisors. Secondly, institution's reliance on archaic and repealed prison rules in the absence of new secondary legislation, which has resulted in management's decisions being based on own discretion and personal whims. Thirdly, poor working environment and conditions of service of correctional officers over a long period of time without redress and which have resulted in rogue behaviour in part, officers colluding with inmates on illegal activities and sabotage on the LCS leadership. Fourthly, delays associated in failure to provide inmates with medical care necessary resulting in an infringement of their fundamental right to expeditious healthcare. Further, the inadequate and shortage of resources resulting in inoperative ICT infrastructure and security systems for a 24/7 surveillance of the institution.

In addition, lack of resources that continue to compromise the MCCI's set standards which *inter alia* include lack of stationery for recording occurrences, limited transport services, training and re-training of correctional officers on advancements and international best practices and the law as it evolves. Further, a code of silence culture prevalent at the institution not to disclose incidents related to correctional officers' torturous behavior directed at vulnerable inmates.

In relation to human factors, the Ombudsman noted the existence of a shortage of staff at the MCCI hence their reliance on CSTS assistance for undertaking general searches during festive season standby times. The second factor was an abuse of power, unresponsiveness and a dereliction of duty by some officers who were present at the time inmates were being violated. Thirdly, lack of communication between correctional officers in the lead over planned search operations that allow for proper planning, greater participation, limitation of misunderstandings, teamwork and accountability. The Ombudsman therefore concluded that there was a violation of inmates' human rights occasioned by both human and systemic factors. As a result, a number of recommendations were arrived at to assist the Ministry of Law and Justice together with the LCS, the DPP and the Ministry of Local Government, Chieftainship, Home Affairs and Police deal with these issues within the MCCI. The recommendations are as follows:

(a) The Commissioner should take an administrative action against CO Tololi Rats'ele and CO Motanya, the CSTS recruits' supervisors. The Ombudsman finds the officers culpable of dereliction of duty by abrogating their duties and failing to halt the general search operation when they could not contain the officers that were subjecting inmates to torture; they had a duty of care placed on them; consequently, they created an opportunity for many inmates to be tortured in the manner they were.

(b) The Commissioner should institute disciplinary action against Officer Kabelo Liholo and Officer Sechaba Mokoara, who opened the cells across all the blocks and were present during the search

operation at the time the recruits were abusing and beating up the inmates; they continued to expose inmates to torture and failed to act in a manner befitting that would ensure that inmates were protected; further, they failed to report the incidents to their superiors at the MCCI even as they saw that the CSTS recruits were aggressive and undertaking the search operation in a manner that infringed on the rights of inmates contrary to section 8 of the Constitution of Lesotho, 1993 (as amended), section 40 of the Correctional Services Act No 3 of 2016 and section 11 of the Human Rights Act No 26 of 1983.

(c) The Commissioner should investigate further the 114 male recruit officers who abused, mistreated, tortured and beat inmates for absolutely no apparent reason. The recruit officers acting in concert, should be disciplined in accordance with internal rules.

(d) The LMPS should investigate, and the office of the DPP should prosecute the CSTS recruits who caused grievous bodily harm on inmates; in particular, the following officers who subjected inmates to torture beatings and who *inter alia* include: Officers Motiki Mohale, Kaana Mosothoana, Nots'i, Tumelo Sekokotoana, Thabo Mohale, Tumelo Makhunoane, Lehlohonolo Moabi, Tumelo Thabane, Fubuzana, Mathai, Koloji, Sepiriti Malefane, Thabiso Jane, Tsietsi Tsietsi, Thetso, Mofokeng, Khele, Potsane Potsane, Mofakadolo and one 'Masenyetse (nicknamed Kiss Kiss). Recruits who searched and beat inmates in Block A were Thetso, Lehlohonolo Posholi, Nts'ekhe, Lereko Lephoi, Sello Matube, Monyane Motsoalisa, Tsepo Mokhele, Lekhoko, Makintane, Nkeo Mohlakola, Thabo Lebone, Tsepo Borotho, Thabiso Jane and Mosola. In Block C, there were Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaisane, Moleleki, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, and Letsielo Makhele. Block B was searched by Molibeli Molibetsane, Mphutlane Ntai, Molaoa Mothabeng, Khosi Hlalele, Potsane Potsane, Lehlohonolo Potsanyane, Thabang Moleleki, Tumelo Makhunoane, Mahooaneng Matjama, Khutlang Telite, Tsepo Nthafa, Matete Mahao, Tsepo Mokhele, Poloko Mokobocho and Mamasieane. Block D search party was by Kaana Mosothoana, Letlatsa Mokhothotso, Masilo Mokhele, Mosebeko, Kopano Tseka, Thabiso Jane, Tseliso Mochaba Thabang Moleleki, Samuel Sekhale, Sila, Khutso, Retselisitsoe Felleng, Seapa Matsoso, Limpho Makhetha, Thabo Mohale, Katleho Fako, Tsietsi Tsietsi, Fukuzana, Molelle, Molatelle, Paseka Tseliso Mochaba, Notsi were party to the search team while the Maximum-Security section was searched by Motiki Mohale, Lehlohonolo Potsanyane, Thabang Moleleki, Samuel Sekhale Kopano Silase, Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaitsana, Moleleki, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, Monyane Motsoalisa, Tsepo Mokhele, Lekhoko, Paseka Mosebeka, Lereko Lephoi, Teboho Mafemekoane, Paseka Mochaba, Sehloho and Tseliso Mochaba.

(e) The LMPS should investigate further the circumstances that led to the death of the deceased Bokang Tsoako, who died at the institution following his rearrest executed by correctional officers; in particular, sergeants including senior correctional officers who were present and in office on the afternoon of the 22nd December 2023.

The Commissioner should institute disciplinary action against such correctional officers, that may result in their removal from office for using excessive force on the inmate thereby causing his death. The officers who acted in contravention of section 8 of the Constitution of Lesotho, 1993, Section 40 of the Correctional Services Act 2016, Section 11 of the Human Rights Act No of 1983, and the Penal Code should accordingly be criminally charged for the resultant death of the inmate.

(f) The LMPS should investigate further the circumstances that led to grievous bodily harm on Tlotliso Bereng, who was assaulted by officers at the institution and in his cell, which has resulted in his disablement; in particular, the recruits who beat him up on the morning of the 22nd December 2023. The Commissioner should further institute disciplinary action against such correctional officers, that may result in their removal from office for using excessive force on an inmate thereby causing his disability. The officers who acted in contravention of section 8 of the Constitution of Lesotho, 1993,

Section 40 of the Correctional Services Act 2016, Section 11 of the Human Rights Act No of 1983, and the Penal Code should accordingly be criminally charged for assault with intent to cause grievous bodily harm.

(g) The DPP should take action against Officer Motiki Mohale, Matete Mahao, Lehlohonolo Ralebese, Khosi Hlalele, Lehlohonolo Thetso, Lehlohonolo Posholi, Sepiriti Malefane and Lehlohonolo Moabi, in their attempt to give false testimony or information and willfully withhold and conceal information in respect of material aspects of the investigation, which is a violation of section 20 (b) of the Ombudsman Act.

(h) The Commissioner should take immediate measures to improve internal controls, develop standards and hold officers accountable, review and improve practices, processes and procedures regulating search and seizure exercises, the opening and closure practices of cells at the MCCI and other stations including the promotion and protection of inmates incarcerated. The institution's practices invoked were inconsistent with the standard operating manual (SoPs) insofar as the opening of cells and the administration of searches is concerned, together with discipline, which have to be conducted in one cell at a time and with due regard to inmates' dignity and respect. The LCS should ensure that attention is given to reviewing the draft LCS Security Framework for its adoption and implementation on an urgent basis.

(i) The Ministry of Law and Justice should take immediate action to promulgate regulations and rules intended to operationalize the Lesotho Correctional Services Act No 3 of 2016 for the latter's efficient enforcement; which will provide a structured framework of guidelines that ensures transparency, fairness and consistency in the application and implementation of the Act.

(j) The Ministry of Law and Justice should address and significantly improve the working conditions and environment of correctional officers together with related staff, and in particular, harmonization of correctional officers' remuneration with other security agencies on an urgent basis, which will most likely bring about positive lasting changes.

Of critical importance, there should also be an overhaul of management as a whole with managers in the lead exercising basics of good management practices i.e. coaching, delegating, planning, goal setting and motivating staff on a day to day basis. The delineation of roles within the LCS will ensure that there is a smooth and efficient day to day operation of officers which will also allow them to be effective leaders.

(k) The Commissioner should stamp out the rampant practices of rogue correctional officers including recruits working in cohorts with other officers to torture inmates. The Commissioner should not just issue a stern directive to officers on the unacceptability of torture but all concerned officers who acted or failed to act on their responsibilities towards inmates, including the deceased Bokang Tsoako, should be subjected to disciplinary action and face the consequences of their actions.

(l) An immediate action plan to root out correctional officers' brutality and violence against inmates should be in place. The LCS should ensure that it takes immediate action to mitigate the risk by ensuring that its risk management practices are safe and are consistently carried out to the required standard. In part, it is recommended that the LCS should inject new blood into the correctional services system and hire recruits starting this new financial year of 2024/2025, which will assist relieve staffing pressures as well as institutional tensions that exist.

(m) General search operations should be constituted with manageable numbers of correctional officers and reasonable number of supervisors of a higher rank that can exercise oversight and contain officers' behaviour towards inmates.

- (n) The LCS, through the Ministry of Law and Justice, should develop a recruitment modernization program focused on attracting a higher caliber of correctional officers through the use of recruitment, screening and selection tools which will ensure that extensive background checks, psychological and fitness testing are undertaken. A consideration of similar recruitment processes undertaken by other security agencies i.e. the LDF and the LMPS should be employed. This will ensure that inherently criminal minded individuals are excluded from the recruitment and selection processes from the outset.
- (o) The Commissioner should address factors affecting safety and security highlighted in this report. The systemic issues compromising the safety and security of inmates, inadequate human resources, poor communication and inability to convey information effectively to officers, deficiencies in healthcare services, training of recruits prior to commencing duties at the LCS, inadequate transport facilities should be addressed and the Ministry of Law and Justice should resource the facility adequately to cater for its needs on an urgent basis.
- (p) The LCS's inhumane disciplinary practices in which officers hold inmates in extreme isolation for violations is at a great cost to inmates' mental health and potential for rehabilitation; consideration should be given to this element as it is inconsistent with the intention and spirit of rehabilitation at correctional facilities as a whole.
- (q) The Ministry of Law and Justice should attend to outfitting the MCCI with appropriate equipment including ICT and CCTV infrastructure and security systems on an urgent basis.
- (r) The Ministry of Law and Justice should ensure that pecuniary compensation is paid to victims of torture by correctional officers; which should *inter alia* include Tlotliso Bereng, who is now disabled as a result of the torturous beatings together with the family of the deceased Bokang Tsoako.
- (s) No finding of wrongdoing has been established on the part of the MCCI's Officer Commanding, Assistant Commissioner Tsoto Manaka;
- (t) No finding of wrongdoing has been established on the part of the CSTS Commandant, Assistant Commissioner Nthako;
- (u) All recruit officers joining the LCS should be subjected to training at the CSTS prior to serving at any of the stations to avoid familiarity and unwarranted torturous behaviour against inmates during search operations.
- (v) Appropriate medical healthcare, including treatment at public hospitals and specialist institutions, should be provided to sick inmates and as the prison rules and minimum standards of measure dictate; all such medical care should be provided free of charge and or inmate's costs should he opt for a medical practitioner of his own choice.
- (w) Inmates emotional and mental health issues which are purported to be aggravated by the physical and emotional assaults that they endured should be given attention and a specialist medical officer i.e. psychiatrist should undertake their assessment in consultation with the rehabilitation unit at the MCCI. I do therefore suggest that there should be additional measures tailored at dealing with inmates' mental health issues and their special needs while they remain in custody.
- (x) The Office of the Ombudsman should be empowered to investigate all allegations of human rights violations by law enforcement agencies, including through the allocation of adequate financial and human resources. The Ombudsman's view is that the torture allegations within the MCCI are widespread, run deep and that the task to investigate the allegations is so huge that she can only manage to scratch the surface. Initially, the intention was to undertake a preliminary investigation that would establish whether there was a *prima facie* case based on allegations made by inmates, which would then inform her decision to undertake a full-fledged inquiry in accordance with the Act. However, due to

limitations of resources, and Government's decision to constitute a commission of inquiry into the torture allegations, the Ombudsman's report is final and remedial action is that government should appoint, within 30 days, a commission of inquiry into MCCI inmates' torture, that should be headed by a judge of the High Court.

The commission should be adequately funded by the Ministry of Finance and Development Planning, should complete its inquiry within six (6) months and present its findings and recommendations to Parliament.

These recommendations should be implemented within a period of six (6) months from the time of publication of this report.

1.1 INTRODUCTION TO THE INVESTIGATION

The outcry that prompted the Ombudsman to initiate an investigation pursuant to its mandate provided for under section 7 of the constitutive Act was intended to investigate complaints on the basis of complaints of abuse of power, torture, manifest injustice, unlawful, oppressive, unfair or unresponsive official conduct. The Ombudsman examined each of the allegations in relation to the processes and procedures used by the MMCI in respect of the handling of inmates during search operations with a view to come up with recommendations that will improve its controls and operations. A consideration was also made of applicable pieces of legislations and international treaties which *inter alia* include the following:

The OPCAT Protocol

The inspections that the Ombudsman undertakes contributes to Lesotho's response to its international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment (OPCAT).

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

International human rights laws such as CAT to which Lesotho is part, prohibit torture and the use of evidence extracted under torture in legal proceedings, except as evidence and the use of evidence against the perpetrators of torture. It requires that those responsible for torture be brought to justice and that international standards be observed for the humane treatment of those detained or imprisoned. (Article 2).

Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and as approved by the Economic and Social Council by its resolutions 663 C (xxiv) of 31st July 1957 and 2076 (LXII) of 13th May 1977)

The standard minimum rules set out generally accepted good principles and practices in the treatment of inmates and the management of institutions.

The United Nations Minimum Rules for the Treatment of Prisoners adopted by the UN on 17 December 2015 (commonly known as the Nelson Mandela Rules)

Rule 1 provides that

'All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification, the safety and security of prisoners, staff, service providers and visitors shall be ensured at all times' [my emphasis]

Rule 50 provides thus

‘The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity’ [my emphasis]

The Constitution of Lesotho 1993 (as amended)

Section 8 of the Constitution of Lesotho makes provision for freedom from inhuman treatment and provides thus

8. (1) *No person shall be subjected to torture, or to inhuman or degrading treatment punishment or other treatment’.*

Article 2 of the CAT stipulates that “*no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*” So under the CAT, a defendant possesses a non-derogable right to be free from torture at all times during the criminal process, including interrogation, detention and trial.

The Human Rights Act No 24 of 1983

Section 11 of the Act provides thus

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Punishment otherwise authorized by law shall not be held to be inconsistent with or in contravention of this section.”

Inmates therefore retain their fundamental human rights and freedoms, except for such restrictions on their rights necessitated by their incarceration. These rights include their right to humane treatment and respect for their dignity as human beings. Being treated humanely requires that inmates are kept under humane conditions of detention which do not aggravate the suffering inherent in imprisonment.

The Correctional Services Act 2016

Section 40 of the Correctional Services Act expresses that

‘No inmate shall be subjected to torture, cruel, inhumane or degrading treatment or punishment’.

Ombudsman Act No 9 of 1996 (the Act)

The Ombudsman is guided by provisions of Section 10 of the Ombudsman Act No 9 of 1996 which provides thus

“In the exercise of his powers and the discharge of his duties under the Constitution and this Act, the Ombudsman or any officer authorized by him, at any reasonable time and upon sufficient notice to the specified authority concerned

(b) enter and inspect police, military or prison cells, government hospitals, asylums, or any other places or centers where any person is detained or kept whether for safe custody or in terms of any law”.

In light of Lesotho’s human rights obligations under these international treaties and applicable domestic legislations, the preliminary investigation examines the violations of inmates’ rights against torture and ill treatment, poor prison conditions, and in particular, their denial to receive medical attention. The investigation concludes with recommendations to the ministry responsible, for action to protect the human rights of the MCCI inmates.

Policies and Procedures

The Prison Procedures and Administration (Prisons Manual (undated))

The Ombudsman requested of the LCS to provide its policies and procedures relating to lockups and release of inmates from cells together with the administration of searches. It was established that reliance is made largely on the LCS Procedure Tool or manual which serves as standard operating procedures that prescribes the processes to be followed on *inter alia* searches in general. The tool is an old version that dates back to the colonial era and has not been updated for many years. The institution further relies on the Prison Rules Proclamation No 3 of 1957, which has since been repealed by the enactment of the Correctional Services Act of 2016; it further relies on unwritten standards and guidelines which all correctional officers are expected to have knowledge of. It was established that the LCS had developed a draft LCS Security Framework which remains unapproved to date. Further, that the institution does not have a national policy framework and in the main, management used its discretion in circumstances where guidelines are not prescriptive on some of the standards to be upheld.

It was further established that reliance is made on Prison Orders that are issued by the Commissioner based on exigencies.

LIMITATIONS:

Our scope of work was limited by the information and tangible evidence made available to the investigators.

THE INVESTIGATION

1.2 INVESTIGATION METHODOLOGY:

The investigation into the complaint was conducted in accordance with section 135(1) of the Constitution read together with section 7 and 8 of the Act which confer on the Ombudsman the sole discretion to determine how to resolve an alleged improper conduct or violation of human rights of individuals.

The investigation process commenced with an exchange of documentation and correspondences between the Ombudsman and the LCS. A team of investigators including the Ombudsman, conducted meeting interviews during the course of the investigation with various stakeholders to obtain a better understanding of the allegations levelled and these included an engagement with the MCCI management, Commissioner of the LCS, affected inmates, recruit officers and the management of the CSTS. The method of investigation included the exchange of written correspondences reviewal of CCTV video footage relating to alleged assaults on inmates. The investigation is phased into two parts and centered around torture allegations, the use of excessive force on inmates and possible violation of fundamental human rights.

Approach

The investigation was approached to enquire on what really transpired, what should have happened and whether or not there were inconsistencies or discrepancies on what should have happened and whether the conduct established could be deemed as improper conduct or a violation of fundamental human rights and freedoms as enshrined in the Constitution respectively. In circumstances of an infringement of fundamental human rights of inmates, the issue is what it would take to remedy the situation and what steps or action has to be undertaken.

With regard to what happened, it is resolved through a factual enquiry relying on the evidence provided by the parties independently sourced during the investigation. In this instance, the factual enquiry principally focused on circumstances that led to inmates' torture during the search operation and whether it was in violation of applicable legal prescripts; and whether inmates suffered any grievous bodily harm as a result of correctional officers' conduct; and if so, whether their conduct was improper and constituted a violation of their rights. Further, focus on what should have happened, the enquiry focuses largely on the law, rules that regulate the standard practices that should have been met by the officers and senior management. Remedial action seeks to provide plausible options for redressing the consequences of a violation of rights where possible and appropriate.

Process of investigation

The Ombudsman notified the LCS Commissioner of the decision to investigate the allegations of alleged torture, unresponsiveness, unfairness and an abuse of power of vide a letter Ref: dated 03rd January 2024. We also obtained relevant supporting documentation relevant to the investigation including: a procedure manual and correspondences between the LCS and correctional institutions including reports. All documents were analyzed and relevant laws, practices and unwritten policies were considered throughout the investigation.

Key sources of information

Documents recovered:

The following documents provided a framework which guided the investigation:

Refer Annexure A

1.3 Legal Framework

The Ombudsman's mandate under the Act is *inter alia* to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to administrative justice, obtain relevant information from any person or government authorities and to compel production of such information.

The Ombudsman is required to prepare a report and inform the authority to which the investigation relates. The report shall include the findings of the investigation, action that the Ombudsman considers has to be taken and reasons thereof and recommendations the Ombudsman deems appropriate. The Ombudsman is empowered to undertake any action as it may deem fit against concerned persons where an investigation discloses that there has been a maladministration, corruption, a violation of fundamental human rights and or degradation of the environment. She may, where evidence suggests that a criminal offence has been committed, recommend that any person or persons so implicated be prosecuted criminally.

Section 9(1)(d) of the Act gives the Ombudsman power to determine and adopt any procedure she deems necessary in conducting proceedings in an inquiry.

Section 15(1)(c) of the Act gives the Ombudsman power to recommend compensation or other appropriate remedy against any person or authority to which the Act applies. Section 17(1)(a) states that if there is a failure or refusal to implement the recommendations of the Ombudsman within a specified time, the Ombudsman may prepare and submit to Parliament, a report detailing the failure or refusal to implement the recommendations and Parliament shall take an appropriate action. Further, section 20 (b) of the Act provides that a person who knowingly submits false or misleading information or withholds or conceals in respect of any matter material to the investigation commits an offence and is liable on conviction to a fine not exceeding M1000-00 or imprisonment for a term not exceeding twelve (12) months or both. Section 20 (d) further provides that a person who hinders or obstructs the Ombudsman's investigation commits an offence and shall be charged for such action. Section 135(3) of the Constitution empowers the Ombudsman to report on complaints investigated under section 135(3)(a) and (b) and take remedial action.

2.0 SUMMARY OF THE EVIDENCE

Analysis and Findings

The following accounts of excessive use of force against inmates have been substantiated through an in-depth engagement and interviews with affected inmates. These are a selection of the stories that the investigation team heard from inmates and officers, who largely bitterly complained of unwarranted beatings and the use of excessive force on their persons for reasons unknown to them. Inmates were reluctant to share their experiences in the presence of officers for fear of reprisal and further beatings.

Summary of evidence

Sebilo Sebilo:

Like many inmates awaiting trial, Sebilo Sebilo, aged 39 years, and who by profession is a soldier, has had a lengthy stay or history of incarceration and has been at the MCCI since 2017 on murder charges.

The accounts of what transpired or happened differ somewhat, according to correctional officers involved. The officers claimed that as they entered his cell, the inmate charged at one officer and was refusing to be examined; that he refused to be searched intimating that 'he could not be searched by *'manyooana'* which literally translated means 'he could not be searched by new recruits'. The LCS management claimed that the inmate manhandled an 'unnamed officer', that was about to search him and this caused the other officers to attack him and beat him up.

According to the injured inmate, no such incident occurred in his cell, and infact, that upon opening the cell, the officers charged straight at him and started beating him up with sticks and hands even as he was complying with their instructions; he purported to not have uttered any word and had absolutely no reason to behave in this manner; moreso as he had been in custody for six (6) years, had submitted to search processes at the institution every time and had absolutely no reason to act otherwise on this occasion. He reported when the recruits arrived, he had been reading some books and he overheard them saying '*take out the cigarettes*' and on entry, they were already aggressive and hailing insults at them and directed that they lean against the wall. It is purported that the officers then started beating the inmates on the buttocks, waist and back with sticks. He went on to indicate that a fellow inmate, Ts'epo Tlakeli had a problem with his waist and was pleading with them to not beat him as he was unwell; they went on to beat him notwithstanding his plea. The officer, one Sepiriti Malefane went on to hit Sebilo several times and he had then turned to ask why he was hitting him.

The officers then charged at him as a collective, beat him while he was being asked if he was protesting and fighting. He indicated he recognized one Officer Matete Mahao and Officer Tumelo Sekokotoane in the cell as well. Matete Mahao hit him with a fist on the face and he sought refuge with Sgt Nkhapetla pleading for protection as he was being beaten. One Officer Lehlohonolo Moabi nicknamed China hit him at the back of his ear and as a result, he fell to the ground and they all hit him hard with sticks on his already injured ankle whereafter he then fainted. He alleged that Officer Motiki Mohale (nicknamed Ruso) had hit him on the face and insulted him with his mother. He indicated that he was beaten to a point that he fainted and later found himself with CO 'Moleli and Sgt Nkhapetla, who had been standing by the door. He could not walk and sustained five injuries to the head; He was later assessed by a nurse at the clinic and he observed that he had suffered bruises and a broken ankle and was later referred on the same day to the Makoanyane Military Hospital (MMH) for treatment. His medical report, which noted the extent of his injuries, described his bruises as 'lacerations'. He had a Plaster of Paris on the ankle and bruises all over, on the arm and legs.

Sebilo's altercation with correctional officers stands out because, as per the explanations provided by the MCCI management, he was the first inmate who allegedly failed to cooperate with them and, in their view, caused of the recruit officers to become angry and thereby applied excessive force not just on his person in trying to restrain him, but to many other inmates incarcerated at the MCCI. Unfortunately, no pictures of injuries sustained were taken by officers at the MCCI and they were only taken quite some time following this incident – some three (3) days later by their legal representatives. In the photographs, abrasions on his arm and thigh and multiple bruises on his lower leg were discernible. The images captured show significant body injuries; he had a Plaster of Paris (PoP) which, the Ombudsman established was downplayed by the recruits involved.

In my opinion, Sebilo's injuries did not appear consistent with the reported use of force, which officers purported was primarily intended to just restrain him; the injuries appeared to have been a result of a much more forceful blow to his body hence the nurse even felt he had sustained significant injuries that

justified an immediate referral to hospital for medical assessment and management. The inmate's description of the events were somewhat consistent with the injuries documented in the photographs as well as evidence offered by his fellow cellmates. Sebilo purported that he has had an ankle problem for quite some time, and he was infact still undergoing treatment. He indicated that one the recruits, who knew very well that he had a serious ankle injury, stomped him repeatedly while beating him on the very injured ankle with a stick, which caused him excruciating pain. He ended up having to install a Plaster of Paris (PoP) and this incident pointed to the fact that the recruit wanted to instill pain and took an opportunity to inflict retribution against a soldier under the guise of inmate being recalcitrant.

Sebilo's medical report from the MMH dated 19th January 2024 elucidates that he had generalized body pain and had a painful right ankle on bearing weight; he also had a history of loss of consciousness during and post the assault on the head with a stick. He had puncture lacerations on the head, a deep bleeding laceration on the upper lip measuring one-centimeter, upper arm abrasions, laceration on the left arm measuring seven centimeters long, bruise on the thigh and multiple bruises on the lower leg. The ankle was swollen. He is no longer in custody.

His cellmates' version of events confirms the version provided by Sebilo. I should point out that in a cell accommodating ten (10) inmates, only two were members of the LDF; however, they all purport to have received a beating and have no clue as to the wrong they had committed. In their account, their cell was not searched at all; all that happened was the physical assaults on their persons on the day in question. I found it quite striking and interesting that none of the officers came forward to indicate that he had been waylaid by the inmate such that he had to be rescued from Sebilo's clutches.

The Ombudsman established numerous faults relating to this incident, which includes that the many officers' attendant at the search operation failed to address the immediate risk or threat as they all witnessed the recruits' officers beating up the inmate. Further, that they breached MCCI's standards and guidelines on how searches should generally be conducted; senior management also failed to properly examine the incident through an immediate investigation to try decipher and properly examine the actual cause of the incident prior to communicating to authorities; moreso, as many other inmates were victims of torture on the day in question, and in this particular case, it was established that a search exercise was not even undertaken in this particular cell.



Pictures: Sebilo Sebilo

Nthathakane Motanyane

Nthathakane Motanyane, a 30-year-old inmate who is a member of the LDF, was also arrested in 2017 for murder and has been in custody since. He gave a full account of how he was beaten up and indicated that from his group of colleagues, he stays with one Makhoali and other cellmates who are not soldiers in Block B, Cell 54. He alleged that he sleeps next to the cell door and on the morning of the 22nd December 2023, the recruits saw him through a spyhole and upon opening, the recruits were hailing insults at all of them and specifically, insulting them with their mothers' parts. They were all caused to stand against the walls facing the wall with their feet apart and hands above their heads for a pat search (rub down); almost immediately, one of the recruits started beating him and he had then attempted to turn, asking whether he was being searched or beaten. He further highlighted that one of the officers said '*these cleaner ones have made the prison as though it's the LDF*' and many of them charged at him and beat him with sjamboks and sticks. He indicated that he was overpowered and fell to the ground. He had been hit on the head and had sustained open wounds. During the course of this ordeal, he indicated that he was bleeding profusely and his entire face was bloodied.

He indicated that he believes what saved him was the fact that he refused to move from the ground where there was a lot of blood around him and he further noticed one of the recruits had come with some water directing him to clean up, and he refused. He further pointed out that he sustained injuries that have also affected his hearing. Inasmuch as he was one of the inmates that were referred to MMH on the same day of this incident and received medical attention, he has indicated that he has not been able to be referred again to see an ear specialist and was informed by the nurse at the clinic that the only

time he will be referred is once there is a court order. He complained about the torture and severe beatings and is currently embroiled in litigation wherein he is suing government for it. Motanyane pointed out that at the time of his ordeal, he noted that the recruits' instructor, CO Rats'ele was present at the cell. He was also able to identify Officers Khosi Hlalele, Thetsane Thetso, Lehlohonolo Posholi, Refiloe Mothae and Thabiso Jane who are correctional officers currently undergoing training. He further indicated that some of these recruits were officers who had worked at the MCCI for many years *albeit* they had not received training at the CSTS hence why they are called recruits; for all intents and purposes, they are correctional officers. He further indicated that he requested Sergeant Nkhapetla Nkhapetla to inform his lawyer about the incident but he did not respond. He remains in custody.

It is concerning that we have a gang of correctional officers entrusted in protecting inmates, who are alleged to have directed profane and derogatory language at inmates showing little regard for them. Further, the 'tacit acquiescence' of senior officers (who were present at the time) to inmates administered abuse and punishment together with the alarming level of use of force directed at the inmate is telling of the culture within correctional facilities. Further, officers' undesirable behavior seems to be a pattern of correctional officers that forget all the things that they learnt at the correctional training school and instead follow widely accepted procedures for covering up abuse. It is unacceptable to have officers taunt, torment, abuse, beat and torture inmates in the manner they did.

Motanyane alleged that he was directed to clean up all the blood away following the assault; and in the course of our investigation, one of the officers interviewed informed the investigating team that such conduct was likely to be an attempt to minimize the visual impact of Motanyane's wounds. There is no doubt in my mind that the intention was to try and downplay the inmate's injuries so that senior officers would not perhaps observe the extent of his injuries. According to the inmate, he suffered two open wounds on the head and one of which was stitched. He had weals and pain on his left hip and right arm, he also experienced hearing difficulties and following the assault on his person, he experienced echoes in his ears whenever there was any form of sound from other people. He had lost considerable amount of blood during the beating and his eyes were extremely red.

On examination, the medical officer, Lt Lehlohonolo Molahlehi (doctor) in his medical report mentioned that the inmate complained of noise in the ears and had itchy eyes, a headache, bleeding laceration on the head and a painful left hip. He had reported to have experienced those symptoms post the assault on the head with a stick, fists and having been kicked on the 22nd December 2023., established that the inmate had a bleeding laceration on the parietal area measuring 2 centimeters long and 3 millimeters deep. He had a reddish sclera (white outer layer of the eyeball) on the left eye and the pupil was intact also reacting to the light and no hyphema (collection of blood in the anterior chamber of the eye). On the abdomen, he had an abrasion on the left iliac fossa (right hip bone). He was then treated and discharged on the same day.

The cellmates of Motanyane were engaged separately on 30th January 2023 and they confirmed the version of events provided by him. It was established that Motanyane stood out from many inmates as he keeps himself clean and has not allowed the elongated incarceration to break his spirit. He was described as an inmate who never engages in confrontations with correctional officers and who was generally very obedient and followed directions. They were all of the view that the officers gained control over him and held him down while they hit him on his head causing him the injuries he sustained. They went on to describe how he had a lot of blood on his face which was attributed to the wounds on his head. Their version or description of what happened was consistent with the injuries documented in the photographs as well as the views expressed by Sergeant Nkhapetla.



Pictures: Nthathakane Motanyane

Litekanyo Nyakane

Litekanyo Nyakane, aged 43 years, has been incarcerated at the MCCI since 2017 for murder and lives at Block B, Cell 49. It is a first cell in the block of cells and in his evidence, he indicated that on the morning of the 22nd December, 2023 he together with his cellmates saw numerous recruit officers entering the block. In his estimate, there were approximately one hundred (100) officers. He purports that he identified them with their gear; they were wearing yellow reflectors, had hats on and were wearing tracksuits and face masks. He could make out that it was LCS recruits as they had recently had a search operation managed by their instructors a month prior thereto. At or around 10h00 that morning, the recruits came into the B Block and as he was seated on his mattress, which overlooks the door in the cell, he saw one of the recruits looking in through the spyhole who then loudly said '*ke eane satane*' loosely translated as '*there's the satan*'. Makhoathi, his roommate then asked who they could be referring to. He indicates that they kept peeping through the spyhole at intervals hailing insults at them. He further indicated that he noticed that things were not normal and decided to change his flip flops and instead, wore proper shoes and had already put his belongings together as he thought they were going to be searched. He indicated that one CO Kheleli opened the cell but did not close it back and the recruits had then entered in a group; they had sticks and planks and on entry, went straight to him uttering '*you never knew we would get you*'. He indicated that he saw CO Rat'sele inside the cell but next to the door; he was standing right opposite officer Ramphielo.

He further alleged that one of them went on to verbally accost him and heard him saying '*whether I do realise that this is a prison and not a hotel, we go to funerals, we eat cornflakes.*' He further indicates he asked '*so when you said satan, you were referring to me*'. He indicates that one of them, who was wearing a red top and a reflector, pushed his way towards him and hit him with a plank on the arm whereafter all of them started beating him up with sticks. He indicated that he later learnt that his name is Lehlohonolo Ralebese. He said he was kicked on the jaw line and slapped hard on the face, which caused an injury to his left eye, which became swollen and was blackened. This he indicated, was witnessed by one officer Monyane. He fell and they held him so he could stand again and he complained that recruits were hurting him; one recruit uttered words saying that he was still alive. He was made to stand facing the wall and was beaten yet again whereafter he lost consciousness. He also alleged that he saw Officer Sekokotoana and Molaoa Mothabeng amongst the recruits. He indicates when he became conscious, he felt someone shake him and established it was Sgt Nkhapetla who asked him what was happening and the inmate told him that he knew very well what was going on. He had then made him stand and he fell again and Sgt Nkhapetla got a wheelchair for him to be ferried to the clinic. At the

clinic, he requested that he be referred to Makoanyane Hospital for treatment. He said they were denied access to their lawyers and to see their families. It was also a concern on his part that many inmates were tortured and beaten up on that morning but most did not receive any medical attention. He was further concerned that these violations of inmates' rights were taking place in the presence of the Officer Commanding and his deputy i.e. OC Manaka and Mahlelebe who, he had seen by the block of cells earlier. In his view, the injuries he sustained were significant and justified immediate and ongoing medical assessment and management; he was however only taken to hospital in the late afternoon of the same day. The LCS's version of events is radically different; in their view, the inmates were not cooperating and were refusing to be searched by recruits, who in their view, was indicative that they undermined them.

The inmates medical report issued by the MMH on the 19th January 2024 indicates that he was consulted at the hospital on the 22nd December 2023 at or around 18h00 and that he was on crutches. He complained of having been beaten with sticks and hands on the morning of the same day and that he had a backache, headache, swollen forearm and generalized body pains. He reported to have been kicked on his chin and lost consciousness for some time. He had developed a reddish sclera of the right eye, had abrasions on his left upper arm and left thigh, had abrasions on his left shoulder, his trunk had multiple bruises, had swollen and multiple bruises on both gluteus maximus, his right forearm was swollen even though he could still extend and rotate his wrist and left elbow. He also had a tender right ankle even though it was not swollen at the time of examination.

I had occasion to also interview the inmates who were cellmates with Nyakane. What I found strikingly similar in all the incidents that occurred in different blocks and cells, is the fact that all inmates beaten up were assaulted by aggressive recruits who, for the most part were hailing insults at them, used excessive force on inmates who, professionally are soldiers, but beat everyone in the cells irrespective of their backgrounds and compliance with the institution's rules. I have made enquiries as to whether the MCCI maintains occurrence reports' which could form part of the investigative exercise. It was established that the MCCI has not maintained occurrence or incidents reports for a long time, primarily due to lack of resources; as a result, for the particular mass beatings, no such recordal was effected. In my mind, the fact that inmates' families were denied access to them raised concerns that they were tortured, which is consistent with the version of events provided by Nyakane and his other fellow colleagues currently in custody. I also found out that Nyakane's version of events appeared to be compelling and consistent with the video footage wherein inmates were beaten on contact with recruits without any trigger of provocation on their part.

I found it further interesting that correctional officers, more particularly the recruits interviewed and who worked at the MCCI prior to the CSTS training, continued to insist that the general search ferried well as normal and that there was nothing untoward or inappropriate that occurred. Officer Motiki Mohale, who appeared to lead the beatings in most of cells and blocks, downplayed what had happened. He purported to have first heard of any beatings from his wife who had come to visit him at the CSTS, who indicated that she had learnt on social media that he was implicated in some of these human rights violations. He indicated that he was undertaking the search with Officer Potsane Potsane, who was collecting contrabands, Sepiriti Malefane, Thabiso Jane, Seabata and others all under the supervision of CO Rats'ele.

I do consider Thabo Mohale's evidence to be evasive and his rationalisation implausible. I therefore found it difficult to believe his version and his team that was evasive and whose accounts were fraught with inconsistencies, were refuted by the video footage evidence as well as accounts presented by the other inmates. I also found it interesting that the recruits from other regional facilities interviewed, Tsepo Borotho and Refiloe Mothae did acknowledge that inmates were beaten up by recruits who were armed with sticks and even went so far as to concede that there had been no imminent threat when they

were beaten nor were there any contrabands found in their possession. One of the recruits acknowledged that the force that was used might have been ‘slightly excessive’.

I found it inappropriate and discourteous for Officer Motiki Mohale, Matete Mahao, Lehlohonolo Ralebese, Khosi Hlalele, Lehlohonolo Thetso, Lehlohonolo Posholi, Sepiriti Malefane and Lehlohonolo Moabi, in their attempt to give false testimony or information and willfully withhold and conceal information in respect of material aspects of the investigation, which is a violation of section 20(b) of the Ombudsman Act.



Pictures: Litekanyo Nyakane

Makhoali Mahlomola, aged 38 years, a soldier by profession, is one of the inmates incarcerated at MCCI since 2017 on murder allegations and presented a history of swelling on the left side of the neck since the day of the torture, after he was beaten with a sjambok (molamu) by a group of recruits on 22nd December 2023. He also began to suffer from pain on the left arm, left wrist and right small finger soon after he was beaten. He had developed swelling on the right side of the neck and had a broken or dislocated small finger and tenderness on his fifth middle finger. He has not been able to urinate and has experienced a burning sensation when forced to urinate. The medical officer’s impression was that the inmate had developed rheumatoid arthritis on his right middle distal interphalangeal joints and he was provided with medical treatment on the 18th January 2024 at the MMH and was treated as an outpatient. He has remained in custody awaiting the resumption of his trial.



Pictures: Mahlomola Makhoali

Lehloenya Matete

Lehloenya Matete, aged 33, stays in Block B, Cell 47 and indicated that he was still on remand for fraud. He indicated that on the day in issue, he together with his roommates had heard cries from other blocks and cells of inmates. He indicated that he stays with three soldiers in his cell and when the recruits got to his cell, they were caused to stand by the wall and were all beaten up with whips on the buttocks and back. He indicated he wanted to determine what he had done wrong and was beaten really hard. He indicated that he witnessed one of his cellmates who is a soldier being beaten by about fifteen officers. He indicated that one Officer Khutso hit him with a knobkerrie on the leg together with Sekokotoana. Of the three soldiers, Heqoa was badly beaten and even wondered why he was not crying considering the injuries he sustained. He further pointed out that two of the inmates in his cell fainted as a result. He indicated that they could hardly walk and he was referred to hospital with other inmates and had to be injected and be placed on a drip as a result.

Sentle Sihle Sekants'i

Sihle, aged 41, has been incarcerated since early 2013 for contravening the Motor Vehicles Act and is serving his sentence over an armed robbery, is housed in Block D, a block ordinarily reserved as a solitary confinement block. He is not a soldier by profession and had been working as an informal trader prior to his arrest and incarceration at the MCCI. It is an area generally reserved for inmates deemed troublesome for their affiliations with gangsterism. He recounted the events of the general search of 22nd December 2023 and indicated that on arrival, the recruits directed that they should take out their personal belongings. He went on to describe how Officer Seapa Matsoso pulled a stick from one of the officers and hit him. He had then asked why he was being beaten and was informed that they were working. He sustained injuries to the hands and has been peeing blood. He alleged he was the only one in the block who had the worst injuries; both his hands had to be bandaged but he has not been taken to hospital to date to address the injuries; he was only assisted with blood in his urine. He indicated that the beating only stopped when he started bleeding a lot in the hands. He further pointed out that he was

beaten by Officer Thabiso Jane, Seapa Matsoso, Tsepo Borotho and their supervisor Rats'ele was present when the incident took place. He went on to indicate that he has only been offered paracetamol at the clinic to deal with pain so far and does not have the M1,200-00 needed to pay for his scan.

Sihle indicated that even as he acknowledges his wrongful conduct of assaulting another inmate, he has complained of officers' abuse on him for some time at the isolation cells and indicated that he has been subjected to prolonged periods of solitary confinement under harsh conditions that are not necessary, and this has resulted in serious psychological harm and severe depression on his part. He complained of being verbally abused and the intentional provocation is meant to ensure that he acts out so as to have a basis for imposing additional restrictions on his conditions.

It is my view that the LCS's inhumane disciplinary practices in which officers hold inmates in extreme isolation for violations is at a great cost to inmates' mental health and potential for rehabilitation. Consideration should be given to this element as it is inconsistent with the intention and spirit of rehabilitation at correctional facilities as a whole.

Molungoa Khatala

Molungoa, an ordinary civilian aged 34 years, lives in cell 12 at the maximum block. The block houses mostly sickly inmates. He recounted the incidents of the 21st December 2023 and indicated that on the morning of the 22nd December, one Officer Mphethe opened his cell and was demanding to know how the escaped inmates ran away, to which no one had an answer. Khatala indicated that he has been incarcerated for the last six (6) years and is a cancer patient undergoing treatment in Bloemfontein. He purported that Officer Mphethe then indicated that he would unleash violence on inmates if they failed to disclose what really happened. They were then locked back and when the recruits arrived, they were beating all inmates. They were directed to bring their belongings for search purposes and was beaten with a whip. He further shed some light on how one of the victims, Tlotliso Bereng, was assaulted. He alleged that he was beaten by a number of the recruits at a time and he fell down to the ground. Officer Thamae had then directed the recruits not to be too harsh on the inmates as the block housed sickly inmates. He further pointed out that he noticed three inmates that had fainted during the beatings and one of them, Tlotliso, was brutally beaten to a point that they had torn his bladder and have dislocated his spinal cord; he was now in what one can be deemed as disabled or vegetative state as he is now wheelchair bound. He is unable to do anything for himself as a result and was recently released on bail. He made out that one of the reasons they were assaulted was because they had not run away when the six escapees fled. At the time of the interview, it was already the 1st February 2024 and the inmates had not yet received any medical attention and as they explained, Officer Ramangoana had indicated that the only inmates that were legible to see medical doctors were ones with open wounds. They have had to self-heal in custody without seeing any medical officer despite their pleas.

I have found it quiet intriguing and incredible at the same time to establish that officers were assaulting inmates based on the fact that they failed to flee as the other escapees had. It clearly points to the fact that they did not have any cogent reasons why they felt the need to abuse and violate inmates in the manner they did. I have established their version of events and explanations as a web of half-truths, untruths and lies by omission.

Tseko Lesoli

Tseko Lesoli, aged 31, is housed in Cell 20, at Block C and gave the Ombudsman a brief account of the torture they experienced in his cell on the day of the incidents. He purported that inmates generally obey orders and can never decide to refuse any search exercises on their persons and belongings. He indicated that he has been incarcerated for ten (10) years now and will only be released in 2027 and as he recounted what happened, he said one of the officers said there was an inmate who shouted out his name at night and that he had caused the inmates to run away. He indicated that Sgt Nkhapetla, Lekhatla, Tsietsi Tsietsi, Masiloane, Peete, Moiloa, Ra'tsele, OC Manaka and Mahlelebe were all present when he was being assaulted. He indicated that CO Rat'sele and Sgt Nkhapetla were exchanging and giving recruits whips interchangeably; they however, failed to find any illegal contrabands in their possession. He indicated that he was hit the most and now has an ear injury requiring medical attention. He was taken to Queen II Hospital but has been referred to Queen 'Mamohato Memorial Hospital (QMMH) though he has still not been taken there; he purported that his ear now oozes pus and is still waiting on the clinic to direct that he proceeds to QMMH. He further indicated that their belongings were being torn apart while the recruits continued to hail insults at them during the search exercise.

What is peculiar about Block C is that it does not house any of the soldiers purported to be resistant to searches by recruits. This block houses bandits only, being inmates already serving their sentences, yet Block C inmates were tortured and thoroughly beaten up as well.

Teboho 'Musa

Teboho 'Musa, aged 32, resides in Cell 9, Block A. Block A largely houses inmates that have chores within the different sections at the institution; they basically work at the kitchen, while others work at sewing, carpentry and other related sections. He as well recounted how they were beaten up and believed that it perhaps was due to the escape of the night before. He alleged that they were beaten up without being provided any reason and further indicated that they had not offended the rules and laws regulating their conduct within the institution. He indicated that he had terrible marks on his back and the buttocks and still needs treatment for his ear that echos all the time.

It was established that specific incidents in which officers brutally assaulted inmates by punching, kicking them and striking them with knobkerries, sjamboks, broom sticks, gumboots as well as rubber batons. He recounted how one inmate was forced to proceed to the shower and strip naked while in the course of being beaten. They were made to stand with their hands above their heads against a wall and were for the most part, beaten on the waist and back. He remains in custody.

Tlotliso Bereng

Tlotliso Bereng, a young inmate aged 38 had been in custody for a month and for alleged malicious damage to property charge prior to the search operation at the MCCI. He is an IT systems engineer by profession and has a consultancy of his own. He had been criminally charged with malicious damage to property when tragedy befell him. He lived at the Maximum-Security block, Cell 11 in a single room and his fellow inmates in the compound were not soldiers by profession. In his account of what transpired on that day, he indicated that on the morning of the 22nd December 2023, he heard loud cries coming from other neighbouring cells and thought it was cries of apprehended escapees who had run away from the same block the night before. It soon dawned on him that his immediate neighbours were being beaten up with sticks. He indicated that when his cell was opened, he was directed to stand by the wall and was beaten with a stick on the buttocks and waist by one recruit officer. He indicated that he did not resist even though he failed to understand why he was being violated when he had not done

anything wrong. He was then directed to take his belongings outside and following the search, he went back into his cell and soon thereafter, two other recruit officers entered his cell and directed him to stand against the wall with his hands high up; he was then beaten hard on the waist with a baton several times until it broke into two parts; he indicated that he went through excruciating pain that led to him fainting and losing consciousness.

He could not determine when the recruits left but submitted that when he attempted to move from where he fell off, he could no longer move. Unfortunately, there was no one by his cell to assist him; it was only quite some time later when an officer Khoase came and they realized that he had serious injuries and brought a wheelchair for him so he could be attended to at the clinic. In the state he was in, he indicated that he has lost all sense of feeling below his waist; he also suspected that his bladder had been damaged in the process as he was peeing on himself; he was using a catheter for quite some time and still battles to hold back urine whenever he has to attend to that call of nature. He was later taken to QEII Hospital, which indicated that they could not assist him and referred him to QMMH; he was however not taken there by correctional officers despite the fact that his injuries necessitated that he receives urgent medical attention; he was informed that procedures did not allow for a direct movement from one hospital to another hence, he was taken back to the MCCI.

He indicated that he was taken to QMMH quite some time later on the same night and the QMMH medical officers directed that he be taken to Pelonomi Hospital the same night given the seriousness of his injuries. He was informed that he had a dislocated spine and the doctors had to attend to it on an urgent basis if he was to receive healing. He was later ferried there and came back on the next day. To this day, he is unable to walk and uses a wheelchair to get by. He is concerned that the MCCI has never contacted his family to inform them that he got injured while in custody; he has never even been checked by any of the correctional officers of his state. His family only got to know that he had been injured just because the hospital contacted them requesting that they provide his identity document for purposes of facilitating his border movement into South Africa on his way to Bloemfontein; otherwise, they would not have known. He informed the Ombudsman that he was, on the day of the interview, advised by his doctors that he will not be able to walk again. He is no longer in custody.

The QMMH's Dr Seyoum Derbew, a consultant orthopedic surgeon, who examined Tlotliso on arrival indicated that he presented to QMMH on the 22nd December 2023 with a complaint of back pain, inability to control urination, inability to move his legs and feeling numbness over them, which symptoms manifested following him being assaulted by correctional officers with a stick (molamu) and batons to the back. He was subsequently catheterized to enable his urine drainage with the use of a urethral catheter; his sensory level was diminished below the knees and his x-ray showed a lumbar spine fracture and possible spinal cord injury. He was, on the same day, referred to Pelonomi Hospital in Bloemfontein for a CT scan to be undertaken, which showed no skeletal fractures of the lumbar spine or pelvis. No orthopedics or neurology surgery was undertaken at Pelonomi Hospital. He was subsequently transferred back to QMMH for rehabilitation and pain management, where he remained until the 28th December 2023. He was being assisted to mobilize with walking aids and a wheelchair and has been on pain killers' prescription ever since. He now has to submit to regular physiotherapy, uses a walking aid and wheelchair and at the time the investigation team engaged him, which was six (6) weeks following his discharge, he indicated that although he reported improved sensation and power on the lower extremities prior to his discharge in hospital, his condition seems to have deteriorated as he now lives with excruciating pain at the back and he was informed by the doctor that he was unlikely to ever walk again.

Plotliso's story is quite a painful and very sad one. As with all other cases where inmates were violated, one fails to understand why the recruits felt the need to beat Plotliso in the manner they did; there was never any misunderstanding nor was there perceived non-compliance on his part, that could have possibly led to officers reacting in a ruthless manner. His is a story of cruelty, unethical and unjust treatment of an inmate by correctional officers. One would expect that inmates would live in a safe and appropriate environment that would facilitate their successful reentry into communities upon their release from the institution. The Ministry of Law and Justice together with the LCS has a responsibility to ensure that safe and appropriate conditions at the MCCI are in place and to this end, it has to issue guidance clarifying the institution's obligations and set forth best practices in this regard. To prevent needless and unjust incidents such as this happening in future, it is also important to continuously subject officers to training on the applicable legislations as well as sensitivity training on the promotion and protection of human rights of inmates.

I also had occasion to engage correctional officers at different levels and feel the need to share, in part some of the evidence gathered during the course of our investigation. We have, however, gone so far as to interrogate some parts in a lot more depth just to shed light into human rights abuses suffered by inmates at the hands of correctional officers at the MCCI.

Video Footage

The investigation revealed that many of the inmates were beaten up in the cells, which serve as blind spots as correctional officers' activities are not caught on camera and there were not as many incidents captured by video surveillance cameras along the corridors save for the Maximum Block. According to the video footage, the recruits were handling the inmates in a highly provocative fashion; however, this never caused any one of the inmates to behave in an untoward manner unexpected. I witnessed officers inciting an aggressive response through their provocative behavior. I witnessed one officer grabbing inmates by their t-shirts at the back, pulling them backouts, forcing them to squat with hands raised above their heads while their belongings were being searched along the corridor and thrown all over. In some cells, it was alleged that inmates' belongings had been dumped on the floor, torn and in one case, an awaiting trial inmate's court notes that he had prepared were torn up and destroyed with water. I witnessed inmates being beaten to a pulp in the maximum-security block, for absolutely no reason. I could not fathom what had offended the recruits as some of the inmates were beaten up almost immediately on contact with the recruits. What I viewed characterized the force used as unauthorized, unreasonable, unjustifiable and excessive. This conduct is in direct contrast to the training provided at the CSTS, and it is unsurprising that in many cases, it can lead to an escalation of conflict between the inmates and officers. It is my opinion that it might be tempting for some to dismiss inmates who are victims of excessive use of force as deserving of their fate; to assume the worst of inmates and the best of their jailers. But it is important to remember that inmates, regardless of why they are incarcerated, are human beings deserving of respect, dignity and humane treatment. In my view, their rights were greatly violated and they were not held with the dignity deserving of all human beings.

I further found it unbecoming and highly disrespectful for senior officers of the LCS, namely Deputy Commissioner T'solo and Senior Assistant Commissioner Matete Mahao, both heading the security division of the LCS to have issued a directive to their junior officers, in this case, Senior Superintendent 'Molaoa, in my presence, that the Ombudsman should be denied access to and be precluded from watching the video footage on demand. I found this was an attempt to interfere with and obstruct the Ombudsman's investigation, which is a violation of section 20 (d) of the Ombudsman Act. Both senior officers were engaged by the Ombudsman and in their submissions, indicated that they had not been

informed by the LCS Commissioner about the Ombudsman's visitation at the MCCI with a view of reviewing surveillance footage; that the law governing the LCS explicitly stated that provisioning of any information by correctional officers should be in consultation with the Commissioner. In this case, communication and or an instruction had not been issued as expected hence their hesitance to allow for SSP 'Molaoa to make available the video footage to the Ombudsman and which, if allowed, could easily have resulted in disciplinary action being taken against him. The two officers indicated that the intention was not to undermine the Office of the Ombudsman or obstruct her in the course of her investigation.

The video evidence contradicted accounts of other recruits who assaulted inmates without any justification for the force captured on MCCI's cameras. I did establish that the institution has some video monitoring capability; however, some of the surveillance cameras and televisions were inoperative and could not record at all for later viewing. In the case in point, I established that a large number of incidents where excessive force was used took place inside the cells, where there were no cameras. There is a need for the LCS to ensure that good quality close circuit television and security systems are procured for the MCCI and it should be prioritized now more than ever, especially as there have been incidents of use of force that seem prevalent. It remains a concern though that no additional steps seem to have been taken to outfit the institution properly and for a long period of time. There is a need for the MCCI to also work on preserving any accurate video records of inmates and correctional officers' engagements. Consideration should further be given on how video coverage can be captured in circumstances when officers enter cells. There should also be a policy in place that sets out clearly reasonable timeframes within which video footage can be kept and erased after.

Assistant Commissioner Tsoto Manaka – MCCI's Officer Commanding

OC Manaka indicated that he is the Officer Commanding at the MCCI and has held this position since 01st December 2020; he pointed out that part of his overall functions is to oversee the safety and security of all inmates and ensure that all legal prescripts, processes and procedures are administratively followed by all correctional officers. In his address, he indicated that he spoke to Assistant Commissioner Nthako, at the CSTS on the 20th December 2023 requesting for his assistance on the holding of a general search operation. He indicated that during the festive season, the MCCI normally engages in clean-up operations to ensure that there are no prohibited articles in the institution and they then agreed that the operation would be held on the morning of the 22nd December 2023. He indicated that he had then informed his two Senior Superintendents (SSPs) on how the search will be conducted and briefed them that to expedite the operation, Commandant Nthako would assist the institution with the release of recruits. He further indicated that at around 22:00 on the night of the 21st December, he received a call from the LCS Commissioner Nkakala enquiring about an alleged inmates break and established that six (6) inmates had escaped; two of whom were rearrested the same night. On the next day, search parties were arranged to look for the remaining four escapees and Commandant Nthako did enquire as to whether it was still prudent to continue with the search operation in the face of what had just happened. He purported that he insisted that the search should continue as it was clear that inmates had instruments that they could use to escape again and needed to arrest the situation. He indicated that when he arrived at work at 07:45am he noticed that there was no movement of inmates inside the compound and that was an indication that the search operation was in motion.

The OC, SSP Mahlelebe and Commandant Nthako decided to proceed to the maximum security to see the escape route and had to go past Block C and the isolation cells, where the two inmates who had just been apprehended were staying. He indicated that at the time, there was no commotion and the search exercise seemed to be working well as planned. He indicated that the escapees seemed to have been beaten up as they had some bruises and blood on the head; the trio had then gone past the center area

and proceeded to go to the maximum-security block so that the Commandant could see the escape route. The inmates were already outside and the recruits were not there yet and he had then told CO Majara that it was wrong to have allowed the inmates outside after the counting exercise while they were yet to be searched. He indicated that they went back to the administration offices and he had a Lesotho Television interview and had to issue statements as directed by the LCS Commissioner following the escape. He was later informed by Senior Superintendent 'Molaoa that there seemed to be a conflict between the recruits' and soldiers.

He was quizzed on security standards, the processes and procedures regulating searches and the handling of keys at the institution and he indicated that the institution worked on the basis of standard practices which all officers were familiar with; for the most part, he relied on his discretion in relation to what seemed reasonable to employ. As such, there were no written processes and procedures regulating searches and the opening of cells, save for the archaic rules that were established during the colonial era, and which are not elaborate at all. He indicated that the institution still relied on old repealed Prison Rules of 1957 that were no longer in operation and that although a new correctional services legislation was enacted, secondary legislation in the form of regulations and rules had not yet been enacted for implementation. It therefore meant that OCs across all stations, including himself, largely acted on the basis of their discretion and personal whims in addressing any operational issues that arise, which relate to any matter including searches and other practices. He further pointed out that reliance is still placed on practices set out in the repealed Prison rules of 1957 and they have set a standard practice regulating how they operate.

I further established that Commissioner Nkakala issued a Circular Notice 30 of 2023 on the 16th November 2023, which was intended to remind all stations, including the MCCI of the festive season standby which was to resume on 15th December 2023 to 10th January 2024 and the need for all staff to note and observe alertness, vigilance, good service delivery and security consciousness.

He went on to indicate that *“During this epoch, all are expected to rigorously and without compromise, demise or negligence ensure maximum security in our institutions. This will be achieved by **complying with security standards, forging cordial relationship with inmates and the public at large; and finally, by promoting unity and harmonious and professional relationships with fellow officers, strict access control, close supervision of inmates and search for effective security**”*. The Commissioner further reminded all officers that ***he was not expecting anything or any device to conduct surveillance over security premises or security key points at any material time.***

I want to believe that the Commissioner's communique triggered the general search operation that was planned for the 22nd December 2023 by OC Manaka. Despite such reminder, security standards of MCCI were compromised and instead of forging cordial relations with inmates, officers violating inmates in the manner they did fostered' a really hostile, antagonistic and frosty relationship with inmates, contrary to the directions issued by the Commissioner. Further, much as officers are prohibited to conduct surveillance over the premises with the use of any form of device, the recruits were using sticks to whip inmates, and which they are disallowed from utilizing. Again, despite there having been a 'prison break', it does not seem like there was proper planning around the general search operation by the MCCI management, moreso as senior officers within the management seem not to have been privy to the search operation, were not directed to take part in it and resorted to keeping away; neither did they find it then necessary to oversee the operation even in the absence of direct instructions to so do; and there were inadequate controls in place to ensure that risks of grave torture that led to grievous bodily harm on inmates, and which were known to the management are curtailed. The senior officers should have, at the very least, ensured that a team of senior officers were present at all blocks during the search exercise with a view of overseeing recruits' activities; moreso as they knew that they have a history of rogue behaviour around inmates. It really is concerning to have officers abdicate their responsibility and hide behind the fact that they were not duly informed of the search operation

timeously nor did they have direct instructions to partake in the operation. It has been established that they know that search operations are never communicated in advance to limit possibilities of such information leaking and compromising the entire exercise.

CO Tololi Rats'ele

I have elaborated in a lot more detail the submissions made by CO Rats'ele, moreso as it gives a clearer view of what went on from the side of supervision and the recruits on the morning in question.

CO Rats'ele was summoned by the Ombudsman to provide his version of events and he indicated that he worked as an instructor at the SCTS and teaches correctional officer recruits on foot and arms drills. He indicated that on the 21st December 2023, he was instructed by Assistant Superintendent Chobokoane he would lead and supervise the search operation at MCCI on the next day. He indicated that it was the first time that he was charged with the responsibility of supervising a search operation of that nature over recruits. The recruits were duly informed and he indicated that he had expected CO Motanya to travel with them to the institution where he was to meet the team at the main gate of MCCI. He indicated that he only learnt in the morning as he waited for the team to arrive from LCSST that there had been an 'inmates' break' the night before and six of the inmates had escaped. He had then collected ten (10) of the recruits who had come to support and reinforce the MCCI team the night before following the escape looking for the escapees. He indicated that upon arrival at the LCSST, he was called by Commandant Nthako at around 06:30am, who directed him to proceed with the search exercise regardless of the escape. He had then assembled a team of 114 recruit officers undergoing training and proceeded to the MCCI, who were then given instructions at a parade to search all the blocks and cells in the manner they were accustomed to. He indicated that he instructed the team to take out illegal prohibited matter and that he expected of them to undertake the activities as expected and as they had been trained to do.

He further alleged that he reported himself at ASP Mokhesuoe's office, who seemed not to know anything about the arranged operation and in turn, he had engaged the OC Manaka. OC Manaka gave him and his team authority to proceed with the search operation. As an instructor, he led his team to the prison cells in the company of ASP Mokhesuoe, who directed the gatekeeper to let the team inside. He further informed officers who were on duty at the center area of the operation. He went on to indicate that the initial plan was to search Block A, B and C only. He alleged that he divided the team into two groups so that they could search two blocks at the same time; they had then commenced with the search exercise in Block C, and Officer Liholo opened the cells and he could not remember with certainty as to who opened Block A cells but Ombudsman established that Sgt Poloko Thabo Mohale was assisting Officer Liholo with opening the cells. He however left soon thereafter as he had to proceed to the offices to allocate ammunition and guns that were to be provided to search parties.

He indicated that he left some of the recruits in Block A with the person responsible for opening the cells and proceeded to Block C to supervise how Officer Liholo would work with the team and determine the number of cells that would have to be opened at a time. He indicated that three to four cells were opened every time so that recruits could search. In Block A though, as it had a number of single rooms, the officer opening the cells would open three single rooms and two cells with a number of inmates at a time.

He indicated that while in Block C, Sgt Nkhapetla arrived and ASP Mokhesuoe had then left to proceed to Block A. He indicated that he moved between these two blocks as he was the only instructor at the time and when he went to Block C for the second time, Sgt Nkhapetla complained that the recruits were beating up inmates whereupon he called those that were nearby who included Officer Lehlohonolo Moabi directing them to stop torturing inmates. He indicated that they were now holding sticks [which by him were not there on entry into the institution]; he had then taken the sticks and sjamboks to the

main kitchen to burn them. He indicated that he was the only officer who had a baton (tonfa). He alleged he repeated the same process in Block B and removed the sticks. He had noted the presence of OC Manaka and his deputy, Mahlelebe together with Commandant Nthako, who seemed to be headed in the direction of the isolation cells where the re-arrested inmates were locked up. He indicated that they soon left to go back to the offices and the recruits concluded the search operation and moved to the center area.

He went on to indicate that they had then received an instruction from ASP Masiloane to continue with the search and which now extended to Block D. He indicated that he identified about fifteen (15) recruit officers to undertake this task and on completion, he enquired from ASP Patrick 'Mabathoana if they were done, who had then indicated that they should also search the Maximum-Security Block and Block B. He had then directed the groups to proceed to the center area and divided them into teams that would proceed to both blocks. At this point CO Motanya arrived – he had not been present at the time the operation commenced as he had been part of the search party that was looking for escapees the night before. OC Motanya then led the team that went to Block B while OC Rats'ele remained behind with the team that was going to search the Maximum-Security Block. The team left him behind at the center and as he followed, he noticed that the maximum security block was opened by one officer Khotso Mphete and the inmates were still in the cells although they were not locked inside; the recruits had already allocated themselves the cells they were to search and as he went on to supervise the first cells, the recruits indicated that they had already finished searching, which was quite quire as they had just started with the search exercise and as the maximum security block was the area the escapees had run from, he felt that more attention had to be given to the inmates and search of cells. He further indicated that following the conclusion of the search, himself and the team left for Block B again where he found OC Motanya waiting for him at the center stage.

He went on to indicate that he then decided to move down to the cells to determine if the search was still being undertaken in a proper fashion. He had then found inmates standing against a wall and there was a dispute as recruits alleged that inmates had referred to them as 'manyuana' meaning newly appointed officers. The inmates were denying that they ever said that; the recruits were arguing with the inmate, who, he has forgotten by name; however, he intimated that it was definitely not one of the LDF soldiers who are incarcerated in the same block. he went further to indicate that he reprimanded the recruits to stop arguing with inmates as it could result in them beating them up. he directed that they should continue with the search, which they did; however, as he got to the one cell where Sebilo resides, one of the recruits, Potsane Potsane, pulled him towards the cell where he found recruits beating Sebilo up; the recruits had already directed his fellow cellmates to move to the corridor. The recruits had alleged that Sebilo had refused to be searched and that he had punched officer Sehloho with a fist. He purports that he rushed to cover him up but the recruits managed to push him to the side and he had then decided to hit them with his baton whereafter they left him. He indicated that he informed CO Motanya of the assault on Sebilo, that they were beating him with fists and a heavy black gumboot and he asked his colleague to keep an eye on him while he went on to report the incident to ASP Masiloane, whom he found at the administration offices. Notwithstanding the fact that the recruits seemed out of control, CO Rats'ele indicated that he did not halt the search operation. Neither did he find it necessary to direct the officers charged with opening the cells to stop opening the cells as they were exposing inmates to more harm. He indicated that he met up with Sgt Thabo Mohale who was opening the cells but he never said anything to him.

Upon his return, he found out that Nyakane's cell had already been opened and on entry, found him already on the floor with injuries to his eye and on enquiring on what happened, Sgt Nkhapetla indicated that he had been slapped hard by one recruit officer in the face; he did not specify who that officer was. He was informed that Nyakane had indicated that he was eating and the things they wanted him to do could wait so he finishes eating. He had then again looked for CO Motanya and informed him that the search operation was getting out of hand and that there was a need for them to stop it. He had then

assembled the recruits in Yard A and he saw Nthathakane Motanyane all bloodied on the face. It was alleged that he had refused to be searched to a point he pulled one recruit by the leg; they beat him up with a stick – molamu. He further indicated that he learnt that Tlakeli had also been assaulted or beaten up although he did not see him.

He further indicated that he took quite some time before realizing that the recruits were beating inmates as in their service, junior officers never abuse or assault inmates in the presence of their superiors. The recruits normally behaved well when the instructor was present. When asked about the cries from other cells, he admitted that there were cries in the block he was in and he heard them prior to Sgt Nkhapetla coming to inform him that inmates were being beaten by the recruits. He indicated that he had stopped officers Kaana Mosothoana, Nots'i, Sekokotoana, Thabo Mohale, Tumelo Makhunoane, Lehlohonolo Moabi, Tumelo Thabane, Fubuzana, Mathai, Kolozi, Sepiriti Malefane, Thabiso Jane, Tsietsi Tsietsi, Thetso, Mofokeng, Khele, Potsane Potsane, Mofakadolo and one Masenyetse. The other recruits in Block A were Thetso Lehlohonolo Posholi, Nts'ekhe, Lereko Lephoi, Sello Matube, Monyane Motsoalisa, Tsepo Mokhethi, Lekhoko, Makintane, Nkeo Mohlakola, Thabo Lebone, Tsepo Borocho, Thabiso Jane, Mosola. In Block C, there were Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaisane, Moleleki, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, and Letsiello Makhele. He indicated that they were searching Block A and C and were later sent to the maximum-security block. Block B was searched by Molibeli Molibetsane, Mphutlane Ntai, Molaoa Mothabeng, Khosi Hlalele, Potsane Potsane, Lehlohonolo Potsanyane, Thabang Moleleki, Tumelo Makhunoane, Mahooaneng Matjama, Khutlang Telite, Tsepo Nthafa, Matete Mahao, Mohethi, Poloko Mokobocho and Mamasieane.

He admitted that the reason why the situation got out of hand was because the recruits were unsupervised. He pointed out that this was due to the fact that the MCCI had insufficient staff at the institution at the time, with many attending to rearresting the inmates that had escaped. He further indicated that as a result, there was inadequate preparation made for this particular operation. In the normal course, senior officers normally oversaw the search operation; they were present but were not assisting the team on this occasion. In his view, it was possibly because they had not been instructed by Superintendent Tsunyane to be part of the search team exercise. He was of the view that the senior officers could have assisted and curtailed the recruits from continuing to assault inmates. He could not, as a result, be in two places at the same time as an instructor and in Block D, he recalled that officer Kaana Mosothoana, Letlatsa Mokhothotso, Masilo Mokhele, Mosebeko, Kopano Tseka, Thabiso Jane, Tseliso Mochaba Thabang Moleleki, Samuel Sekhale, Sila, Retselisitsoe Felleng, Seapa Matsoso, Limpho Makhetha, Thabo Mohale, Katleho Fako, Tsietsi Tsietsi, Fukuzana, Molelle, Molatelle, Paseka Mochaba, Tseliso Mochaba, Notsi were party to the search team while the maximum-security section was searched by Motiki Mohale, Lehlohonolo Potsanyane, Thabang Moleleki, Samuel Sekhale, Kopano Silase, Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaitsana, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, Monyane Motsoalisa, Tsepo Mokhethi Lekhoko, Paseka Mosebeka, Lereko Lephoi, Teboho Mafemekoane, Paseka Mochaba, Tseliso Mochaba, Sehloho and Tseliso Mochaba. He indicated that he never solicited their assistance at all even as he saw that the operation was getting out of control and admitted to having failed the inmates as a result. He further pointed out that they left without searching four of the cells that were left primarily because the situation was now out of control.

He indicated he tried to determine what could have caused so much anger on the part of the recruits; and whether there had been any feuds with inmates recorded during the last search that took place in November 2023. He pointed out that the only feedback report he had received was that the search was concluded well and there was no formal report shared from CSTS side, which had sent just one person to assist with the search operation. He indicated that inasmuch as this was his first search operation

while at the CSTS, the normal practice was to feedback on how the search was conducted, the reactions of inmates and recruits would also be recorded which would assist in identifying challenges so that better controls could be in place to provide redress in subsequent searches. In his view, the search was not organized well and if it had, ASP Mokhesuoe would have known timeously and prepared for it. Officers should have been informed in advance of the operation while mindful of the fact that some of the inmates collude with officers who bring them contrabands and if adequate time is given to all, the search operation could be compromised as the illegal matter can be removed in time.

He indicated that he reported the incidents to Superintendent Lekhatla at the MCCI and at the CSTS, informed the Commandant and raised concerns that he had been overseeing the search without any assistance from correctional officers at the MCCI. He further said he realized that the recruits were harbouring a lot of anger from the last search and the escape which resulted in inmates being beaten. He further indicated that at the time he reported to his authorities, he had just seen four (4) of the inmates that had been affected in a bad way i.e. Nyakane, Sebilo, Tlakeli and Motanyane. He did indicate that when he asked one officer Tsietsi Tsietsi, he had confirmed that it was because they had been called recruits during the last search undertaken in November 2023; he said he wanted to believe that it was their way of trying to retaliate and as such, did concede that it could not be true that the inmates had resisted the search operation; more so as more than half the institution's population had been affected.

He advised that it was important to advise the ministry that searches now employed are provocative and that individuals who have been trained as security officers cannot take kindly to being manhandled in the manner the recruits were doing; to be pushed, handled and held with their cloths at the back and that they be directed to squat on the floor while their belongings are being searched. He indicated that this is a new practice that was never employed before; that in years gone by, an officer could not handle an inmate's belongings at all and the inmate had to show an officer what he had. He said he failed to understand why an inmate has to now squat and raise his hands to his head because he is no longer dangerous to officers following an initial search in the cell. He indicated that this seems to be a new way of searching which the recruits are being taught at the CSTS. He indicated that the Prison Rules have not changed despite the repeal and promulgation of the new Correctional Services Act 2016; he further indicated that he just happened to be available on call when his direct supervisor called hence, he was instructed to lead the search operation.

He pointed out that he observed the differences between old practices of searching inmates and the recruits' new way of doing things. He indicated that in the past, inmates were not made to stand by the wall; upon entry into the cells, each one of the inmates would stand next to his belongings and where there were limitations of space, some of the inmates would be searched along the corridor. The new practice is now that the inmates are expected to stand by the wall in the cell, and each officer takes one inmate outside, searches him and follows him back to the cell with his possessions to collect whatever remains; he is then taken back again to the corridor and is expected to squat with hands above his head while the officer goes through his belongings and searches them. In the event there are contrabands found, they are set aside and placed in a bag and another officer records what has been found from such inmate. At times, an inmate is beaten if found with prohibited items and they were normally clapped on the back. He intimated that he did not know about the inmates who were out of order and beating inmates; he also observed that a gumboot was being used to beat the inmates as he had removed all the sticks that the recruits had in their possession and sent to the kitchen to be burnt. Further, that the boot did not have anything in it but had a thick sole – he said it belonged to one of the inmates. He indicated that the recruits had not come with sticks but possibly used the ones that had been left at the prison entrance following the search party exercise of the night before. He further said that the gatekeeper would never have allowed the recruits come inside the institution carrying sticks or tonfas; they are expected to search bare handed while officers have batons/tonfas that they carry on their waists.

Last, he made mention of the fact that during searches, his experience has been that inmates are at times beaten by recruits but the operation of the 22nd December 2023 was aggravated; the last incident he knew where inmates were beaten up happened in 1998 against the LMPS officers who were detained therein and it only happened when they offend the law.

CO Rats'ele failed inmates and came across as an officer who was either a slow thinker and felt helpless or he colluded with and condoned recruits' acts based on the fact that he did not cause for the OC to provide him with the necessary manpower to assist him with the search operation. Even as he noticed that he could not manage and supervise an entire team of 114 officers during the operation, and who were in different blocks, he failed to seek the necessary assistance that would ensure that the search operation was run seamlessly and became a success. I fail to appreciate how correctional officers, even as unbriefed as they alleged, failed to take the necessary action in supervising and overseeing the search operation even as it came to their attention that inmates were being assaulted; in my view, it is immaterial that they were not directed to do so; it is a clear case of senior officers' dereliction of duty. The normal practices of ensuring that recruits are supervised were compromised and indeed, as he rightly pointed out, he could not be in two places at the same time. I also found it odd that despite the fact that he indicated that recruits are trained to have discipline and when so directed to desist from certain behaviour they do so immediately, in this case he failed to contain them. Even when he saw that the situation had become too volatile and he could not control them even as they became aggressive and violent towards inmates, he failed to stop the operation with immediate effect. Instead, regardless he saw there were already challenges, he continued with the operation which led to many other inmates' casualties.

He even went further to enquire as to which additional blocks to continue searching even under the circumstances. In my mind, this was a clear case of dereliction of duty and to me, its immaterial whether or not officers had not been briefed about the search; it is incumbent on all correctional officers to protect inmates under their care. He ought to have done more in ensuring that they are not harmed and violated anyhow and a reasonable person in his position should have foreseen that the situation was already uncontrollable and was likely to lead to more violence being meted out to inmates. He realized from the outset that the search was not properly planned for and coordination became a challenge and should have not continued with the operation on his own at the time. To me, it is also immaterial that he was manning and supervising recruits at a search operation for the first time. The same is extended to CO Motanya, who, despite the fact he arrived late as a result of having been party to the night search and needed to rest a bit, he should have, upon arrival and on being informed by CO Rats'ele of the violence meted out on inmates, identified the danger that confronted the inmates in the absence of correctional officers at the MCCI who would have had to oversee the search in all the blocks. They both had the authority to bring to a halt the search operation as it was not proceeding as planned. It is my view therefore that CO Rat'sele and CO Motanya condoned the recruits' acts which occurred under their supervision but failed to act or do anything about the aggression meted towards inmates.

ASP 'Mota and Sir Chobokoane (CSTS)

ASP 'Mota informed the Ombudsman that she has 197 recruits who were currently undertaking training which commenced on 1st August 2023. The training was intended for all correctional officers who had not undergone recruitment training at the CSTS. All the recruits were reported to have worked for the LCS for a period 4 to 10 years of service and they are trained on *inter alia*, the treatment of offenders and their fundamental rights. It was indicated that even in the absence of such training, they all had been exposed to on-the-job training and know how they should handle inmates at all times. The recruits are then sent to correctional facilities for practical work to determine their readiness and whether they use any different approaches to those they were accustomed to prior to training. It was indicated that it was not uncommon to have stations request the commandant to release recruits to undertake search

operations under the guidance of their instructors. It was established that the curriculum that is covered entailed treatment of inmates in a humane manner and in November 2023, a general search exercise took place at the MCCI without any hurdles. The Ombudsman was further advised that there was a similar exercise at the Lepereng station a week following the MCCI general search operation and ASP Poqa advised that it went well without any challenges and contrabands that were uncovered were confiscated. The officers further advised that recruits are not provided with any weapons when they undertake searches primarily because inmates do not pose a danger to them. The expectation is always that the institution will provide supervisors and other officers who will work with the recruits' team; the intention is to assist the institution undertake its job and not for the recruits to do the job for the officers stationed there. CO Rats'ele had later reported upon their return that there was a conflict that led to some of the recruits beating up inmates as they were refusing to be searched. Of the names mentioned, was Nyakane, who it was purported refused to be searched until he had finished eating and one Sebilo, who was fighting the recruits when asked to face the wall for search purposes. They further indicated that the Commandant had then convened a meeting to determine the cause of the conflict that arose and CO Rat'sele had indicated that there was use of excessive force on the inmates. The officers were of the view that they could not fathom why the recruits would treat inmates in this fashion except to want to believe that the escape of the six inmates the night prior thereto could have exacerbated the situation and caused the recruits to ill-treat and handle inmates in an unbecoming manner.

Senior Superintendent 'Molaoa and MCCI Management team

The Senior Superintendent 'Molaoa informed the Ombudsman that during festive periods in December and Easter, general searches are normally undertaken without due notice being given to officers for the avoidance of opportunities of officers colluding with inmates to hide contrabands. He indicated that OC Manaka had advised that there would be a search exercise undertaken by recruits on the next day. A general search exercise was undertaken in November and went exceptionally well. The night prior to the search, there was a prison escape of six inmates and while two were apprehended, search parties had to be arranged in the morning to look for them. Senior Superintendent 'Molaoa further advised that following a consultative engagement with OC Manaka, SASP Matete Mahao and SSP Mahlelebe, it was agreed that the general search operation should proceed as there was a suspicion that tools used in the escape could be used to facilitate further escapes.

It was indicated that the normal general search operation is normally manned by a sergeant, a chief officer and four other officers who attend to the search. Under circumstances where there are contrabands, they are collected and placed together and reported to ASP 'Mabathoana's office and depending on the nature of illegal matter found, inmates may be charged for possession of some of the items recovered like drugs.

The search operation commenced in the morning and he learnt from Superintendent Tsunyane, who was leaving for a search party to Makhaleng, that the search was not being undertaken as expected as officers were assaulting inmates. ASP Swatsi had then proceeded inside the facility to check on the status; Senior Superintendent 'Molaoa had directed the officer who came to report on inmates being injured to bring their list and he observed, on its receipt, that inmates from most blocks had been assaulted and were injured. He further observed that inmates were now moving around the yard and some were going to the clinic which was indicative that the search was completed and they sought for medical assistance from the nurses. The clinic nurses referred three of the inmates who had been injured, Tlotliso Bereng, Lepota Matsoane, Lehloenyha Matete to hospital; they were among the inmates that needed medical attention at the time and were taken to QEII and based on the extent of their injuries, Tlotliso and Lepota were referred to QMMH. The nurses identified four other inmates who required medical attention at a referral hospital, namely Motanyane, Sebilo, Nyakane and 'Moleli. The nurses reported that they had attended to about 44 inmates on the day but while some of them needed specialist

attention like (ears, nose and throat) ENT, most were given painkillers in the interim for their various injuries. The MCCI arranged for the inmates to be taken to MMH, where they were assisted and brought back. OC Manaka was then requested to engage with the Commandant Nthako at CSTS to elicit exactly what had happened. He further pointed out that on the next day, the MCCI received an application causing the institution to present nine (9) of the inmates before court, based on an allegation that they were prevented from seeing their visitors. In his view, it could have been as a result of the general search exercise which commenced early and visitations are normally from 08h00 in the morning; as such, inmates could not be seen immediately upon arrival of their visitors.

Although Rule 104 of the archaic Prison Rules of 1957 should no longer apply due to the repeal of the rules, the standard practice has always been that *an untried prisoner may be visited during such hours, and under such restrictions, as the Director may determine*. Senior Superintendent 'Molaoa indicated that for at least four (4) days immediately following the torture beatings at the MCCI, the inmates were not seen by outside visitors; it cannot therefore be true that the supposed reason for inmates' visitation rights being violated was primarily due to the search operation that took place on the 22nd December 2023. It points to a situation where inmates were badly wounded and correctional officers found it prudent to deny them their right to visitation just so they be allowed to recuperate and recover from the wounds suffered.

I further established that following the high court *habeas corpus* application, a request was made to the Commissioner of the LCS to assist with engagements with the Ministry of Health so that inmates that had not been attended are allowed to see medical doctors and that assessments be made on those that had to be referred. SSP 'Molaoa indicated that inmates were taken to QEII in batches; however, that not all of them were able to be attended by medical officers due to transport limitations. He alleged that the four (4) inmates demanded that they be taken to medical doctors of their choice and which would have been at the cost of their own families. He indicated that the policy of the LCS was to provide adequate medical assistance to inmates at public hospitals alone. From a security perspective, he made mention of the fact that the CCTV was not operating optimally and that senior management had been informed although there were no funds to cater for appropriately outfitting the unit with an effective and efficient CCTV system. It was further elicited that the security personnel operated with limited numbers as recruits had all gone for training at the CSTS. He further made admissions that as a routine, searches are not to be undertaken without any supervisor at the cells; however, due to circumstances that permeated at the time, some could not attend to the general search operation.

He further briefly recounted the rearrest of Bokang Tsoako's and indicated that at or around 15h00 on the 22nd December 2023, Sgt Senekal received a tip that Bokang had been seen around an orphanage at Mohalalitoe. He was rearrested and brought to the MCCI around 16h00 and the report he received was that the deceased appeared extremely tired and had to be taken to QMMH to see a doctor. He alleged that officers who were present at the time of his arrest were *inter alia*, Sgt Lesema, ASP Swatsi, ASP Mokhesuoe and CO Marai.

With regard to health-related issues, nursing sister Thabiso Jane Lekhema indicated that the MCCI clinic worked with referrals of inmates to hospitals. Further, that while it was not uncommon to have inmates and officers' assaults and sustenance of injuries, there was an outbreak of these incidents which meant that the clinical team had to now undertake their own assessments and prioritize critical cases that had to be referred to hospital. It was indicated that some of the injuries required specialized attention and necessitated that appointments' be procured especially for inmates requiring ENT services; they would be attended to only in February. The officer was unsure as to the number of inmates that had been attended and those that were outstanding treatment. It was further established that about 300 inmates had been affected and had sustained injuries. However, that those requiring to see medical doctors still had an opportunity to do so. The QEII was the secondary level of treatment while the

QMMH was deemed a tertiary referral hospital. It was further indicated that it was untrue that the MCCI did not allow inmates seeking attention to attend to their medical needs at the MMH.

I found it extremely concerning that inmates suffered injuries, both externally while others sustained internal injuries on 22 December 2023; however, as at the time of the inspection and interviews in early January 2024, most of the inmates had still not received any medical attention. Very little effort had been made towards ensuring that all inmates affected received the necessary medical treatment. Correctional facilities have a constitutional obligation to provide reasonable medical care to inmates; inmates cannot obtain their own treatment, so they are at the mercy of the institution that has incarcerated them and the denial of medical care is a serious human rights violation. Inmates have a right to receive all the medical care necessary while in custody and it is inappropriate and unacceptable that the MCCI did not offer the majority of inmates with the necessary medical care timeously, the failure of which, requires immediate redress.

In my view, it is not enough that management justifies the delays in the provisioning of medical care with the lack of resources and or limitations insofar as transportation is concerned. As a government institution, it is wrong to deny inmates their constitutional right to medical care on account of lacking. I have further observed that the Commissioner, in his communique of 30 January 2024, alleges that all inmates who claimed to be tortured had seen medical doctors. I do not know if that means inmates had all been treated as at that date. Even if it were the case, the delays in administering such care amounts to an injustice and cannot be condoned.

Assistant Superintendent Telang Masiloane

ASP Masiloane indicated that he works at the security section of the MCCI. He is *inter alia* in charge of shifts, escorts to court, hospital and the like; however, often, there are other duties including overseeing the CCTV unit. He went on to relate the events of the night of the 21st December 2023 and the search party to which he was participating in and only got back home in the early hours of the morning. He had then gone home to refresh and came back to the office. He was surprised to learn on arrival that there was a search operation undertaken by recruits that had been arranged. Him together with his other colleagues, ASP Mokhesuoe and ASP 'Mabathoana were surprised because they had not been informed by their seniors. He indicated that everything comes to a standstill when there are escapes; that searches are undertaken in the mornings following inmates count, they are locked inside and they will proceed with the operation under the guidance of their instructors. He recalled he wanted to proceed to the maximum-security block to see where the inmates had escaped from and went in through the main gate where he was met by Superintendent Ramangoela who called him and directed that he should inform CO Rat'sele that recruits should stop beating up inmates; he had heard their cries from Block A, which was closer to the administration block. He indicated that he did relay the directive and CO Rat'sele went back to Block B; he had indicated that he will reprimand them and ensure that the situation is normalized. He indicated that the recruits have more than ten (10) years' service and do know how searches are conducted. ASP Masiloane further pointed out that having informed Morena Sefali, who is in charge of the maximum-security section, he had then left the center area to go to the maximum-security block and noticed that the recruits were already there searching; he walked towards the tower from outside and heard inmates' cries '*jonnana oeee*'. He purports that he went on top of the roof and noticed CO Rat'sele getting in through the gate and whistled; he called them and took them out; he was unaware as to whether they had finished the search. He indicates that he did not witness the inmates being beaten but saw many casualties; there were three inmates who did not look okay lying on the ground on mattresses. He had then asked officer Khoasi who works at the dispensary to proceed to the maximum-security block to assist the patients. He had then proceeded to the offices to report the incidents; the recruits had assaulted the inmates and the beatings seemed severe. ASP Masiloane indicated that he reported to Superintendent Ramangoana about the beatings. Further, that he had met

with CO Rats'ele on his way who indicated to him that the recruits had informed him that one Sebilo and other inmates were resisting the search operation and that they said they were not going to be searched by 'mantobolo' which meant people who had not undergone training. He later realized that the recruits were now stationed outside the prison and to him, it was an indication that the OC had acted against them as they were no longer in the prison. He went further to say that he realized later that at least 95% of inmates had been assaulted; that he had been in service for 25 years but had never witnessed such a situation; it came as a surprise to officers at the MCCI why inmates were being assaulted.

He indicated further that he had really thought that the LDF officers were not cooperating because many times, they have had to deal with their superiority complex and have had to reprimand them many times so that they conduct themselves appropriately. However, he was in doubt whether this was the problem on this particular day given the degree inmates were beaten. He was of the opinion that recruits liked flexing their muscles which seem itchy. There is also a culture of going inside the prison with sticks and tonfas and he was of the view that when he arrived, it was at the time the search was nearing its completion. He also shared that recruits do normally beat up inmates but not at the extreme level where inmates are injured in the manner they were.

He went on to say that he did not know the criteria that was used to prefer some inmates over others when referrals to hospital were made. He just recalled that Superintendent Mafatle directed that they be taken to MMH around 14h00. He also indicated that on the 24th December 2023, he took 18 other inmates to QEII to receive medical attention; there were also two doctors who came to attend to inmates at the MCCI. He further pointed out that he was aware of the CCTV that was not fully functional and for a very long time. The cameras are operational but the occurrence book showed that two of them did not work; he was of the view that it remained a concern as it compromises security.

With regard to the deceased escapee Bokang, he indicated that he established that he had been rearrested although he did not see him upon arrival at the MCCI. He was candid and of the opinion that it could not happen that the escapee would have just been left without being reprimanded and being beaten out of correctional officers' anger.

Assistant Superintendent Selai Mokhesuoe

He indicates that he is in charge of security of high-profile inmates, the armoury, weapons, keys and the CCTV unit. For the new block, there are officers in different sections who open and close the prison in the afternoons. He reports directly to Superintendent Tsunyane and he could not confirm how many officers he is responsible for on any given day. He indicated that on a daily basis, he relieves the officer who was working at night and opens the prison at around 06h30 am every morning. He pointed out that he has been tasked with the responsibility of opening the new block cells and he attends to it and at the same time, directs chief officers to proceed to the general blocks to count the inmates; once he completes counting the new block inmates, he normally proceeds to the general blocks to ensure that all is going as planned. Once confirmations have been made of the numbers, he indicated that he goes back to the administration block to report. He normally undertakes the opening of the blocks and cells while accompanied by a chief officer, a sergeant and ordinary officers. The sergeant monitors that the situation is normal and there is no rioting, violence or any unsettling event within the blocks; he also records the numbers and reports back whereafter ASP Mokhesuoe goes back to his office. The inmates will then wait for some time prior to being allowed to get out to do their various chores and proceed to eat or fetch their medication at the clinic. In relation to searches, he indicated that once inmates have been counted, they are directed to get back into their cells and they are locked back in and in the normal course, a large contingent of staff undertakes this exercise. He indicated that there are no written procedures on how searches are conducted but there were general practices which all correctional officers know and have to follow. When they have transgressed the rules, they are beaten up on the

buttocks and are accordingly charged depending on what is found on them. The inmate is supposed to stand and examine his belongings whereafter he goes back to the cell and they are locked up again. The team will then proceed to the next cell repeating the same procedures.

On the 22nd December, he alleged that he opened the facility or prison and while waiting for CO Molise to bring the inmates recordal books and tool, he noticed CO Rat'sele arrive with a huge contingent of recruits. He went into his office indicating that he had been instructed to supervise a general search operation. He went on to indicate that he was unaware that there was a planned search operation and as his team had already finished counting the inmates, the inmates were already starting to walk around the institution's yard. He indicated he called Senior Superintendent 'Molaoa asking him about the search and he had indicated that it was an instruction so he should oblige and order the inmates back into their cells. He sourced additional masks for the team as they did not have enough for everyone. Officer Liholo came with the keys as he was assisting with the opening of the cells. The recruits started the operation in Block A and on that day, he alleged he had numerous other activities to perform, including arranging for search parties of officers who were going to look for escapees and so he left the team of recruits searching under the guidance of their instructor. There were other officers as well at the center although he had forgotten who was on duty. He pointed out that the MCCI officers do not get involved in a general search undertaken by recruits; however, he had raised a concern that he noticed that CO Ratsele was working alone and he did not think that he was going to be able to manage and coordinate it seamlessly and had then asked CO Thabiso Jane, CO Molise and Khoto Sesinyi to proceed there and help with the search.

He indicated that the first time when he entered the cells in Block A, he had heard some tapping sounds like there was a commotion in a cell; there were no cries whatsoever at the time and he had asked Thabiso Jane what was going on; he had said there was nothing and he said to the recruits that he hoped that they were not beating inmates up. They were in accord and said 'yes sir' and he then instructed the officers to monitor them. He indicated that he said this as it was a practice for recruits to normally beat inmates and given past incidents, they had to be monitored closely; however, those were not extreme and were largely based on the discovery of contrabands. He indicated that he later learnt, upon his return from a search party mission, that many inmates had been beaten.

He went on to indicate that he is also responsible for the CCTV unit and that some of the cameras and televisions were not working while others do not display anything at all. The problem has been reported on numerous occasions but nothing seems to have been done about it to date and it was always a challenge to replay the tapes.

With regard to the search to which he was party to at Mohalalitoe, he indicated he was in the company of ASP Swatsi, CO Leshota, who was driving, CO Khoabane, Mphaololi, CO Marai and Sgt Senekane and officer Nthonyane, who found the escapee hiding under the bed. Sgt Senekane was not on duty on the day but was communicating with the team having received tip offs of where the escapee Bokang Tsoako was. He pointed out that they looked for the escapee for a long time and thought he had managed to run away but ultimately, one of the officers shouted out that he had found him. When he got to them, they were already beating him up and he alleges he went up to them running and directed that they should desist from beating the deceased up. The deceased was taken to the vehicle and even as he got to the MCCI, he alighted on his own from the vehicle. He indicated that he had then left to go home and could not deny that the deceased was beaten up by correctional officers.

I found it intriguing and concerning that a senior officer charged with a responsibility of rearresting an escapee inmate only went so far as ensure that the inmate was brought back to the MCCI. He however, failed to explain to the Ombudsman what occurred following his arrival at the MCCI and indicated that he had left the inmate with his 'unnamed' colleagues who he could not remember, went on to report to the superintendent's office and then went home. I would have expected that there would be a proper handover of the inmate and he would have ensured that he was not subjected to any form of harm as he

had already witnessed the aggression and anger of officers who attended to his rearrest. I find it irregular and unbecoming of an officer at his level to have just left without a proper handover and in my view, his indication that he cannot deny that the deceased was beaten by correctional officers is indicative that he knows exactly what transpired in the sergeant's office and what ultimately led to the demise of the deceased.

Assistant Superintendent Palo Swatsi

ASP Swatsi indicated that he worked at the security unit of the MCCI and in the mornings, he was normally accompanied by around ten officers, two sergeants, two chief officers and other junior officers when he opens up the prison. The normal practice was to open the cells and provide reports to the OC on any incidents that could have occurred at night and also the total number of inmates. Searches are normally undertaken by MCCI officers and are normally planned to determine teams' constitution whether inmates in all the blocks are searched with their belongings. The normal procedure was to search one cell at a time and ensure that inmates stand by the wall or squat outside the cells on the corridor. An inmate is expected to show an officer all his belongings and will also be searched on his body. There are recruits at the CSTS and he indicated that for the first time, they were allowed to search inmates some time in November 2023 and he had noted that as they searched inmates on that occasion, they were employing a different mechanism of search, which was to ensuring that inmates were in a squat position and are made to place their hands on top of their heads. There were complaints lodged at the New Block as most of the inmates in that block are elderly and they found it difficult do that. He felt that much he appreciated that squatting was meant to ensure that an inmate is not a danger to an officer searching him, as officers, they should have been informed when changes to the manner of search are implemented within the institution.

On the 22nd December 2023, he indicated that on arrival at work, he found ASP Mokhesuoe and his team were already attending to the opening of the prison and cells. He established that there was a search underway and he went on to undertake his own daily activities as he had no role to play at the search operation. He indicated that he met with Superintendent Tsunyane who was with ASP Mokhesuoe outside a meeting room and both directed him to assist Sgt Nkhapsela at the cells as there was noise coming from the cells and the understanding was that inmates were being beaten. Sgt Nkhapsela had just reported that there were inmates' cries and he needed assistance as recruits were violating inmates by beating them. He went further to indicate that he was also informed of the escape that occurred the night before. He had then decided to walk to the prison and in particular, to Block C, which is the biggest of the blocks and he also realized that many of the blocks had been opened at the same time and he assumed that it was because there were many recruits to undertake the exercise. He noted that the recruits had their normal gear, were wearing tracksuits, yellow reflectors, sun hats and masks. He stopped one of the inmates who was beating an inmate with a shoe, who obeyed and desisted from continuing with his action. He further pointed out that he went on looking for their instructor, CO Rat'sele, who was at the furthest end of the block and he told him that the search was not being undertaken in a proper manner and asked him to stop them and call the recruits to order. He indicated that he had then left to take a call, which was briefing him on one of the escapees who had been located.

He further recalled that his seniors, OC Manaka, Senior Superintendent Mahlelebe and Senior Superintendent Nthako came to pass at the Block C; however, at the time, there was no commotion nor were there any cries; it was fairly quiet. He indicated that he met up with ASP Mokhesuoe on his way back to the offices as he was going to recharge his mobile phone, who then asked him why they were not assisting the search operation exercise. He indicated that he explained that it was an operation manned by the CSTS and as they had not been directed to do so, they could not get involved. He indicated that he went on to the maximum-security block and saw recruits there searching inmates there in numbers; he also witnessed recruits beating up the inmates. He had then asked CO Majara who was

in charge of the operation and he did indicate that he did not know but had acted on the basis of what his seniors had said that recruits would be searching the block as well.

ASP Swatsi further pointed out that he had then called the recruits in a group and asked them who their supervisor was; they pointed to one of their senior recruits in the group and he told them that they should desist from beating inmates in the manner they were. He indicated that they heard him and went back to undertake the search. He had then gone with CO Majara to check the escape route that had been used by inmates the night before. He went on to indicate that he cannot say that inmates were refusing to be searched; there was absolutely no resistance and, in his view, the maximum-security block and Block C inmates were not places where you could find inmates resisting. The maximum-security block is a quarantine block that houses incoming and sickly inmates and it was unlikely that they could have resisted any search. Block C inmates, have in the majority of cases, been at the institution for a long time and while there could be exceptions, they are not the type of people who can just resist to be searched. Often, resistance is experienced with inmates who are favourites amongst officers. With Block A, which houses inmates who have been sentenced but have privileges of being involved in vocational education and work, it is individuals who are almost ready to leave the institution and would not wish to have their privileges cut off by refusing to be searched. He further pointed out that he never received any report from the recruits as to why they were beating up the inmates. He had then received a call and left with a search party to look for the escapee Bokang Tsoako.

With regard to the deceased Bokang, he confirmed that at or around 9h00 in the morning, he left in the company of CO Moleli, Sgt Morie, Sgt Senekal, Officer 'Bascu' on a mission to look for him. He could not be located in the early morning but they got a second lead later and had to retrace their steps and proceed to Mohalalitoe, at Mochochoko's orphanage. He indicated that they went there in the company of ASP Mokhesuoe and Sgt Leshota, who was driving the vehicle and they were informed that he was in the house but could not locate him for a while. CO Marai felt that he was still at the orphanage and went on to search further for him and located him under a bed where he had covered himself with a lot of dirt in a storage room. When they pulled him out therefrom, his foot was bloodied and officers who arrived beat him up with sticks. The correctional officers were angry because escapes can lead to them losing their jobs where it is established that they were negligent in undertaking their duties. The deceased was thereafter taken back to the MCCI.

CO Khalemang Leshota

CO Leshota indicated that he works at technical unit as an instructor, which unit is mixed with transport and reports to Sgt Mafatle, who in turn is responsible for projects. He indicated that he works with inmate projects which relate to inmates' vocational training. He indicated that following the escape of the 21st December 2023, two inmates were rearrested and on the next day, there were search parties arranged and as it was business unusual, the teams were planning on how they would rearrest the escapees. He indicated that there was a report from Sgt Senekal that one of the inmates, Bokang Tsoako, had been spotted at Mohalalitoe and a search team was set up to rearrest him. CO Leshota indicated that he was driving the vehicle that went on this search mission; he recalled that he was accompanied by ASP Mokhesuoe, CO Khoabane, CO Marai, Sgt Morie, Officer Makakole, Officer Sanaha and ASP Swatsi. He indicated that upon arrival at the Mochochoko orphanage, he parked the vehicle some distance away from the premises and the people accompanying him went into the yard while some of them surrounded the premises to avert possibilities of him escaping from the premises. He indicated that after quite a long time, someone shouted that he had found him whereupon he had driven the vehicle to the small gate by the side of the buildings. He indicated that he did not know the inmate himself but saw officers holding him up in the air and threw him in the vehicle. He recalled that he saw him land on a tyre that was in the boot of the vehicle. He also saw ASP Swatsi warding off the officers who seemed very angry so they do not hit him. He never saw any of the officers beating him up then but

they were pulling him. He was still talking and indicated that he intended to surrender and take himself to the MCCI. Due to where he was with the car, he could not say with certainty whether the deceased was beaten up at Mohalalitoe. ASP Mokhesuoe had then directed that they proceed to the MCCI with the rearrested inmate. He further recalls that upon arrival, one of the officers directed the deceased to get down from the vehicle, which he did. There were already many officers outside the institution at the time. As he stepped down, the other officers attempted to hit him and CO Marai was stopping them from attacking him saying 'butleng butleng'. He was being asked by some of the officers of where he was coming from. The officers were very angry and were pulling him; most of the officers were of a lower rank. He indicated that the inmate was taken into the office of sergeants. CO Leshota indicated that he had then been directed to go back to Mohalalitoe with Officer Matobo to fix the lock that the officers had broken. Upon his return, he saw the deceased sitting in a vehicle lying down; he later learnt that he had died. When he got to the MCCI, he was still alive and walking and he even jumped from the vehicle. The condition he was in when he left to hospital taught him that something had happened that caused his condition to deteriorate. He looked extremely tired.

Commandant Lipholo Nthako

Commandant Nthako indicated that he was approached by OC Manaka to assist him with a search operation that was scheduled for the 22nd December and even as there was a reported escape, the OC felt the need to continue with it as he felt the institution was now vulnerable to additional escapes when there was suspicion that there were still tools that were utilized by the escapees. He had then arranged for the 114 recruits to undertake the search operation under the guidance of CO Rats'ele. He was later informed by OC Manaka that there was an outcry of recruits having violated and beaten the inmates and he wished for the exercise to rather proceed in the afternoon. He had then advised the OC that given the circumstances, the operation should just be called off. He further indicated that the OC requested that he release 30 of the recruits to close up the cells, in light of the fact that most of his officers were still out on search parties looking for escapees. CO Rat'sele had then arrived and explained they had worked but that there was a challenge with four (4) inmates who had refused to be searched; in fact, that one Sebilo Sebilo 'sleeper choke held' an officer (faesa) and was beaten with sticks by recruits. He indicated he enquired where they got the sticks and he was informed that they found them in the cells; that OC Manaka had then indicated that it was not uncommon to have sticks following inmates search for and collection of firewood from the forest. He further indicated that on enquiry, CO Rats'ele indicated that the soldiers, including Nyakane, had resisted search indicating that they were not going to be searched by recruits; that he had been seating on the floor eating his chips and caused for him to stand whereupon they beat him up as a melee (ba mohloa setha) until he fainted. Rats'ele had said that he ended up being the one having to beat up the recruits to abort the mission, which he felt was odd as recruits normally stop immediately when ordered or instructed to do so.

In his view, all along he knew that only four inmates had been beaten but only learnt on the next day at a meeting with the minister and senior officers of the LCS that there were more inmates that had been violated which included civilians as well. On engaging the recruits, he indicated that they maintained their version around them being called newbies and resistance by soldiers and that even at the last search operation, they had been hesitant to be searched but did not resist. The recruits further indicated that the violated soldiers had intimated that the recruits cannot have left the escapees but wish to search them. The impression created was that other inmates were taking advantage of the situation of soldiers refusing to be searched. It remained unclear as to the number of inmates that had been affected. He indicated that he found it odd that on the occasion of the search, the MCCI officers were not assisting CO Rats'ele with the search operation which in his view was very odd. He further said on the day in question, he happened to be at the MCCI to run other errands and the OC had then taken him with Mahlelebe to see the escape route; they walked all the way to the maximum-security section of the

institution having passed some officers at the center area. He did recall seeing OC Manaka engaging these officers briefly and they had then left to proceed to the isolation cells to see the escapees incarcerated thereat. The escapees looked like they had been beaten up and had swollen faces. OC had then said that they were idiots for having run away and that officers do beat up inmates that escapees and that this may lead to injuries. In his view, at the time, there was nothing untoward or any suspicion that the search operation was not proceeding according to normal procedures; there were blankets along the passage way and never heard any cries whatsoever. He indicated that officers never punish inmates in the presence of their supervisors. He further indicated that he was informed that recruits had batons or tonfas but in his view, the information is distorted as he could not fathom where they would have gotten them from. He purported that the only person who had a tonfa was instructor Rat'sele and inasmuch as the CSTS maintains a number of them at the armoury that are normally used by security officers during unrests, it cannot have been they gained access to them as they are securely kept and registered by the officer in charge.

He also found it odd that when he pursued and pressed the recruits to inform him of exactly what took place on the day in question, the recruits were now denying that there was ever any torture or assault on the inmates during the search operation. What he established is that the recruits colluded in misrepresenting facts as they made admissions of the beatings and advanced reasons justifying their actions prior thereto; however, on a subsequent interrogation, they now deny that and indicate that there was nothing of that nature and played no role in such violations.

Officer Kabelo Liholo

Officer Liholo indicated that he works at the armoury within the Security Department and as a correctional officer, part of his work was to assist with security issues and he was charged on the morning of the 22nd December 2023, with the responsibility of opening up the cells. He indicated that he was with Sgt Poloko Thabo Mohale and Chief Officer Molise at the time. As a security officer, he works on instructions; that he went on to open Block C, which is the biggest block with more cells than the others. He indicated that he left the bunches of keys at the center stage with Sgt Poloko Thabo Mohale. He recalled that he was in the company of Sgt Nkhapsela, who works at the Intelligence Office and was assisting him with the opening of the cells. Chief Officer Kheleli opened Block B cells but he indicated that he did not know how it came about that two blocks of cells were opened all at the same time; Sgt Poloko Thabo Mohale would be in a better position as his senior to explain why the normal processes of opening cells was not complied with. He seemed not to know who collected the other sets of keys to open the remainder of the blocks (Block A and D) save for the maximum-security block keys, which were taken by Mokena Matoko, who is part of health personnel officers. He indicated that per the standards set, he is not supposed to release the keys to anyone unless he is supervising the processes. He further indicated that the manner of opening cells differed from the closure and while CO Kheleli does not normally work with keys. He indicated that his immediate supervisor was present during the search operation and during such an exercise, they only take instructions from the supervisor, Sgt Nkhapsela. He went on to indicate that the manner of search on this particular occasion was somehow different from what he was accustomed to and when realized that the recruits were more aggressive in searching inmates, he could not stop the operation when he had not been instructed to do so by his supervisor, Sgt Nkhapsela, otherwise he could have been accused of insubordination. He had failed though to even ask Sgt Nkhapsela whether to refuse to open the cells at all. He indicated that the recruits were aggressive and pushing the inmates around while searching them in the corridors. He was surprised and wondered if the manner of search was a new method of searching inmates. He indicated that he opted to open a number of cells at a time, just so that the recruits do not have to stay for long in one cell and limit harm to inmates.; that he was opening three to four cells at a time. He indicates that he could not have interfered with an operation which he had not been briefed on and was not therefore in a

position to act otherwise. He further said that Sgt Nkhapetla did proceed to the offices to inform his superiors and in his view, he could not have acted without any further instruction from those in more authority than he held. He further confirmed that when their instructor Rat'sele saw they were beating up inmates, he collected all their sticks and took them to the kitchen to be burnt. The search was for the recruits hence why all the MCCI officers present at the institution kept away from the exercise

He went on to indicate that in his capacity as a reasonable man, he understands that he ought to have intervened and acted but as a security officer, the protocols and rules that they are governed by preclude them from interfering with operations that they have not been instructed to participate in or which they were not briefed on. In his view, the search was meant to be a general search and the recruits' instructor, CO Rats'ele was present to guide and supervise the team. As such it was not going to be easy for him to just get himself involved or stop the operation on account of the violence he witnessed.

He went on to indicate that even OC Manaka had passed by the block and had seen how disheveled it was. He however failed to intervene in their situation as he could see that some had been beaten. There were still cries coming from some of the inmates and did nothing. The conditions that prevailed in Block C were the same in Block B as well. He indicated he saw some of the inmates with marks on their buttocks while one of the soldiers had injuries to the head and was bleeding. Further that he did note some of the recruits who were searching inmates in Block C namely Ts'epang Sehloho and one Khohola as his colleagues who worked at MCCI prior to going to CSTS for training. He indicated that in the normal course, when inmates are found with prohibited items, correctional officers normally reprimand such inmate(s) without assaulting them. On this particular day, he realized that all inmates suffered the same fate regardless there was nothing illegal found on them. It also never happens that officers beat up an inmate in a group.

I have difficulty accepting the sentiments expressed by Officer Liholo primarily because first, he had full control of the keys to the cells and continued to expose inmates to violence and aggression caused by the recruits. In my view, a reasonable person in his position should have alerted his authorities and refuse to open the cells further when it dawned on him that recruit officers were abusing, torturing and treating inmates in an inhumane, degrading and disrespectful manner. He knew that what he was witnessing was an abnormal situation and he should have acted upon and sought for immediate intervention from his superiors.

PART B: Escapee Bokang Tsoako's circumstances

This part deals with the circumstances under which Bokang was re-arrested and how he later met his demise. Much as we understand that issues related to the inquiry around his death are reserved for a court inquiry, it would be remiss of the Ombudsman not to highlight how he was recaptured and later died at the hands of the LCS officers.

The deceased Bokang Tsoako

Bokang Tsoako, a young inmate aged 25, was one of the inmates that escaped on the 21st December, 2023 and was later rearrested at an orphanage in Mohalalitoe. He had been charged with housebreaking with intent to steal and had been in custody for hardly a month at the time of his escape. The LCS management, in particular Assistant Commissioner Mahlelebe, provided the Ombudsman with a report on how the inmate met his demise. It was alleged that one of their intelligence officers, Sgt Senekal got wind of the escapee's whereabouts and followed the leads. He had then caused for a search party to be assembled to proceed to the orphanage to apprehend him. It is alleged by the LCS team that the escapee had hidden inside a ceiling, had then missed a step while in there, fell to the ground, whereupon he

suffered and sustained the injuries that the LCS believes led to his untimely death. The investigation team went so far as to establish how he was apprehended and what transpired at Mohalalitoe on this occasion. The description of the incident by the LCS cannot be reconciled with the injuries sustained by the deceased and I have established that the officers involved together with the management have concealed its seriousness and acted in complete disregard to the institution's policies, standing orders and rules of conduct for correctional staff. It also characterized the force used as unauthorized, unjustified and excessive. The deceased Bokang did not pose a threat to the officers, had been apprehended and I'm duly informed that he even indicated to the officers that he said he had intended to go back to the MCCI. His plea was met with a lot of anger with officers angrily saying '*u batla ho re senyetsa mosebetsi*' translated to '*you want to get us dismissed from work*'. The search party was comprised of *inter alia* ASP Mokhesuoe, ASP Palo Swatsi, CO Khalemang Leshota, who was the driver, who attended to the recapture of the deceased inmate. The Ombudsman established that he was beaten up, kicked at and Officer Swatsi even directed that the team should stop beating him up. He was taken to the MCCI whereupon he received a thorough beating from numerous officers' present at the institution at the time. This incident was also witnessed by a number of inmates, as I am informed, the office he was being beaten at was well within the view of some inmates. I was informed that on arrival, he could still walk on his own and even alighted from the van that collected him. I am informed that this is where officers then realized that he looked extremely exhausted and could no longer stand up and a directive was issued that he be taken to Queen 'Mamohato Memorial Hospital. The hospital has confirmed that Bokang was declared dead on arrival.

Much as my role does not extend to the role played by courts through the holding of inquests intended to arrive at a determination around who caused the deceased untimely death and causes thereof, I found it prudent to engage the doctor who examined the deceased, and to determine whether the alleged cause of his death was consistent with what he established on examining him. Dr Phakoane, a pathologist at the LMPS, was summoned by the Ombudsman and produced a post mortem report indicative that on examination, the deceased had bruises, abrasions and puncture wounds on both legs which are wounds that can be sustained only through a sharp object being struck. The marks on his body were consistent with a person who had been beaten a lot; he had multiple bruises (metopa) on his buttocks, the back, the entire body and his legs were swollen. Internally, he established that there was a collection of blood in the right thorax (lung cavity) which was indicative that there was trauma on his right lung while the left lung had collapsed. He indicated that he had dramatic haemorrhage and lung collapse, which shows that there was something that was applied to him; further, that all this occurred because of dramatic injuries. He indicated that the deceased did not have a lung sickness prior thereto at all as there were no adhesions. In his view, the injuries the deceased sustained were consistent with someone who had been beaten to death. He did not have many bruises on the face and did not have a fractured skull.

The QMMH deputy managing director (Clinical Services) reported, by way of letter dated 9th February 2024 following a subpoena for a medical record request by the Ombudsman of the deceased that he arrived at the hospital on the 22nd December 2023 and was certified dead on arrival at 18h25 by a medical practitioner. The deceased was accompanied by one Thabelo Lesema from the LCS.

Based on the interviews and evidence received, the version of the LCS staff is markedly different from what has been established as evidenced by the post mortem and the pathologist's version together with evidence provided by some of the inmates who witnessed the beating. The evidence clearly points to officers having used excessive force on the deceased escapee. There is no evidence to suggest that the deceased Bokang was resisting arrest, was violent nor was there any threat or attempt to assault an officer and that he therefore needed to be subdued or anything of that nature. It is totally untrue that he fell from the ceiling where he had been hiding prior to his recapture at Mohalalitoe. It was indicated that he was beaten to a pulp in the sergeants' office and in my view, the officers used excessive and unjustified force against him. The officers stood by their original version of how the deceased died even in the face of overwhelming evidence presented before them. In my view, the officers were punishing

the deceased in retaliation for having escaped from the institution and their version was in fact contrived to fit the evidence.

It is concerning that correctional officers responsible have deliberately failed to provide accurate reports on the incident and the circumstances surrounding the inmate's death remain unclear. It is very unfortunate, that the officers' instinct for solidarity seems to run very deep to a point that they are unwilling to disclose the primary causes of the deceased's injuries to the Ombudsman. I want to believe that the reluctance to tell the truth can be attributed to officers 'code of silence' which is still practiced at the institution and they willfully conspire to keep silent on all human rights violations. The unfortunate eventuality is that the contradictory and fabricated reports have failed to demonstrate a realistic view, which has seriously affected their reliability and credibility. I established and have come to the following; in my view, as Bokang's death occurred during his detention and at the hands of correctional officers; he was brutally assaulted where he was recaptured and further beaten to a pulp at the MCCI upon his arrival. There is therefore a need for an inquiry into the cause of his death, who was involved and present officers responsible for beating him up, more particularly as it has become clear that his death was unnatural.

Commissioner Mating Nkakala

I had occasion to engage Commissioner Nkakala as well and established that numerous standing orders were issued to LCS officers around condemnation of violence and torture of inmates. As recently as the 3rd October 2023, the Commissioner issued internal circular No 26 of 2023 to all stations titled '**Torture Cases**' which reads thus:

"The Office of the Commissioner is seriously concerned about the alarming culture of violence by Correctional officers. This phenomenon is marked by acts of violence to some members of the public and inmates as well, which results in grave torture leading into grievous bodily harm and even loss of lives in some cases. [my emphasis]

The office strongly condemns such acts as they seriously violate the convention against torture and any forms of inhuman and degrading treatment or punishment and other human rights conventions which Lesotho has ratified as a member state in international bodies.

The office further reminds all officers of their status as peace officers who are expected to enforce the law and protect the Human Rights of the citizens using conventional methods that are justified in social, moral, legal and human rights terms without any compromise whatsoever.

The office therefore seizes this opportunity to warn all members of staff to avoid/refrain from becoming/being perpetrators of human rights abuses and acts of violence and, that such acts shall not be tolerated and that perpetrators shall face very serious disciplinary action.

Divisional Commanders and OCs are therefore instructed to ensure strict adherence to this order.

Signed Commissioner M Nkakala

It has been established without a doubt that inmates were beaten by officers unprovoked, slapped and aggressively searched to pick a fight. The recruits' officers seem to have gathered together to get their stories straight and report with bogus scenarios justifying the abuse. The inmates individually and collectively depicted an environment of brutality and fear with officers roughing up those who in their view, peacefully 'resisted mistreatment' by subtly enquiring whether they were being searched or

beaten. Their evidence depicted an environment where those in charge of the MCCI apparently know about these and similar allegations of officers' assaults on inmates over many years but there was a broad effort by correctional officials to hide the concerns of inmates. It was elicited from some of the officers that recruits have a tendency of rogue behaviour and violating inmates' rights and some have been the subject of disciplinary actions as a result.

It would seem that officers play ignorant to the Commissioner's orders and continue to violate inmates' rights by subjecting them to grave torture which has resulted in grievous bodily harm for the most part, and even death as is the case in Bokang Tsoako's case. This also evinces and is indicative that violence perpetrated against incarcerated persons is an epidemic and its prevalence is such a deep-rooted culture that correctional officers ignore direct instructions to desist from such practices. The unjustified and excessive use of force meted on inmates even under circumstances when it is an unnecessary infliction of punishment is indicative that inmates at the MCCI are treated like animals without souls deserving of whatever they get from officers.

Inasmuch as Commissioner Nkakala is seeking to bring about cultural change among his staff, realistically, I established that inasmuch as he wishes for officers to act differently, if he does not set standards and hold them accountable, it will be difficult to instill a different culture of handling inmates. His communication has clearly been met with an indifference on the part of correctional officers and the facility's management who are aware of the conditions but have failed to curb the practices.

I have also come to realize further that the significant challenges the Commissioner faces trying to combat and control rampant inmates abuse and savage beatings of not just recalcitrant inmates but all incarcerated, the resistance to change and reform the facility and other stations perhaps, could be a direct sabotage on him and senior management of the facility; which can come in many forms such as the facilitation of the escape that occurred the night before, which may as well have been intended to embarrass the commissioner and senior officials together with the use of excessive force that leads to grievous bodily harm (GBH) and deaths. As he reflected on the obstacles he faced, he offered these observations about his staff, including those who had gone to great lengths to oppose his efforts:

*“Despite my experiences, I still believe that there are still law-abiding correctional officers who do not abuse their power and subject inmates to unnecessary violence and torture. Even as I try to inculcate a culture of observance to applicable laws, I have come to realize that some of the officers, who I least thought capable of such acts, do get involved in such activities and this has caused of me to take more stringent measures in bringing all concerned to account and face the consequences of their actions. **Our culture at facilities is such that irrespective of seniority, any officer witnessing an irregular or unlawful act, has a responsibility to ensure that such misconduct is stopped and it is concerning that in this case, it was entertained unabated and all those officers were negligent and need to be held to account.** In this environment, things are far more complicated than I originally believed...many of my colleagues are ostensibly quite friendly people who believe they are advancing and promoting inmate's safety, however, the issue around **government's lack of harmonization of their remuneration with other security agencies, which had long been approved, remains a thorny issue and has resulted in complexities around the management of officers who still treat inmates wrongly, fail to act in circumstances where they should while in other cases, they connive with inmates on illegal activities.** There is also a bad culture of promotions being undertaken on the basis of proximity to political leadership...any such officers would do anything to support views of an aspiring officer to a point of compromising themselves and the work they are entrusted with.... The Commissioner's performance, is largely assessed on the performance of the MCCI as the biggest facility in the country”.*

It is clear that the challenges facing the LCS leadership run deeper than the torture incident that occurred on the 22nd December 2023 at the MCCI. It is my view therefore, that officers abuse should not go unchecked and inasmuch as there is a need for further reforms within correctional facilities nationwide, the Ministry of Law and Justice should address and significantly improve the working conditions and

environment of correctional officers together with related staff, which in my view will likely bring about positive lasting changes.

USE OF FORCE

In the normal course, correctional officers are authorized to use force against inmates under certain circumstances, provided that they only use the degree of force necessary for administration or enforcement of the law i.e. to restrain an inmate. One would expect that force could be used to enforce discipline and maintain order within the MCCI and or under circumstances where a rebellious or disturbed inmate has to be restrained, or when searches are conducted. I would therefore expect that the force that can be used against an inmate should be reasonable and not excessive having regard to the nature of the threat posed by the inmate and all other circumstances of the case. It should also be utilized as a last resort and after every less intrusive alternative has been applied.

In my view, the force used in this incident was willful and was intended to cause harm to the inmates; it was excessive and unwarranted. The unreasonable use of force by the recruits was tantamount to assault and they should in fact, in my view, be charged accordingly for it. I found it quite concerning that there were numerous senior officers present within the institution at the time the assaults were going on, but they chose to stay aloof or indifferent and do nothing to save vulnerable inmates from the harm they were facing.

I am further of the view that because the inmates were assaulted, they ought to have all been examined by healthcare professionals regardless of whether there were any visible signs of injury or not. For all inmates referred, all their injuries should have been recorded appropriately in a normal accident or injury report, which will form part of the evidence to be adduced should charges be proffered against the individual officers concerned. I would have further expected of the LCS to ensure that inmates right to lay criminal charges be explained to them. As things stand, it is unclear as to whether the majority of inmates have now had to abandon their right to pursue and lodge any criminal charges against the rogue officers or not. In my view, the LCS correctional officers failed to follow sound practices when handling the inmates as victims of crime. Save for the few medical reports received from inmates' hospital, none of the documents presented before me clearly and accurately recorded their injuries.

As earlier indicated, the recruits are correctional officers who have served at the institution for many years, and who have learnt their work on the job. It cannot therefore be said that they were unaware that what they did was a violation of the fundamental human rights of inmates as enshrined in the Bill of Rights in the Lesotho Constitution. The officers were well aware of their responsibilities of treating inmates humanely with the dignity deserving of all human beings together with human rights principles of good prisons management amongst other things. I have no doubt in my mind that they acted willfully and with an intention to cause grievous bodily harm on vulnerable inmates who posed no harm on themselves.

INMATES HEALTH AND SAFETY

In almost all cases, injured inmates gave an account of the ill treatment that they receive at the MCCI; in particular, that they have not received medical care for a very lengthy period, with serious consequences for their health. The Ombudsman was informed that for some days following this incident, inmates were denied all access to their families and lawyers, which even caused some, to approach the High Court on an urgent basis. This was confirmed by SSP 'Molaoa who indicated in his submissions that for a period of four (4) days, the inmates were not allowed any visitations and that the restriction was only dispensed with following inmates' *habeas corpus* application in court.

Section 41 of the Lesotho Correctional Services Act No 3 of 2016 provides as follows:

- (1) *The Commissioner shall provide adequate healthcare services to inmates, within the premises and available resources of the service.*
- (2) *An inmate shall be afforded adequate medical treatment at state expense, but not of cosmetic nature.*
- (3) *A medical treatment shall be provided by a medical officer, medical practitioner, specialist, healthcare institution, relevant health care professional or institution identified by the medical officer, except where the medical treatment is provided by a medical practitioner in terms of subsection (4).*
- (4) *An inmate may be visited, examined and treated by a medical practitioner of his choice, on the approval of the Commissioner, and in such a case the inmate is personally liable for the costs of any such consultation, examination, service or treatment.*
- (5)

The LCS is obligated to provide all inmates with services that satisfy their essential needs, which encompass the provision of medical care while in detention. They have a right to be examined by a doctor and where necessary, to receive medical treatment. They should therefore have been afforded prompt access to medical officers or practitioners. At the time the Ombudsman engaged inmates, it was thirty-eight (38) days following the alleged torture and ill treatment. I raised issue with the LCS senior management i.e. the Commissioner, OC Manaka, SSP Mahlelebe together with SSP 'Molaoa and it was established that it was only following Ombudsman's initial visitation that medical officers were requested to attend to inmates at the institution. The majority of inmates were denied medical treatment for much longer notwithstanding the fact that such services are generally offered for free at public hospitals.

I established though that the LCS Commissioner did engage the MoH Director General: Health Services in January some time to assist in deploying a medical doctor to the MCCI to assess affected inmates. I further established that one medical officer, Dr Mojela was able to examine and assess eighteen (18) inmates on the day of his visitation at MCCI, while the rest did not receive any medical attention.

Mindful that some of the injuries the inmates sustained required more invasive or intrusive examinations necessitating that they be taken to hospitals. The LCS has not found it necessary to deal with inmates in a prompt manner, more particularly because an overwhelmingly large number of them were affected. In their view, some of the inmates were taking advantage of the situation and claiming affliction when infact they had not been injured anyhow. In my view, only a medical officer is qualified to ascertain whether or not such inmates had any injuries or not and it is unreasonable and unjust for officers to refuse inmates medical attention just on the basis that they did not have open wounds warranting referrals to medical hospitals.

I am further of the view that given the extent of the injuries suffered, some of the inmates required regular access to doctors; they were, however denied further opportunities to consult medical officers at public hospitals. With regard to the nine (9) inmates who have approached courts of law following the assaults, it was elicited that they were denied their right to see doctors at the MMH for subsequent visitations and at other private facilities on account that they had sued the LCS and would only be allowed such an opportunity once a court order had been issued. The LCS purported though that the inmates were requesting to be taken to private doctor establishments which they indicated cannot be at the expense of government but their own as their policy is to utilize public hospital establishments. The engagement I had with the inmates was indicative that they were not necessarily soliciting and requesting that they be taken to private doctors at the LCS's expense but rather that they be sent to MMH, which offers them services for free. It just did not happen.

This is such an injustice and cannot be a justification for the inhumane treatment they are receiving and a violation of inmates' rights. Human rights standards require authorities to respond promptly to requests on complaints about the treatment of inmates, and allow such complaints, if rejected to be brought before courts of law or other authorities. The nine (9) inmates therefore reserve such right and it was well within them to decide whether to exercise them by seeking recourse from the courts or not. Considering the response of clinical nurse for a request for their referral, the impression that the LCS created was that they now denied inmates their inherent right to medical care just as a way of retaliation because they were dissatisfied with the fact that they decided to sue government and the LCS for violating their rights.

The LCS cannot further claim a lack of material resources or financial difficulties as a justification for trampling on their rights. In any event, medical attention for inmates at public hospitals is provided for free. I find that inasmuch as inmates rights are subject to restriction and supervision only to the extent necessary in the interests of the administration of justice, the LCS's obligation to treat inmates with respect for their inherent dignity as humans was undermined and violates both national laws and international protocols to which Lesotho is signatory to.

INITIAL DENIAL TO CONSULT LEGAL REPRESENTATIVES

The Ombudsman has further established that inmates were initially denied their right to access legal representation immediately following the ill treatment they suffered on the 22nd December 2023. International legal standards require that everyone arrested or detained facing criminal charges has a right to prompt assistance of legal counsel. As indicated, although no longer the law, in the absence of new rules, the LCS still places reliance on standards and practices dictated for by the old Prison Rules, which make reference to an inmate's right to communicate with his lawyer.

Prison Rule 105 states as follows

*'If an untried prisoner is in default of bail, he shall be allowed facilities for the purpose of finding bail, and to have an interview on any day at a reasonable hour, and to communicate with his friends, relations and **legal adviser**' [my emphasis]*

Prison Rule 107 goes on to state

'An untried prisoner shall be allowed all reasonable facilities for the purpose of arranging his defence, including the provision of writing materials, communications by letter with friends, and other correspondence relating thereto'

Further hereto, and in accordance with Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and as approved by the Economic and Social Council by its resolutions 663 C (xxiv) of 31st July 1957 and 2076 (LXII) of 13th May 1977); an inmate is entitled to receive visitations from his legal advisor with a view to prepare his defence and hand over confidential instructions. For this reason, if an inmate so desires, he can be provided with writing material and interviews between himself and his legal advisor may be within sight but not within the hearing of a police or institution's officials.

It is concerning therefore, to learn that the MCCI correctional officers denied inmates this right hence their families decided to approach the High Court on an urgent basis for a *habeas corpus* application. It cannot be said that their right to consult their lawyers had to be suspended under the circumstances that prevailed at the time. The inmates felt, at that particular time, that the only recourse to justice and the

only persons who could have safeguarded them against torture and the ill treatment suffered was their lawyers. It is my view that the initial denial of access to legal representation constituted a fundamental violation of inmates right to legal representation. I also want to believe that considering that the majority of inmates incarcerated are not in a position to access lawyers due to their inability to afford legal fees, the denial of access may further perpetuate or facilitate the ill treatment and torture of inmates by correctional officers.

CRIMINAL INVESTIGATIONS ON TORTURE ALLEGATIONS

As earlier indicated, the ill treatment suffered by inmates on the 22th December 2023 was torturous, and inmates were assaulted in differing degrees. Torture remains prohibited under international law and the Lesotho government has obligations under the CAT to institute a prompt and impartial investigation into allegations of torture and to bring to justice any person suspected of it. In my view, all reasonable steps to prosecute rogue officers who continue to mistreat and torture inmates should be pursued with vigor to ensure that those responsible are brought to justice. Further, following the investigations underway, all officers implicated in the ill treatment of inmates should be referred to the DPP so that a decision on their prosecution is taken and criminal charges be proffered against them. I am mindful of the fact that some of the correctional officers have been suspended from duty following this incident but none of the recruits who are accused of perpetuating human rights abuses have been suspended or brought to justice yet.

NO JUSTIFICATION FOR THE UNJUSTIFIABLE

It would be unrealistic to only perceive issues from the perspective of vulnerable inmates alone without acknowledging the many challenges that officers experience from time to time at correctional facilities. I do acknowledge that there are many influences within correctional facilities that place a lot of pressure on correctional officers and which for the most part, have led to increased population and resultant congestion, and which in turn often results in a lot of conflict between inmates and officers. Notwithstanding, inmates should not be subjected to unreasonable and excessive physical force at the hands of correctional officers. In my view, excessive use of force is unlawful and inexcusable and there is also no way that unprovoked physical attacks on inmates, unwarranted slaps, kicks, punches should be tolerated. As Rule 1 of the Mandela Rules succinctly states, **that no circumstances whatsoever may be invoked as a justification** torture, cruel, inhuman and degrading treatment or punishment.

It would also be remiss of me not to indicate that the illegal rogue behaviour of some of the officers serving at the MCCI are guilty of abusing inmates or covering up alleged assaults does not necessarily reflect on the entire correctional services. As the Commissioner did indicate, I also want to believe that there are still many disciplined and conscientious individuals who fully appreciate and understand the importance of their duty to respect and protect inmates under their charge. However, for the most part, during the course of this investigation, I did establish that the code of silence between officers still persists in occurrences such as the present one, where excessive force was used. I established that officers largely relied on an instinct to remain silent so that they stay protected against their fellow colleagues and this remains a very integral part of the correctional services culture. It is therefore unsurprising that none of the officers came forward to disclose the assault that resulted in the death of Bokang Tsoako.

UNDERSTAFFING

The LCS management indicated that the major challenge that they are accosted with is understaffing at the institution; to a point that they have had to now resort to using recruits for general searches undertaken periodically. They indicated that the escape of the 21st December 2023 added to the challenge that they already had as officers had to now proceed on search parties to locate them. It caused for the institution to continue operating with the deficient number they had. It has now caused for some of the officers having to work long and frequent overtime shifts to compensate for persistent staff shortages.

3.0 INVESTIGATION FINDINGS:

General inmates' circumstances

Our inspection identified some critical weaknesses in how custody is provided to make sure detainees are kept safe, treated and cared for well.

Having heard evidence from both the inmates and the officers complained about, I make the following findings:

(a) It was established without a doubt that inmates were beaten by officers unprovoked, slapped and aggressively searched to pick fights. The recruit officers seem to have connived and huddled up to get their stories straight and report with bogus scenarios justifying the abuse.

I found that the use of force was not just unjustifiable, unlawful, unreasonable and unnecessary in officers' attempts of searching inmates on 22nd December 2023.

(b) The recruit officers abused their power while some of the officers were unresponsive and were derelict in their duty as inmates were beaten and violated in their presence. Officers breached their duties as caretakers of inmates. I have established that the allegations on the ill treatment and torture of inmates at the MCCI are well founded and verified.

(c) I have found out that officers deliberately targeted specific individuals during the general search exercise and in particular, inmates, who are members of the LDF who were beaten to a pulp. It was established that notwithstanding the recruits' instructor reporting that the inmates were obstructive and not cooperating throughout the search, it was totally untrue that the said inmates resisted the search. I have established that the statements they are alleged to have uttered namely '*We are not going to be searched by newbies manuoana*' is totally misplaced; it was established that prior to the search, recruits were peeping through spyholes of each cell at intervals identifying LDF members in cells; there were utterances such as '*there is the satan*' (in Nyakane's cell) and while in another cell, a recruit officer asked one of the inmates of where Nyakane stayed. Some of the inmates pointed to the fact that as they were being beaten, they were asked their names and where they ordinarily worked outside the facility so that it could be established as to whether they were LDF officers. Nine (9) of the LDF inmates were assaulted and they all do not stay in the same cells. It remains clear that the assaults on the LDF inmates were orchestrated, had underlying undercurrents and the malignant recruits already had a motive.

(d) I established that more than half of the institution's inmates complained of having been subjected to all manner of inhuman, humiliating and degrading treatment. One inmate complained of being pulled by his testicles by one of the recruit officers who in turn denied the commission of atrocious acts that the inmates allege they committed. There is overwhelming evidence that suggests that the fundamental rights of inmates to be treated humanely, with respect and without any degradation were unjustly violated. The reasoning behind recruits' attitude towards inmates on the day in question fails to justify

the resultant infringement of their rights and the alleged attack that took place is characterized by contradictions and inconsistencies in the evidence of officers interviewed.

It became abundantly clear to the Ombudsman that they had connived not to disclose what had really happened. I have considered the evidence in its entirety and have come to the conclusion that the inmates' version of events is more probable than that of the officers.

(e) It was established that the MCCI officers, although they acknowledge that they ought to protect interests of inmates, portrayed themselves largely as bystanders who only act when they have been directed by their seniors to do so; inmates' version was that recruits beat them up with sticks forcefully on the waist, buttocks and back even in the presence of their seniors. The 'tacit acquiescence' of senior officers to inmates administered abuse and punishment together with the alarming level of use of force directed at the inmates was particularly telling of the culture of administering violence within the MCCI correctional facility.

(f) It was established that there was an MCCI Maximum-Security 'prison break' of six (6) inmates the night prior to the torture at or about 21h00 and two of whom were re-arrested on the same night. It was further established that OC Manaka had already scheduled a general search on the next day and had sought for the assistance of the Assistant Commissioner Nthako (Commandant), who is the OC at CSTS. Following the escape, OC Manaka had then engaged the Commandant to confirm that the search would proceed as initially envisaged based on the fact that the institution ran the risk of more escapes if the tools used during the escape were not recovered.

(g) It was established that there was an existence of a shortage of staff at the MCCI which could largely be attributed to the fact that fifty-eight (58) of the officers had been taken to the CSTS to undergo training as correctional officers while other officers had gone on search parties intended to locate the other four (4) inmates who had escaped.

(h) Inmates living in Blocks A, B, C, D and Maximum were the only ones who were searched by recruit officers to the exclusion of the New Block, which houses high security inmates who are mostly elderly; the search was partially completed and was halted on account of the sheer physical assaults on inmates and the humiliating and degrading treatment they received at the hands of the recruits.

(i) It was established that the sheer physical assaults and torture were mostly undertaken by recruits in the cells; a lot many of the inmates alleged that not less than ten (10) of the inmates would enter a cell whereupon inmates were all expected to stand up, face the wall with their hands on the wall above their heads. Most purported to have just been whipped on the buttocks and upon enquiry on why they were being lashed, it was, in the most part met with 'are you resisting' and this then invited others to now concentrate on inmates that were deemed protestants who would then get a thorough beating. The inspection team witnessed about ten (10) whippings that took place along the corridors on video footage while some were at the Maximum-security block.

(j) It was found that the accusations against Sebilo Sebilo refusing to be searched on the 22nd December 2023 were unfounded and untrue as he never resisted any search. The inmate and others were unjustifiably subjected to physical torture for absolutely no apparent reason but to feed the ego of recruits. Allegations that the inmate refused to be searched by the recruits and uttered a statement that he was not going to be searched by 'newbie officers' whereupon he resisted search by fighting a recruit officer attempting to search him were untrue. There was absolutely no reason why an inmate that has been in custody for a period in excess of six (6) years, who knew that while incarcerated, he was subject to the rules and laws regulating their behaviour, and who, for many years had been subjected to searches and seizure exercises, could suddenly refuse to be searched, assault and 'sleeper front choke hold' (ho faesa) a recruit. Having interviewed his cellmates, it surfaced that there was never any resistance or utterances on Sebilo's part that should have provoked officers to a point of assaulting him. He was in a vulnerable state as things were and one appreciates the suffering that he experienced with a baseless

accusation made. Punching, slapping, kicking, stomping on someone who is under control, under restraint, is inexcusable and morally repugnant. Regardless of why inmates are incarcerated, inmates are human beings and they deserve respect, dignity and human treatment. The only inference that one is compelled to draw in the circumstances is that an attempt was being made to frame the inmates so that the recruits' actions could seem justified.

The conclusion is inescapable that in seeking to torture the inmates, the recruits went out of their way to find some reason, true or false, as justification for such beatings. This to me was not a genuine reason but faked and the justification for interfering with the rights of inmates was an outright lie; it constituted an undue violation of inmates right not to be tortured or be treated in a degrading manner in line with the law. Even if it were so, none of the recruits came forward indicating that they were attacked anyhow by an inmate. On the basis of the evidence gathered, the recruits had an ulterior motive for beating up inmates and there was more to the reason for beating up most of them than meets the eye.

(k) I found out that officers assaulted inmates with complete impunity because their fellow colleagues do not speak up and there seems to be 'a code of silence' that exists amongst officers at the MCCI. The reluctance to tell the truth can be attributed to this practiced and they willfully conspire to keep silent on all human rights violations.

(l) I established that the injuries that the inmates sustained were concerning. They were affected in varying degrees and while some were treated upon referral at hospitals, most inmates did not receive any form of medical care. Of the 650 inmates incarcerated at the MCCI, more than 300 inmates were beaten and tortured, and some were beaten so badly that *inter alia* one inmate, Sihle Sekant'si, was allegedly peeing blood, one Tlotliso Bereng is in a state of disablement with a dislocated spinal cord, another Sebilo Sebilo had an ankle injury and had a Plaster of Paris (PoP) on the foot and was on crutches, some inmates like Litekanyo Nyakane had their backs and legs covered with weals where they had been repeatedly beaten with sticks, while another Makhoali Mahlomola sustained, amongst others, a broken finger.

(m) The medical evidence points to the fact that most inmates sustained lacerations and abrasions to their bodies, mostly concentrated at the back, hands, bottoms and legs.

(n) I found out that the force that was used was excessive, unjustified and disproportionate. It cannot be that even assuming that the LDF officers were recalcitrant, the basis for torturing and beating them to a pulp was just that they refused to be searched. This to me, does not justify the force that was used on them.

(o) I further established that some recruit officers, including Motiki Mohale, Matete Mahao, Lehlohonolo Ralebese, Khosi Khosi Hlalele, Lehlohonolo Thetso Lehlohonolo Posholi, Sepiriti Malefane and Lehlohonolo Moabi in their attempt to give false testimony or information and willfully withhold and conceal information, alleged that the search operation was carried out without any hindrances or obstructions and by them, all was normal in their view.

(p) I established that the evidence of the inmates totally destroyed the credibility of the version provided by the recruits and the report that was given to OC Manaka and his management. They could not provide cogent reasons why more than 300 inmates had been assaulted if at all the version they had shared with the Ombudsman was true and had a basis. Contrary to the evidence of the institution's management, no evidence was given showing that the inmates were insincere when they said they were all assaulted by recruit officers or that inmates resisted searches on their persons. Not one recruit officer came to the fore to indicate that they were infact assaulted anyhow by inmates refusing to be searched. I have no reason to doubt the inmates' evidence in this regard.

(q) It was established that while most, if not all inmates, ended up at the clinic seeking medical attention, they did not receive immediate and adequate healthcare services as the two nursing assistants halted

consultations as patients were overwhelmingly many and they referred those that they deemed critical to be attended by medical officers at government hospitals.

(r) I have established that CO Rats'ele and CO Motanya are culpable for dereliction of duty by abrogating their duties and failing to halt the general search operation when they could not contain the officers that were subjecting inmates to torture; they had a duty of care placed on them; consequently, they created an opportunity for many inmates to be tortured in the manner they were.

(s) Further that senior officers that were on duty are culpable for dereliction of duty by abrogating their duties and failing to halt the general search operation when they heard and established that recruits were subjecting inmates to torture; they had a duty of care towards all inmates and in particular, failed the inmates by not ensuring that a team of MCCI officers is assembled to oversee the search operation by recruits at the institution – even as they suspected that inmates were being beaten, not much effort was put in ensuring there was sufficient oversight over recruits activities. When one listened to the evidence of management officers, the torture incidents were handled casually giving a distinct feeling that the practices employed were not a major concern. In particular, ASP Swatsi was deployed by Superintendent Tsunyane to proceed inside the facility to assist Sgt Nkhapetla following his report to senior officers of the torture incidents; it was confirmed that there were seemingly cries from the blocks of inmates being beaten and all that was done was to just reprimand the recruits to desist from beating inmates without taking any further steps, whereafter they had left. In like manner, a report raising an alarm of the torturous behavior of recruits was provided to SSP 'Molaoa and in his submissions, he indicated that he just called for the lists of inmates that had been beaten.

(t) I also found it irregular for recruits to have been allowed to enter the 'prison blocks' with sticks, which one officer had indicated that even as he saw them carrying sticks, he assumed that recruits would still undertake their duties in the normal manner. As we now know that recruits are disallowed to use any form of weaponry in a search operation, he should have disallowed them from entering the blocks carrying sticks but he never questioned that; this in a way goes to confirm that it was normal for them to carry sticks into the 'prison' when search operations were carried out. I am of the view that a lot more effort should have been placed on ensuring that there were proper controls and oversight over the operation.

(u) CO Rats'ele failed to disclose and misled his superiors into believing that the nine (9) inmates who are all LDF officers were not cooperating under the guise of having a superiority complex hence the recruits beating them up. He failed to report to his superiors that most of the inmates had been tortured and that his version of the report was untrue. This has also led to Government being misled to a point that false information was shared to the public as to the reasons behind the beatings during the general search and seizure operation.

(v) I established that fifty-eight (58) of the recruits have been engaged and employed at the MCCI for many years, were known to the inmates as they interacted with them on a day-to-day basis; and even as they disguised themselves under masks and hats, the inmates could still identify a number of them who subjected them to torture. Their barbaric acts points to their inappropriateness and unreadiness to be correctional officers that can be entrusted with protecting the fundamental rights of inmates; and to this extend, all implicated recruits should be charged criminally under the doctrine of common purpose and should face the consequences of their actions.

The recruit officers identified during the search operation as party to the torturous behaviour were *inter alia*: Officer Motiki Mohale (Ruso), Kaana Mosothoana, Nots'i, Sekokotoana, Thabo Mohale, Tumelo Makhunoane, Lehlohonolo Moabi, Tumelo Thabane, Fubuzana, Mathai, Koloi, Sepiriti Malefane, Thabiso Jane, Tsietsi Tsietsi, Thetso, Mofokeng, Khele, Potsane Potsane, Mofakadolo and one 'Masenyetse (nicknamed Kiss Kiss). Recruits who searched and beat inmates in Block A were Thetso Lehlohonolo Posholi, Nts'ekhe, Lereko Lephoi, Sello Matube, Monyane Motsoalisa, Tsepo Mokhethi,

Lekhoko, Makintane, Nkeo Mohlakola, Thabo Lebone, Tsepo Borocho, Thabiso Jane, Mosola. In Block C, there were Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaisane, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, and Letsielo Makhele. Block B was searched by Molibeli Molibetsane, Mphutlane Ntai, Molaoa Mothabeng, Khosi Hlalele, Potsane Potsane, Lehlohonolo Potsanyane, Thabang Moleleki, Tumelo Makhunoane, Mahooaneng Matjama, Khutlang Telite, Tsepo Nthafa, Matete Mahao, Tsepo Mokhehi, Poloko Mokobocho and Mamasieane. Block D search party was by Kaana Mosothoana, Letlatsa Mokhothotso, Masilo Mokhele, Mosebeko, Kopano Tseka, Thabiso Jane, Tseliso Mochaba, Thabang Moleleki, Samuel Sekhale, Sila, Khutso, Retselisitsoe Felleng, Seapa Matsoso, Liphopho Makhetha, Thabo Mohale, Katleho Fako, Tsietsi Tsietsi, Fukuzana, Molelle, Molatelle, Paseka Mochaba, Tseliso Mochaba, Notsi were party to the search team while the Maximum-Security section was searched by Motiki Mohale, Lehlohonolo Potsanyane, Thabang Moleleki, Samuel Sekhale Kopano Silase, Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaisana, Molelle, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, Monyane Motsolisa, Tsepo Mokhehi Lekhoko, Paseka Mosebeka, Lereko Lephoi, Teboho Mafemekoane, Paseka Mochaba, Sehloho and Tseliso Mochaba.

(w) The identified recruit officers are employed at the MCCI and had been working thereat for many years prior to undergoing training. Some of them had been in the employ of MCCI for four (4) years while others had been working at the institution for up to ten (10) years. The current training offered is just a formality and they are subjected to all the laws ordinarily applicable to all other officers irrespective of the rank they hold. They therefore knew all the procedures and applicable laws that relate and promote the protection of inmates that have to be handled humanely and with dignity. Moreover, at the training institution, it was established that they were now left with just two (2) months of the training course, and as at the time of the inmates beating, they had already completed the curriculum relating to OPCAT, Mandela Rules, Human Rights Act, the LCS Act and other legal instruments intended for the promotion and protection of inmates' human rights. None of the recruits can justifiably then say that they did not know that they were involved in an unlawful act by torturing and beating up inmates in the manner they did.

(x) It was further established *via* the office of the LCS Commissioner that all officers were duly informed, and reminded of their responsibilities towards inmates in a Savingram dated 3 October 2023, which read in part that all officers who continue to subject inmates to inhumane treatment should be prepared to face the consequences of their actions.

(y) I further found that the torturous behaviour was seemingly a practice, *albeit*, unwritten, of all recruits and officers who are charged with the responsibility of searching and seizing all contrabands imported by inmates into the institution. It was established that in the majority of times, when a senior officer passed by officers violating inmates' rights, they normally stop immediately as most senior officers would not condone such behavior. As such, I want to believe that the recruits were engaged in the practice of torturing inmates as they are used to doing but they used excessive force due to the fact that there were inmates that had escaped the night prior thereto. What is even more annoying and baffling is that the inmates subjected to torture had not escaped but were made to bear the consequences of actions of those inmates that had absconded. This can be buttressed by the statements that are said to have been uttered by the said recruit officers enquiring from inmates as to why they did not run away. I was not told of even an attempt to escape by any of the inmates remaining. It never emerged from either one of the many witnesses I engaged. As such, what the recruits were doing was purely an abuse of their power over the inmates.

(z) Per submissions made, I further found that the significant challenges the Commissioner faces trying to combat and control rampant inmates abuse and savage beatings of inmates together with the

resistance to change and reform the facility and constant collusion of officers involved in illegal activities within the facility, is a direct sabotage on him and senior management of the facility; which has come in many forms such as the facilitation of the escape that occurred the night before, together with the use of excessive force that led to grievous bodily harm and an inmate's death; which are all intended to embarrass the Commissioner and senior officers.

(aa) I established that reliance is largely placed on standard operating procedures (LCS Procedure Manual) (undated) which makes provision for cell lockups and the different types of searches in an elaborate fashion and the archaic prison rules at the discretion of management. I was provided with standard practices and elicited that they were generally not followed as expected. In the normal course, the unlocking of cells is by an officer who opens the cell and once counting is concluded in any particular cell, the inmates are locked back in and the search team moves to the next cell. However, on the day in question, the officer that opened a block of cells opened at least four (4) cells at a time to allow the recruits to search.

(ab) I established that the normal practice for unlocking cells and the constitution of such team (chief officer, officer from security unit responsible for the keys and a sergeant) intended to count inmates was adhered to on the morning of the 22nd December 2023; which entailed that inmates' be counted, be locked back in and reconciliation of the numbers be made by the Administration office; however, processes and practices of search operation and oversight function were compromised. The only MCCI personnel that was present during the search operation was the junior security officers responsible for the keys.

(ac) I further found that Officer Liholo, who was on duty on the morning of the assaults, was responsible for opening the cells during the search operation, and in particular, that he opened almost all the blocks interchangeably with CO Kheleli and Mokoara. He continued to open cells for recruits to search despite the aggressive manner of search and beatings he witnessed, which in his view, was abnormal and violated inmates' human rights. I established that even as he saw that inmates were being brutally beaten, he was complicit in his approach and failed to report the abnormal situation to his superiors so that they could take action.

In my view, he failed inmates dismally; vulnerable as they were, they expected of him to protect them inasmuch as he purported that he continued to open many cells at a time to 'enable the recruits to move quicker to other cells which would limit the degree and time spent assaulting inmates' when it dawned on him that they were being beaten up to a pulp. I find it odd that he felt this type of approach would render his conduct less harmless to inmates. I find that Officer Liholo abdicated his responsibility of protecting inmates by continuing to open cell doors to recruits that had gone rogue and subjecting inmates to torture. As a security person charged with the responsibility of opening up the cells, I further find that he acted negligently by causing a fellow colleague who was not on duty and who was neither in his security unit, Chief Officer Kheleli to open Block B, where similar assaults were reported. I established that even though Officer Liholo failed to disclose who was assisting him in opening the blocks, Block A, D and the Maximum were also opened by him. He indicated that he had left the bag of keys at the Centre area in the presence of his supervisor, Sgt Thabo Mohale and he could not say with certainty as to who went to open these blocks. I also established that he opened the blocks interchangeably once Sgt Thabo Mohale left the prison to attend to the allocation of firearms and ammunition for search parties. This further shows the degree of carelessness in the management of institution's keys as it shows that the controls in place are inadequate and measures need to be put in place to manage the processes better.

He elucidated that officers have from time to time, been informed by the LCS authorities not to get involved in search operations if they have not been briefed or been directed to partake in any of such search operations. I have no doubt in my mind that this does not necessarily apply to instances where the lives of inmates are threatened. The rogue recruits were not punishing inmates for indiscretions

committed but were engaged in a brutal assault which any officer should have been expected to intervene in their situation and bring the operation to a halt. Him, together with his other colleagues, while confronted with this situation, failed to act as reasonable persons in their positions as officers within the correctional institution. A reasonable person in his position would have refused to further open cells when it dawned on him that he would be subjecting inmates to further danger. He could have further taken strides to report the matter to superiors who would have then taken steps to ensure that a response team was deployed or failing which, completely halt the operation before many of the inmates were assaulted.

It would not therefore be unreasonable for me to suggest that he was unresponsive and there was a dereliction of duty by him and his other team members. He acted in concert with the recruits as he did nothing to stop them from beating up inmates in the manner they did. This was one major discrepancy and, in my view, it is one thing to have a system or procedure of doing things in place and it is quite another to follow that procedure. The failure to maintain control of block keys did not follow normal practices and did not follow guidelines which placed inmates at a significant risk of harm.

(ad) I established that there were major security breaches in undertaking the search operation exercise; recruits' officers are not allowed the use of *inter alia* any weapons, batons (tonfas, which in the normal course, are kept at the armoury and used to dispel and quell unrests), sticks, knobkerries and sjamboks in undertaking the search; in the majority of cases, they were found utilizing sticks to torture inmates and even resorted to utilizing a heavy gumboot with the thickest sole to hit inmates and this was done following CO Rat'sele's removal of the sticks they were using to beat up inmates. It was observed *via* surveillance videos that the gumboot was used to hit inmates on their backs as they stooped with hands raised above their heads. One of the inmates explained that his back hurt profusely and he struggled to move from the search area in the corridor, back to his cell as a consequence.

(ae) The facility is further compromised as surveillance CCTV infrastructure and security systems are not fully functional and requires urgent redress. There is inadequate and a shortage of resources resulting in inoperative ICT infrastructure and security systems for a 24/7 surveillance of the institution. CCTV surveillance is the backbone of correctional facilities and it is not just necessary to keep inmates in but serves to combat misbehaviour, keep everyone safe for identification of perpetrators of any form of crime committed within the parameters of the facility. I found that it to be reckless and irresponsible for the LCS not to have solicited for additional funding to ensure that the surveillance and security systems are replaced for increasing efficiencies. There should be in place, an effective surveillance CCTV system installed that is consistently maintained so that reviews and assessments of incidents can be made on how inmates are handled or whether the force used is necessary, justified and proportionate.

(af) I further established that there were delays associated in the provisioning of necessary medical healthcare to inmates which amounts to an infringement of their fundamental right to expeditious healthcare services. Inmates have an inherent right to be examined by a doctor and where necessary, to receive medical treatment. They should therefore have been afforded prompt access to medical officers or practitioners. At the time the Ombudsman engaged inmates, it was thirty-eight (38) days following the alleged torture and ill treatment and a majority of the over 300 inmates that had been beaten had not yet received any medical attention on account of invisibility of injuries sustained. It was established that while a few were referred to public hospitals on the day of the beatings, some were examined by the inhouse clinic nurses but the majority were denied referral to see medical doctors on account of invisibility of injuries. It was established that it was untrue that the inmates, and in particular, the LDF members who were beaten, demanded to be taken to private practitioners; they were very comfortable with being treated at MMH, which does not attract any form of costs on the part of the MCCI.

(ag) I further found that the MCCI is under resourced in terms of funding requirements tailored at addressing *inter alia* their shortages of staff, lack of and limited transportation needs, medical healthcare

personnel and drugs. I established that it became virtually impossible to address and provided healthcare services to all affected inmates at hospitals due to, amongst other things, limitations in transport facilities and with a huge contingent of inmates requiring attention, it was only reasonable for the MCCI to arrange for medical officer who would provide adequate healthcare services to inmates within the premises and on availability of resources. Notwithstanding the requirements of section 41(1), the appointed medical officer was still unable to provide such services to the vast majority of inmates; while in other matters, it was established that some of the inmates required specialist treatment which was not ordinarily available at the MCCI. I therefore found that the delays in affording inmates' medical treatment was an infringement of their right to expeditious healthcare services.

(ah) I found it irregular and improper for the MCCI to have denied inmates their right to visitation from their families, friends and legal representatives in accordance with the minimum standards of measure (Mandela Rules) not just on the day the beatings occurred but for some 4 days subsequent thereto. The conduct of the MCCI officers' points to the fact that inmates were badly wounded and they found it prudent to deny them their right to visitation just so they be allowed to recuperate and recover from the wounds suffered prior to being in contact with anyone from outside.

(ai) I established that the deceased Bokang Tsoako was beaten up to a pulp on recapture by correctional officers both at Mohalalitoe and at the MCCI and his injuries characterized the force used which was unjustified and excessive under the circumstances.

(aj) Further, a code of silence culture prevalent at the institution not to disclose incidents related to correctional officers' torturous behavior directed at vulnerable inmates remains and needs to be uprooted. I have found out that the violence perpetrated against incarcerated persons is an epidemic and its prevalence is such a deep-rooted culture that correctional officers ignore direct instructions to desist from such practices. It is very unfortunate, that the officers' instinct for solidarity seems to run very deep to a point that they are unwilling to disclose the primary causes of the deceased's injuries to the Ombudsman. The LCS has to therefore take more direct and assertive action to address the dysfunctional correctional services culture and crack this code of silence.

There also needs to be further steps taken to reduce opportunities for officers to engage in unlawful use of force, collusion to conceal it, tampering of crucial evidence and engagement in intimidation of inmates as potential witnesses.

(ak) Much as some of the senior officers blame a minority group of 'rogue recruits' currently at the training center, who bully inmates, it has been established that the aberrant behavior has been allowed to metastasize throughout the correctional facilities system. It has been established that similar occurrences took place on the 18th December 2023 at the Lepereng correctional institution wherein all inmates were brutally assaulted by recruits from the CSTS. This was never disclosed to the Ombudsman at any point by the LCS authorities and points to a culture of silently treating inmates in an inhuman manner and violating their rights. The LCS has let the system to run amok and this requires that this dysfunctional culture should be addressed and interventions to be employed should end this kind of behaviour.

(al) I have established that some senior officers on duty on the morning of the 22nd December abdicated their responsibility of ensuring that the recruits were supervised by officers from the MCCI as is the norm. I find that senior management officers who were present at the facility derelicted from their duties by failing to protect inmates when they were expected to have done so. They did not find it necessary to oversee the operations and as a result of inadequate controls that would ensure that the risks of grave torture that led to grievous bodily harm are limited, they created an environment where inmates are tortured; they should have, at the very least, have ensured that a team of senior officers were present at all the blocks during the search operation moreso as they knew that recruits had a history of rogue and abusive behaviour directed at inmates. It is therefore irresponsible of them all to hide behind the fact

that they were not duly informed timeously of the operation nor did they have direct instructions from their seniors to partake in the search operation. It has been established that they know that search operations are never communicated in advance to limit possibilities of such information leaking and compromising the entire exercise.

(am) OC Manaka and Commandant Nthako did all that was reasonably possible to ensure that the search operation was undertaken as necessary. The OC had informed his SSPs a day prior to the search operation as per norm so that directions could be given to those in charge. The Commandant had also played his part by directing that the CSTS team assist the MCCI (on its' request for the release of recruit officers) in the normal way searches were undertaken, and under the instruction of two COs and the supervision of the MCCI. I find that both officers did not commit any form of wrongdoing on their part.

(an) I found that the facility operated on the basis of unwritten standards or guidelines associated with the processes and procedures governing the opening of cells and their closure, searches and seizures and the practices of allowing CSTS recruits to undertake searches unsupervised by MCCI supervisors. I have established that a large component of the current challenges stems primarily from inadequate enforcement of existing policies and practices. I have established that the controls in place for the opening and safe locking of cells are inadequate and, in my view, need refinement so that officers rely on written policies *vis-à-vis* current practices that are at the discretion of the leadership and are open to many interpretations and manipulation. I found it necessary that the LCS's policies on the use of force should clearly articulate issues of responsibility and who should take accountability when incidences such as these occur.

(ao) I established that out of convenience, the institution still relied on old repealed Prison Rules of 1957 that were no longer in operation and that although a new correctional services legislation was enacted, secondary legislation in the form of regulations had not yet been enacted for implementation. It therefore means that OCs across all stations, including OC Manaka, largely acted on the basis of standard practices and their discretion or personal whims in addressing any operational challenges that arise, which relate to any matter including searches and other practices. I found out that in the absence of new regulations and rules, there was no uniform approach to addressing some of the challenges as a result.

(ap) I further found that the recruits were handling the inmates in a highly provocative fashion and were thus inciting an aggressive response through their provocative behaviour; however, this never caused any one of the inmates to behave in an untoward manner unexpected. I established that the new approach of undertaking searches is highly inflammatory or inciteful and requires immediate review and redress. It is illegal to handle an inmate without respect and in a degrading manner and in my view, holding inmates with their clothes at the back of the head is highly disrespectful. I have established that it has never been a practice prior hereto for inmates to be subjected to, or been handled in a manner that shows the level of disrespect witnessed by the Ombudsman.

(aq) It was observed on video surveillance that the inmates were now made to stoop or squat when searched with both hands held high up in the air. Inmates have always been required to stand against the wall with their legs apart to enable officers to examine them. The officers have misconstrued the provisions of the old Rule as applied because it does not permit officers to make inmates stoop when searched. I find it inappropriate for officers to expect inmates to stoop with hands held high along the corridor. In my view, the inmates would have already been examined in the cell and no longer pose a threat to the officers. As such, officers are transgressing the rules and should not be allowed to do that which the rules do not permit.

(ar) I further established that the controls in place for the opening and safe locking of cells are inadequate. I have established that a large component of the current challenges stems primarily from inadequate enforcement of existing policies and practices; typical example was the mishandling of cell

keys and security officer in charge not knowing who ultimately opened other blocks of cells together with the fact that they were just left at the center stage upon the departure of Sgt Mohale.

(as) I found that the force used was willful and was intended to cause harm to inmates; it was excessive and unwarranted and the unreasonable use of force by recruits was tantamount to assault and they should be accordingly charged for it. I further established that inasmuch as inmates have a right to pursue criminal charges, no investigation has been lodged with the LMPS on account of the assaults by correctional officers and in pursuance of justice for inmates who were violated, I established that the Commissioner reported the incidences to the COMPOL with the understanding that investigations will be launched following internal inquiries; as such, criminal investigations shall be referred to the LMPS and the DPP.

(at) I established further that the delays by government to harmonize LCS officers remuneration has created complexities around the management of correctional officers and a hostile environment where inmates are treated in a degrading and inhumane manner, where officers are insubordinate to their supervisors and connive with inmates on illegal activities. The Ministry of Law and Justice should expedite harmonization as a means of improving the working conditions of officers and resultant treatment of inmates.

(au) I found that correctional officers are hardly ever offered any training save for the recruit course offered at the CSTS. Regular training of officers by way of workshops, seminars, courses etc. are necessary to keep them abreast with developments in their particular sector internationally. They need to meet their counterparts from other countries and be in a position to exchange experiences, tactics of handling different types of offenders and adopting best practices learnt which do not anyhow violate the dignity and humanity of inmates.

(av) I established that one of the underlying problems that could have culminated in the problem at hand is the overcrowding and understaffing of officers at the facility, which has exacerbated the problem of human rights violations. Overcrowding is a subject that has been broached repeatedly by the Ombudsman and it has been observed that the category of inmates driving serious overcrowding at the MCCI is remand and awaiting trial detainees who are unable to raise bail money and those that have waited for years for their cases to be mentioned or finalized in court. The delays in the justice system for trial prosecutions to ensue and for decisions to be delivered calls for a re-engineering of the criminal justice system to ensure and assist the fast tracking of some of the cases which have taken long to resolve.

(aw) I further found that many of the inmates have all sorts of emotional and mental health issues and inmates indicated that their mental state is aggravated by the physical assaults that they endured.

(ax) I found out that communication from senior management of the decision to undertake a general search operation at short notice could have hindered and prevented the incidents that took place on the 22nd December 2023, and in the absence of which officers withdrew and did not take an initiative to participate in the search operation. The SSPs 'Molaoa and Mahlelebe together with Superintendent Tsunyane should have planned the operation better and ensured that in the mist of the escapees' crisis, there was adequate manpower on the side of the MCCI to oversee the search operation throughout.

The Ombudsman therefore concluded that correctional officers acted inconsistently with all applicable laws and prescripts and further that there was a violation of inmates' human rights occasioned by both human and systemic factors. I preferred the inmates' version to that of correctional officers interrogated for the following reasons:

(a) Correctional recruit officers withheld information and failed to provide a truthful account on what transpired on the day in question; and there was no proof provided by officers alleging that inmates were recalcitrant.

(b) There was sufficient physical proof to support inmates' version of events as evidenced by their injuries sustained and surveillance recordings.

(c) Inmates' version of events was largely coherent, consistent throughout and across all blocks and cells of inmates that alleged to have been tortured and brutally beaten.

(d) They never endeavored to paint all correctional officers as rogue and violators of their rights; they made acknowledgements on officers who sought to protect them when they realized they had been beaten to a pulp. For instance, Sgt Nkhapetla is alleged to have warded off the recruits from continuing to mercilessly beat Sebilo and sought to stop them;

(e) Each one of the inmates related their version of events which was consistent with other inmates in other blocks of cells. Asked why they think they were treated in this manner, they indicated plausible reasons to be the escape of the night before, while others indicated that the evidence points to a well-orchestrated plan to torture and ill-treat inmates, in particular, that it was mainly targeted at members of the LDF who remain incarcerated to date but somehow affected all other inmates in different cells.

(f) On crucial aspects of what transpired on the day in question, inmates' version was corroborated and found support on some facts from the version of the officers at the MCCI. Officers had become complicit and failed to provide appropriate direction, report to their supervisors in a timely manner.

(g) The officers' reliance on standard rules regarding their discipline and inaction under circumstances where recruits were brutally beating inmates raises concern about the culture of brutality towards inmates at the MCCI.

(h) The searches were carried out in an unreasonable, irregular manner and from a procedural perspective, were targeted at specific individuals.

(i) I have failed to establish or find a possible reason why recruits could have acted illegally and outside legal prescripts and the Prison manual as it applies. I have not been able to establish a justification for their actions and I am satisfied that inmates were subjected to torture or inhuman or degrading treatment in total disregard of section 8 of the Constitution and all other legislative prescripts that they ought to observe.

I have considered the evidence in its entirety and have therefore come to a conclusion that the inmates' version of events is more probable than that of the officers. In my view, the dignity of inmates was not respected and was, on the basis of the evidence in total, trampled upon. It is concerning that this infringement happened within sight and presence of correctional officers who were present at the search areas but chose to do nothing about the inhuman treatment to which inmates were subjected to by recruits, who are junior to them. The officers failed inmates as they did not do the necessary supervision expected of officers in their positions. I find these to be a flagrant disregard and neglect of their duties and an unprecedented act of irresponsibility on their part.

For these reasons, I find that the inmates' complaints have merit. I also find that its acts such as these that erode the confidence of inmates in officers and correctional facilities in general. The LCS's image has been severely dented and I want to believe that the treatment inmates are accorded will likely

influence their behaviour to a point that they can become hardened criminals due to the fact that the institution that is intended to assist rehabilitate them and make them better citizens has failed them given the ill treatment they receive.

Having heard evidence from both the inmates and the officers complained about, I have come to a conclusion that the inmates have made out a *prima facie* case for the torture and beatings.

4.0 RECOMMENDATIONS:

The recommendations are as follows:

(a) The Commissioner should take an administrative action against CO Rats'ele and CO Motanya, the CSTS recruits' supervisors. The Ombudsman finds the officers culpable of dereliction of duty by abrogating their duties and failing to halt the general search operation when they could not contain the officers that were subjecting inmates to torture; they had a duty of care placed on them; consequently, they created an opportunity for many inmates to be tortured in the manner they were.

(b) The Commissioner should institute disciplinary action against Officer L. Liholo and Officer S. Mokoara, who opened the cells across all the blocks and were present during the search operation at the time the recruits were abusing and beating up the inmates; they continued to expose inmates to torture and failed to act in a manner befitting that would ensure that inmates were protected; further, that they failed to report the incidents to their superiors at the MCCI even as they saw that the CSTS recruits were aggressive and undertaking the search operation in a manner that infringed on the rights of inmates contrary to section 8 of the Constitution of Lesotho, 1993 (as amended), section 40 of the Correctional Services Act No 3 of 2016 and section 11 of the Human Rights Act No 26 of 1983.

(c) The Commissioner should investigate further the 114 male recruits who abused and mistreated inmates by torturing and beating them up for absolutely no apparent reason. All the 114 recruits acting in concert, should be disciplined in accordance with internal rules and should, at the very least, forfeit their salaries for a period of three (3) months, and at most, be removed from the service.

(d) The LMPS should investigate, and the office of the DPP should prosecute the CSTS officers who caused grievous bodily harm on inmates; in particular, the following officers who subjected inmates to torture beatings and who *inter alia* include: Officer Motiki Mohale (Ruso), Kaana Mosothoana, Nots'i, Sekokotoana, Thabo Mohale, Tumelo Makhunoane, Lehlohonolo Moabi, Tumelo Thabane, Fubuzana, Mathai, Koloi, Sepiriti Malefane, Masilo Mokhele, Thabiso Jane, Tsietsi Tsietsi, Thetso, Mofokeng, Khele, Potsane Potsane, Mofakadolo and one 'Masenyetse (nicknamed Kiss Kiss). Recruits who searched and beat inmates in Block A were Thetso Lehlohonolo Posholi, Nts'ekhe, Lereko Lephoi, Sello Matube, Monyane Motsoalisa, Tsepo Tsepo Tsepo Tsepo Mokhethi, Lekhoko, Makintane, Nkeo Mohlakola, Thabo Lebone, Tsepo Borocho, MokheThabiso Jane, Mosola. In Block C, there were Sepiriti Malefane, Tumelo Thabane, Maese Ramashamole, Mphutlane Ntaisane, MoleleThabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, and Letsielo Makhele. Block B was searched by Molibeli Molibetsane, Mphutlane Ntai, Molaoa Mothabeng, Khosi Hlalele, Potsane Potsane, Lehlohonolo Potsanyane, Thabang Thabang Moleleki, Tumelo Makhunoane, Mahooaneng Matjama, Khutlang Telite, Tsepo Nthafa, Matete Mahao, Tsepo Tsepo Tsepo Tsepo Mokhethi, Poloko Mokobocho and Mamasieane. Block D search party was by Kaana Mosothoana, Letlatsa Mokhothotso, Masilo Mokhele, Mosebeko, Kopano Tseka, Thabiso Jane, Tseliso Tseliso Mochaba, Thabang Moleleki, Samuel Sekhale, Kopano Silase, Khutso, Retselisitsoe Felleng, Seapa Matsoso, Liphopho Makhetha, Thabo Mohale, Katleho Fako, Tsietsi Tsietsi, Fukuzana, Molelle, Molatelle, Paseka Mochaba, Tseliso Mochaba, Notsi were party to the search team while the maximum-security section was searched by Motiki Mohale, Lehlohonolo Potsanyane, Thabang Moleleki, Samuel Sekhale, Kopano Silase, Sepiriti Malefane, Tumelo Thabane,

Maese Ramashamole, Mphutlane Ntaitšana, Thabiso Jane, Tsietsi Tsietsi, Seeiso Makotoko, Sekokotoana, Masilo Mokhele, Thabo Seakhoa, Teboho Mafemekoane, Sello Matube, Monyane Motsoalisa, Tsepo Mokhele Lekhoko, Paseka Mosebeka, Lereko Lephoi, Teboho Mafemekoane, Paseka Mochaba, Sehloho and Tseliso Mochaba.

(e) The LMPS should investigate further the circumstances that led to the death of the deceased Bokang Tsoako, who died at the institution following his rearrest executed by correctional officers; in particular, the sergeants who were present and in office on the afternoon of the 22nd December 2023. The Commissioner should further institute disciplinary action against such correctional officers, that may result in their removal from office for using excessive force on an inmate thereby causing his death. The sergeants who acted in contravention of section 8 of the Constitution of Lesotho, 1993, Section 40 of the Correctional Services Act 2016, Section 11 of the Human Rights Act No of 1983, and the Penal Code should accordingly be criminally charged for the resultant death of the inmate.

(f) The LMPS should investigate further the circumstances that led to grievous bodily harm on Tlotliso Bereng, who was assaulted by officers at the institution and in his cell, which has resulted in his disablement; in particular, the recruits who beat him up on the morning of the 22nd December 2023. The Commissioner should further institute disciplinary action against such correctional officers, that may result in their removal from office for using excessive force on an inmate thereby causing his disability. The officers who acted in contravention of section 8 of the Constitution of Lesotho, 1993, Section 40 of the Correctional Services Act 2016, Section 11 of the Human Rights Act No of 1983, and the Penal Code should accordingly be criminally charged for assault with intent to cause grievous bodily harm.

(g) The DPP should take action against Officer Motiki Mohale, Matete Mahao, Lehlohonolo Ralebese, Khosi Hlalele, Lehlohonolo Thetso, Lehlohonolo Posholi, Sepiriti Malefane and Lehlohonolo Moabi, in their attempt to give false testimony or information and willfully withhold and conceal information in respect of material aspects of the investigation, which is a violation of section 20(b) of the Ombudsman Act.

(h) The Commissioner should take immediate measures to develop standards and hold officers accountable, review and improve practices, processes and procedures regulating search and seizure exercises, the opening and closure practices of cells at the MCCI and other stations including the promotion and protection of inmates incarcerated. The institution lacks adequate written policies around the administration of searches (and procedures for searching non-compliant inmates), maintenance of security, good order, discipline and which have to be conducted with due regard to inmates' dignity and respect.

(i) The Ministry of Law and Justice should take immediate action to promulgate regulations and rules intended to operationalize the Lesotho Correctional Services Act No 3 of 2016 for the latter's efficient enforcement; the regulations should set out procedures necessary to implement provisions of the Act. In the interim, The LCS should develop clear policies and guidelines regulating how cells are opened and from a security perspective, how general searches should be conducted. It is my hope that through further refinement of existing policies, procedures and practices, the LCS will be in a better position to reduce the risk of inmates being subjected to unreasonable force.

It may further be of much help if the LCS were to establish, within the security department, a risk management team responsible for collating, reviewing, assessing and recommending appropriate action to be taken whenever force is used against inmates or vice versa; the key requirements and responsibilities of which should be set out in LCS's policy framework.

(j) The Ministry of Law and Justice should address and significantly improve the working conditions and environment of correctional officers together with related staff, which include the outstanding

harmonization of LCS officers' remuneration packages and which, in my view, will likely bring about positive lasting changes.

Of critical importance, there should also be a segregation of duties within the LCS, which serves as a foundation of effective internal controls. Responsibilities of individual officers and those in authority should be clarified and should not be centrally held. As such, there is a need to overhaul management systems as a whole and the institutional structure should be fit for purpose. Senior officers in the lead should exercise basics of good management practices i.e. coaching, delegating, planning, goal setting and motivating staff on a day to day basis. The delineation of roles within the LCS will ensure that there exists a smooth and efficient day to day operations which will also allow them to be effective leaders.

(k) The Commissioner should stamp out the rampant practices of rogue correctional officers including recruits working in cohorts with other officers to torture inmates. An immediate action plan to root out correctional officers' brutality and violence against inmates should be in place. The LCS should ensure that it takes immediate action to mitigate the risk of detainees by ensuring that its risk management practices are safe and are consistently carried out to the required standard. To this extend, it is recommended that the LCS should inject new blood into the correctional services system and hire recruits starting this new financial year of 2024/2025, which will assist relieve staffing pressures as well as institutional tensions that exist.

The Commissioner should ensure that all culpable officers are subjected to disciplinary action and should face the consequences of their actions; in particular, the recruit officers and instructors who are unfit for the job of rehabilitating offenders.

The Commissioner of the LCS should take adequate steps and measures to discipline all senior officers who failed to undertake their oversight function over the search operation while present at the MCCI.

The Commissioner should ensure that there is always a rapid response team in place during general searches that will guard against similar incidents taking place and that is well equipped to disperse roque officers should similar incidents happen at any of the facilities.

(l) The Commissioner should address factors affecting safety and security highlighted in this report. The systemic issues compromising the safety and security of inmates, inadequate human resources, deficiencies in healthcare services, inadequate transport facilities should be addressed and the Ministry of Law and Justice should support and resource the facility adequately to cater for its needs on an urgent basis.

(m) Correctional officers should be continuously be exposed to training so that they may be empowered on how to handle situations such as the present one. The LCS should invest in better training, more particularly as it deals with inmates' treatment, appropriate and internationally approved standards around search and seizure mechanisms that are not provocative and that do not invoke human rights violations.

(n) The Ministry of Law and Justice together with the LCS should attend to outfitting the MCCI with appropriate surveillance equipment including ICT and CCTV infrastructure and security systems on an urgent basis. Wider use of video surveillance is necessary so that officers know that they are being watched. It is unacceptable to find that some of the surveillance video machinery has not worked and been in disuse for some time due to 'a lack of funds.' Surveillance remains the backbone of correctional facilities security and it is unheard off that such critical equipment remains dysfunctional for elongated periods of time and management does nothing to prioritise and ensure that such systems operate efficiently. Well functional surveillance systems will also ensure that there are more rigorous investigations of complaints lodged by inmates at all times.

(o) The Ministry of Law and Justice should ensure that pecuniary compensation is paid to victims of torture by correctional officers; which should *inter alia* include Tlotliso Bereng, who is now disabled as a result of the torturous beatings and the family of the deceased Bokang Tsoako. What happened to inmate Tlotliso Bereng is horrific and he is now being cared for by his family which now has to take drastic life changing measures at an immeasurable cost; he is in a state of disability as he is now assisted to do everything like a child.

(p) Government should provide redress for the victims who were subjected to torture and ill treatment or their families where appropriate, should obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible for the tortured victims.

(q) No finding of wrongdoing has been established on the part of the MCCI's Officer Commanding, Assistant Commissioner Tsoto Manaka; he is therefore absolved from any form of wrongdoing on his part.

(r) No finding of wrongdoing has been established on the part of the CSTS Commandant, Assistant Commissioner Lipholo Nthako; he is therefore absolved from any form of wrongdoing and liability on his part.

(s) The delays in the justice system for investigations to complete, for trial prosecutions to ensue and for decisions to be delivered timeously calls for a re-engineering of the criminal justice system to ensure and assist the fast tracking of some of the investigations and cases which have taken long to resolve in order to address overcrowding at the MCCI.

(t) Appropriate medical healthcare, including treatment at public hospitals and specialist institutions, should be provided to sick inmates and as the Prison Rules of 1957 and minimum standards of measure dictate, all such medical care should be provided free of charge and or inmate's costs should he opt for a medical practitioner of his own choice.

(u) Inmates emotional and mental health issues which they purported were aggravated by the physical and emotional assaults that they endured should be given attention and a psychiatrist should undertake their assessment in consultation with the rehabilitation unit at the MCCI. I do therefore suggest that there should be additional measures tailored at dealing with inmates' mental health issues and their special needs while they remain in custody.

I have not gone to the extent of engaging with the rehabilitation officers to determine the efforts and measures they have employed in trying to assist the inmates following this incident. I do however note that whatever efforts the office makes may be counter-productive given the ill treatment that inmates have to endure, if this sort of behaviour continues at the MMCI.

(v) Lines of communication should be improved to ensure that planned search operations are communicated well *albeit*, at short notice, to allow for greater participation, limitation of misunderstandings, teamwork, trust and accountability. There should also be better means of communication to enable immediate action to be taken under circumstances where there are incidents of violence against inmates.

(w) The LCS should ensure that inmates rights to being treated humanely, with dignity and respect are upheld. The LCS correctional officers should observe and respect all relevant international treaties and standards minimum rules for the treatment of prisoners and in particular, and of particular significance, inmates should be allowed immediate and regular access to their families, legal representatives and medical doctors, and be kept under humane conditions.

(x) As a prerequisite, the LCS should stop the practice of recruiting and employing individuals prior to offering adequate training to them at the CSTS. The ‘conversion training’ offered to officers many years following their employment does not seem to be helpful. It should also recruit and hire an entirely new breed of officers who will be receptive to change the institutional customs and practices of using excessive force on inmates; appropriate training that meets international best practices, laws and protocols against inhumane and disrespectful treatment to inmates prior to taking up duties at LCS stations should be provided. There should therefore be measures in place to further expand training for correctional officers in dealing with inmates in circumstances where conflicts may arise and how to de-escalate such fights.

(y) The LCS, through the Ministry of Law and Justice, should develop a recruitment modernization program focused on attracting a higher caliber of correctional officers through the use of recruitment, screening and selection tools which will ensure that extensive background checks, psychological and fitness testing are undertaken. This will ensure that inherently criminal minded individuals are excluded from the recruitment and selection processes from the outset.

(z) The Office of the Ombudsman should be empowered to investigate all allegations of human rights violations by law enforcement agencies, including through the allocation of adequate financial and human resources. The Ombudsman’s view is that the torture allegations within the MCCI are widespread, run deep and that the task to investigate the allegations is so huge that she can only manage to scratch the surface. Initially, the intention was to undertake a preliminary investigation that would establish whether there was a *prima facie* case based on allegations made by inmates, which would then inform her decision to undertake a full-fledged inquiry in accordance with the Act. However, due to limitations of resources, and Government’s decision to constitute a commission of inquiry into the torture allegations, the Ombudsman’s report is final and remedial action is that government should appoint, within 30 days, a commission of inquiry into MCCI inmates’ torture, that should be headed by a judge of the High Court. The commission of inquiry should in turn report back to Government within 180 days of its initiation of its investigation.

These recommendations should be implemented within a period of six (6) months from the time of publication of this report.

DELIVERED AT MASERU ON THIS 19TH DAY OF MARCH 2024.



ADV TLOTLISO POLAKI
OMBUDSMAN

5.0 CONCLUSION

Correctional officers, like the police, are in a special position of power over inmates as the latter can do nothing to protect themselves against assaults perpetrated by those entrusted to protect them. If officers expect inmates to abide by the law and act in a civilized manner, they should themselves act as role models – generally, violence by correctional officers begets violence from the inmates. Sadly, in a majority of cases, inmates are the least likely to be believed when they allege that there is maltreatment against them within correctional facilities.

The assaults carried on by LCS correctional officers over inmates are serious crimes which are not necessarily only against the inmates themselves but against the justice system as a whole. We do expect, as the public, a high standard of care and conduct on their part and any form of abuse and excessive force should not be tolerated anyhow. We should never lose sight of the fact that inmates who remain incarcerated are vulnerable and defenceless and should be protected from violence and excessive use of force at all times.

Resort to violence is, apart from being a criminal offence, also not in keeping with respect for human rights and modern internal trends on rehabilitating offenders. Instead, it breeds resentment and resistance on the part of the victim inmates. It turns the otherwise reformable material into hardened criminals. The MCCI is also intended to be a rehabilitation institution and not an institution intended to punish inmates. The assaults and abuse of power of officers over inmates can unavoidably lead to inmates becoming hard core criminals in the process given the treatment they are receiving while incarcerated, which defeats the sole reason as to why they have to be rehabilitated in the first place.

It is my view that the correctional officers were unjustified in using force excessively on the inmates on the morning of the 22nd December 2023, and they cannot invoke any form of circumstances as a justification for subjecting inmates to torture and inhumane treatment.

The LCS should place more focus on the malignant peer pressures that continue to influence the attitudes and actions of some of the correctional officers. I want to believe that having to change embedded institutional culture will be quite a challenging and daunting task for the leadership, but I remain hopeful, however, that new recruitment efforts will yield positive results.

It is my view that the ugly conspiracies intended to cover up correctional officers' violence is an exposition of corruption and a malignancy within the MCCI and which however, remains prevalent at the institution. I remain of the opinion that appropriate training on best practices, treaties and basic rights of detainees tailored at strengthening the rule of law in the treatment of offenders will go a long way in changing mindsets; however, Government and the LCS should invest more energy in overhauling the LCS and in particular, by developing and setting standards against which correctional officers will be able to hold them accountable; this is the only sustainable way in which we can influence the toxic culture of handling inmates differently.

I further wish to reiterate that more focus should also be placed on moving away from unwritten standard practices and guidelines to developing and implementing preventative policies, practices and strategies that will insulate inmates from excessive use of force. In my view, inmates need better treatment from officers together with services if they are going to rehabilitate.

I am further encouraged by the positive steps that Government has already taken, and their commitment to ensuring that the violent actions and malpractices at the MCCI are investigated further through a full-fledged inquiry. I will monitor the implementation of my recommendations closely to ensure that momentum for reform continues and concrete progress is made.

I trust that the investigation will assist Government in introducing necessary interventions that will ensure that the safety and security of inmates is preserved.

Annexure A

List of Legislative prescripts

The OPCAT Protocol

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and as approved by the Economic and Social Council by its resolutions 663 C (xxiv) of 31st July 1957 and 2076 (LXII) of 13th May 1977)

The United Nations Minimum Rules for the Treatment of Prisoners adopted by the UN on 17 December 2015 (commonly known as the Nelson Mandela Rules)

The Constitution of Lesotho 1993 (as amended)

The Human Rights Act No 24 of 1983

The Correctional Services Act 2016

Ombudsman Act No 9 of 1996 (the Act)

List of documents

Letter from Commissioner dated 27th February 2024 – Details of afflicted inmates

Medical Reports of 6 inmates

Letter from the QMMH's Acting Deputy Managing Director – Bereng Tlotliso – dated 19th February 2024

Letter from the QMMH's Acting Deputy Managing Director – Bokang Tsoako – dated 9th February 2024

Letter from the LCS – Submission of particulars in the furtherance of Ombudsman Investigation dated 30th January 2024

LCS internal circular notice No 30 of 2023 dated 16th November 2023

LCS Corrections internal circular Notice No 10 of 2023

LCS Corrections Internal Circular Notice No 26 of 2023 dated 3rd October 2023

Human rights Training Program for LCS [1st – 3rd June 2022]

Human rights Training Program for LCS [23rd – 25th November 2022]

Human rights Training Program for LCS [1st – 3rd December 2021]