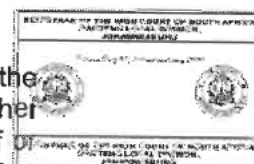


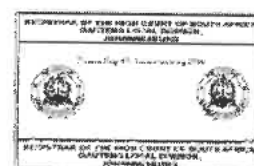
6. The Chairperson may designate one or more knowledgeable persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.
7. The Chairperson or an officer generally or specially authorised thereto by the Chairperson must administer an oath to, or accept an affirmation from, any witness appearing before the Commission.
8. Subject to the provisions of regulation 9, any proceedings of the Commission must, in accordance with section 3(2) of the Act, be open to the public.
9. The Commission may direct that the public or any member thereof must not attend any proceedings of the Commission or any portion thereof, where—
 - (a) this is justified in the interests of the conduct of the proceedings or the consideration of the matter in question;
 - (b) this is justified for the protection of the privacy of any person or of the confidentiality of any information relating to that person, that warrants the hearing to be conducted in-camera;
 - (c) the proper conduct of the hearing requires it; or
 - (d) there is any other reason that would be justifiable in civil proceedings in a High Court.
10. Where, at the time of any person giving evidence before the Commission, members of the general public are, or have been, excluded from attendance at the proceedings of the Commission, the Chairperson may, at the request of such a person, direct that no person may disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.
11. A witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.
12. A witness appearing before the Commission may, in the discretion of the Chairperson and in such manner as may be determined by the Chairperson, be assisted by an advocate or an attorney.
13. An officer, attorney or advocate designated by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the enquiry.
14. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's enquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation must be dealt with by the Commission in

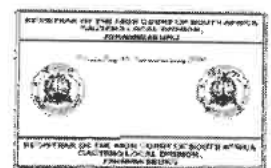


such a manner as not to adversely affect such legal proceedings or investigation.

15. The Chairperson, or any member or any officer may, with a warrant, for the purposes of the enquiry, at all reasonable times enter and inspect any premises and demand and seize any document which is on such premises.
16. No person may, without the written permission of the Chairperson—
 - (a) disseminate any document submitted to the Commission by any person in connection with the enquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.
17. No person may, except insofar as is necessary in the execution of the Terms of Reference of the Commission, publish or furnish any other person with the report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication: Provided that the Premier may authorise publication of any such report or part thereof.
18. No person may insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the proceedings or findings of the Commission.
19. Any person who—
 - (a) wilfully hinders, resists or obstructs the Chairperson, any member or any officer in the exercise of any power contemplated in regulation 15; or
 - (b) contravenes a provision of regulation 5, 10, 16, 17 or 18, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months, or both such fine and imprisonment.











Printed by the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001,
for the **Gauteng Provincial Administration**, Johannesburg.

Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

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**IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg**

CASE NO: 2025-125365

In the matter between:

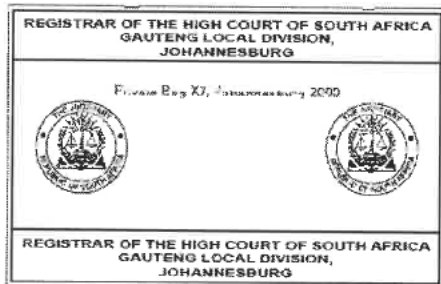
ORGANISATION UNDOING TAX ABUSE NPC Plaintiff / Applicant / Appellant

and

HELEN MARGARET BOTES ,CITY OF JOHANNESBURG PROPERTY COMPANY SOC LTD,CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Defendant / Respondent

Annexure 06

NOTE: This document was filed electronically by the Registrar on 29/7/2025 at 12:29:40 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**



COMMISSION OF INQUIRY INTO USINDISO BUILDING
HEADED BY JUSTICE SISI KHAMPEPE



**COMMISSION OF INQUIRY INTO CIRCUMSTANCES SURROUNDING
THE DEATH OF AT LEAST 77 PEOPLE AND DOZENS MORE
OTHERS INJURED AND HOMELESS AT THE CORNER OF ALBERT
AND DELVERS STREETS MARSHALLTOWN, JOHANNESBURG
CENTRAL (REGION F)**

Report: Part a(i)

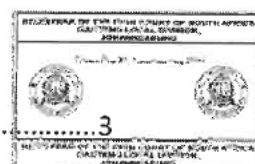
Date: 30 April 2024

**COMMISSION OF INQUIRY INTO CIRCUMSTANCES SURROUNDING THE DEATH
OF AT LEAST 77 PEOPLE AND DOZENS MORE OTHERS INJURED AND
HOMELESS AT THE CORNER OF ALBERT AND DELVERS STREETS
MARSHALLTOWN, JOHANNESBURG CENTRAL (REGION F)**

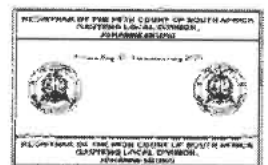
**REPORT ON PART (a) (i) REGARDING CIRCUMSTANCES SURROUNDING THE
DEATH OF AT LEAST 76 PEOPLE AND DOZENS MORE OTHERS INJURED AND
HOMELESS AT THE CORNER OF ALBERT AND DELVERS STREETS
MARSHALLTOWN, JOHANNESBURG CENTRAL (REGION F)**

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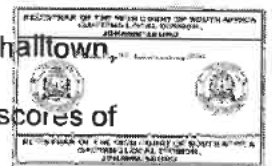


COMMISSION OF INQUIRY INTO CIRCUMSTANCES SURROUNDING THE DEATH OF AT LEAST 77 PEOPLE AND DOZENS MORE OTHERS INJURED AND HOMELESS AT THE CORNER OF ALBERT AND DELVERS STREETS MARSHALLTOWN, JOHANNESBURG CENTRAL (REGION F)

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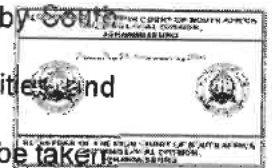
INTRODUCTION

1. On 31 August 2023, a fire erupted in the early hours and engulfed the Usindiso building situated at the corners of Delvers and Albert Streets in Marshalltown, Johannesburg ("Usindiso building"), killing at least 76 people, injuring scores of others, including women and children. Many victims of the fire who survived were displaced.
2. On 13 September 2023, and exercising his powers in terms of section 2 of the Provincial Commissions Act, 1 of 1997, read with section 127(2)(e) of the Constitution, the Premier of Gauteng Province, Mr Andrek (Panyaza) Lesufi, established the Commission of Inquiry to inquire into the circumstances surrounding the fire at the Usindiso building.
3. The report deals, amongst others, with the mandate of the Commission, how it discharged its mandate, an overview of the evidence heard by the Commission relating to the history of the Usindiso building, circumstances that led to its occupation by those affected by the fire, the condition of the building just before the fire, and the consequences of the fire. It concludes with a summary of the factual findings and recommendations.



MANDATE OF THE COMMISSION

4. The mandate of the Commission was split into two parts. This report concerns the first Part of the two parts, Part (a)(i) of the Terms of Reference ("TOR"), in terms of which it was required to inquire into the circumstances surrounding the fire at the Usindiso building in a Provincial Gazette dated 13 September 2023 and to make findings as to who must shoulder the liability or responsibility for the state of affairs, deaths and injuries, as well as what lessons can be drawn from those circumstances and, taking account of the investigations by South African Police Services ("SAPS") and other relevant competent authorities, and to make recommendations in so far as the appropriate steps that must be taken and by whom and any other matter the Commission considers necessary or appropriate to address any relevant matter arising in relation to the Terms of Reference.



COMMISSIONERS, PARTICIPANTS AND TIMELINES

5. Justice Sesi Khampepe was appointed as a member and Chairperson of the Commission, with Advocate Thulani Makhubela and Ms. Vuyelwa Matilda Mabena as assistant commissioners. Advocate IAM Semanya SC, Advocates N Moloto, and R Matiza were appointed as Evidence Leaders. Seanego Attorneys were appointed as the Secretary to the Commission.
6. The Socio-Economic Rights Institute of South Africa ("SERI"), a public interest law clinic registered under the Legal Practice Act 20 of 2014, represented itself as an entity and the Inner-City Federation, a self-organizing coalition of tenants and residents of inner-city buildings. Norton Rose Fullbright ("Norton Rose Attorneys") represented the Johannesburg Fire Victims Support Group.

Mncedisi Ndlovu-Sedumedi Attorneys ("MNS Attorneys") represented the City of Johannesburg, its entities and officials ("COJ").

7. On 28 October 2023, SERI successfully brought an application for the recusal of Commissioner Makhubela on the grounds that there was a reasonable apprehension that he would not bring an impartial mind to the proceedings. The evidence was that Advocate Makhubela had published over a period of more than five years sentiments that were inimical to foreign nationals. The evidence was that he also supported anti foreign agitations by Operation Dudula.
8. In terms of the original Proclamation, the commencement date of the Commission was 1 October 2023 to 30 November 2023 for Part (a)(i) of the Commission's TOR and 1 January 2024 to 31 March 2024 Part (a) (ii) of the Terms of Reference. These timelines were later changed, with Part (a)(i) ending on 30 April 2024 and Part (a)(ii) ending on 30 August 2024.
9. The extension was necessitated by the need to obtain another venue for the hearings because, on 27 October 2023, the COJ declared the original venue secured for the hearings unsafe.



THE EVIDENCE

Living conditions at Usindiso building

10. The Commission heard the evidence of fifty-nine (59) witnesses, including four (4) expert witnesses. The Commission permitted the evidence of two (2) witnesses to be heard in camera. The evidence of thirty-nine (39) witnesses was read into the record, while the statements of two hundred and eighty-one (281) witnesses were admitted into the record. The Commission received the evidence

of the chain of custody documents relating to the deceased bodies, cause of fire and forensic experts from the SAPS in terms of section 212 of the Criminal Procedure Act, 51 of 1977. The nature of the evidence heard by the Commission follows.

11. The Usindiso building was erected in 1954 as a "Pass Office" for "natives" and under the heading "Non-European Affairs Department". After the new democratic dispensation, it fell under the ownership and control of the City of Johannesburg ("COJ"). In July 2003, the COJ let the Usindiso building to Usindiso ministries for ten years. Usindiso ministries used the building as a shelter for abused women and children.
12. After the lease expiry, the Usindiso ministries ran out of funding and eventually abandoned the shelter in 2017. During 2018, members of the public moved in forcibly but were soon forcibly removed by the COJ. An audit conducted by the Department of Social Development of the COJ recommendation, in December 2018, that the shelter be shut down, which was not done. During December 2018, members of the public moved into the Usindiso building again.
13. In early 2019, the COJ, accompanied by the Department of Home Affairs ("DHA") and the SAPS, raided the Usindiso building. The raid revealed distressing living conditions under which people resided at the Usindiso building. The living conditions continued until the occurrence of the fire on 31 August 2023.
14. The residents did not receive basic municipal services such as water, electricity, and waste management from the COJ. The residents used firefighting connections and equipment, such as fire extinguisher hoses, to draw water for



domestic use. The residents were illegally connected to the electricity grid with uncovered cables.

15. The building was partitioned with highly flammable material to divide the living space and to create shacks. Suppliers of the combustible building material were stationed on the south side of the building.

16. The built-in emergency evacuation features like passageways and doors were blocked. Creating living spaces along the passageways reduced the width of some evacuation passageways. Emergency passageways were blocked with chained and locked steel burglar gates to secure residents and their property.

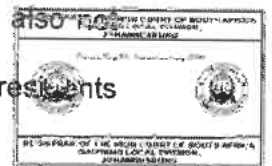


The safety features of the building were compromised, with exit doors being welded and, therefore, not operable as escape routes.

17. Some stairwells and toilets were converted into rooms to house some families in the building. Residents converted bathrooms with no windows into living quarters and spaza shops. The lack of ventilation and the combustible material increased the fire load, and smoke and fire did not have an escape outlet.
18. On all the floors, firefighting and fire suppression equipment was either enclosed within newly constructed rooms, deinstalled, not working, vandalized, or tampered with to supply potable water, precluding their use for firefighting purposes.
19. The building became a crime-infested site, with witnesses testifying to the fact that there would be gunshot fire in the building, bodies of people killed in the building, and people who would run into the building to avoid any possible arrest after committing crimes. Children as young as 15 years old were abused and

trafficked as prostitutes. Drug peddling was common, with evidence pointing to some of the drug lords making incomes of up to R50 000,00 per day.

20. The integrity of the structure of the building was compromised when the building was vandalized before the fire by the removal and recycling for cash of steel reinforcement material supporting the building structure, namely, columns, pillars, and slabs. The vandalization of the building extended to tampering with and removing firefighting, sanitation, and potable water connections and installation materials, further compromising the safety of the building, which was also not designed for residential purposes, and necessitated that the former residents obtain water from the firefighting installations for their domestic needs.



21. A fair number of tenants in the building were undocumented foreign nationals from countries like Tanzania, Malawi, Zimbabwe, Mozambique, Lesotho, and Kenya.
22. The COJ admitted to becoming aware of the distressing living conditions and that no steps were taken to address any of the above from at least 2019 until the fire on 31 August 2023.

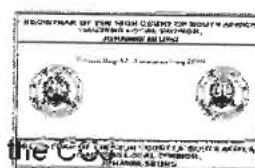
Cause of the fire

23. The fire was caused by witness X, who, being high on the crystal methamphetamine drug and on the ground floor, assaulted an individual to the point of strangulating him to death and set him alight with petrol to conceal the evidence of the murder.
24. Expert evidence from SAPS confirms that the fire originated from the ground floor and that no evidence of ignitable liquids was detected.

Deceased

25. Seventy-six persons (76) persons met their unfortunate demise in the Usindiso fire, of which fifty-seven (57) were positively identified, and nineteen (19) have not yet been identified. Of those who were positively identified, twenty-three (23) were South African; twenty (20) were Malawian; six (6) were Zimbabweans; four (4) were Tanzanian; and four (4) were Mozambican. Scores of others were injured and left homeless.

The integrity of the building



26. A practising structural engineer, Mr Prendolin Moodley, was engaged by the CC to conduct a visual assessment and report on the structural integrity of the building. He recommended that the structure be temporarily condemned as its integrity is compromised and not fit for occupancy until a full structural engineering assessment is complete. He also expressed the opinion that it would be more feasible to demolish than reconstruct the building.

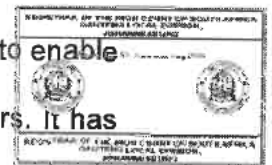
Department Of Home Affairs And Border Management Authority

27. The DHA conducted a status determination, verified those affected and provided assistance. It verified 99 survivors as South African, all of whom it assisted in reapplying for documentation lost in the fire. It also identified 78 undocumented foreign nationals and requested the embassies of the affected nationals to assist their citizens.
28. In November 2023, the DHA arrested and charged 33 illegal immigrants found at Hofland and had them detained at the Johannesburg Court. In terms of an order of the South Gauteng High Court On 7 December 2023, the South Gauteng High

Court issued an order interdicting the DHA from deporting illegal immigrants found at Hofland and who were victims of the fire until their appearance before the hearings of the Commission, the detainees were to be kept in the country until their appearance before the hearings of the Commission.

29. The Commission also heard the evidence of the Border Management Authority ("BMA"). Its evidence was that it is responsible for detecting and preventing illegitimate movement of people within the border enforcement area.

30. It will deploy a force of approximately 400 in May 2024 with technology to enable the force to respond by interception and apprehension of transgressors. It has now initiated engagement with Mozambique, Lesotho, Zimbabwe and the Kingdom of Eswatini to collaborate on cross-border movement of people. It has plans to redevelop the Beitbridge, Lebombo, Maseru, Kopfontein, Ficksburg and Oshoek ports of entry on a private partnership basis. It will engage with conveyancers such as bus companies for cross-border movements to request valid passports when travellers procure bus tickets and during bus boarding, as well as local farms and game reserves to assist with managing illegal cross-border movements.



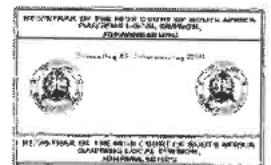
31. While its mandate has been priced at R2.9 billion, it only has an approved budget of R250 million.

EXPERT EVIDENCE ON IMMIGRANTS

32. Undocumented foreign nationals both died and were injured in the fire at Usindiso. The Commission heard the evidence of immigration experts subject to the recognition that migration policy and enforcement fall outside of the remit of a Provincial Commission.

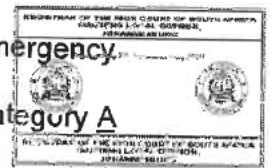
33. The evidence of the experts is that the DHA suffers from severe operational shortcomings which contribute to the status of illegal immigrants; immigrants have a positive impact on the economy and job creation; the total number of immigrants in South Africa is in line with those of many other countries; the immigrants are often blamed for lack of service delivery.
34. The experts recommend overhauling immigration policies with a progressive slant towards facilitating the movement of people and goods.

FACTUAL FINDINGS

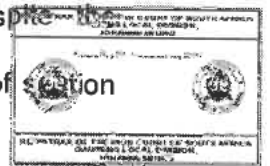


35. The building was never zoned for residential purposes.
36. At the time of the fire, the Usindiso building had a high prevalence of crime.
37. The Usindiso building was abandoned by the COJ and the Johannesburg Property Company (SOC) Limited ("JPC") at least since 2019. The building was vandalized by the removal and sale for cash of the steel reinforcement material supporting the columns, pillars and slabs. The COJ and JPC never attended to repairs and maintenance of the building. The Usindiso building showed signs of disrepair and danger to life and property. It became liable to be demolished within the meaning of section 12(1)(b) of the Building Regulations and Building Standards Act, 1977.
38. The absence of doors swinging in the direction of escapes due to being welded together, and the blocking of passageways, escape routes and stairwells is evidence of contraventions of sections 13(1)(a), (2)(a), (3) and (4) of the Emergency Services By-laws.

39. The vandalization of the building by removing all firefighting installations and equipment to retrieve steel to sell to recyclers for cash and usage for domestic water supply is evidence of the contravention of section 16(1)(a) of the Emergency Services By-laws.
40. The failure of the Chief Fire Officer to issue a notice designating the Usindiso building as requiring an emergency evacuation plan is evidence of the contravention of section 17 of the Emergency Services By-laws.
41. The response time of 11 minutes, alternatively 19 minutes by the Emergency Management Services of the COJ to the fire at Usindiso building, a category A building, is evidence of the infringement of SANS 10090 issued in terms of the Fire Brigade Act 99 of 1987, which prescribes a response time of not more than 8 minutes for a category A building.
42. The use of firefighting connections to source water for domestic use due to the disconnection of potable water supply is evidence of the contravention of the Water By-laws and section 1 read with section 3 of the Water Services Act, 108 of 1997.
43. The accumulation of waste on and around the building and the COJ/s failure to remove the waste, keep the building free from waste, and prevent the building from being used as a dumping site is proof of contravention of sections 27(1); 70(1) and (2); 73(2); 74(1) of the Waste Management Services By-laws.
44. The evidence referred to in paragraphs 36 to 43 above is evidence of the COJ's failure to implement and a contravention of the provisions of section 7 of the Problem Properties By-laws.



45. The accumulation of waste, the presence of unhygienic and unsanitary conditions, the existence of overcrowding, and the occupation of the building without a sufficient supply of potable water, coupled with the COJ's failure to prevent, eliminate, and remove such public health hazards and nuisances is evidence of the contravention sections 5(2); 6; 7(2); and 38; of the Public Health By-laws. The evidence on overcrowding also shows a clear breach of the National Building Regulations, GN R2378 in GG 12780 of 12 October 1990.
46. The continued presence of illegal connections of electricity despite the disconnection effected by the COJ is evidence of the contravention of section 15(2) of the Electricity By-laws.
47. X admitted to having caused the fire when, after strangulating a victim, he sought to conceal the murder by setting his victim's body on fire, which then triggered the conflagration that ensued.
48. The consequences of the fire would have been mitigated had the City complied with its legal obligations as owner and municipality.
49. Law enforcement at the Usindiso building was virtually absent, and there was no political accountability taken by the officials of the City for the condition of the building both at the time and in the aftermath of the fire.



RECOMMENDATIONS

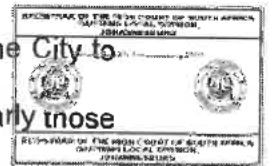
50. At an appropriate place, the City must consider putting a plaque in memory of the deceased and bearing the names of those who perished in the fire, and whose identities would have been established when the recommendation is implemented.

51. The process for demolishing the Usindiso building must be seen to its full and final implementation.
52. All contraventions of the national Acts and the By-laws have been established, and the City must engage in an independent process to determine who must bear responsibility or liability for each of the contraventions found in our report and to report any attendant criminal conduct to the relevant authorities for further investigation.
53. The Board of Directors of the JPC must consider taking appropriate action against Ms Botes, the Chief Executive Officer of the JPC for the total disregard of managing the Usindiso building despite knowledge of the disastrous state since at least 2019.
54. X, Y and their cohorts must be probed further for possible prosecution for multiple murders and attempted murders, arson, the obstruction of justice, and assault with intent to do grievous bodily harm to those victims where an appropriate case can be made.
55. The SAPS must be requested to investigate Mr Mongameli Mnyameni and Mr Mbangiseni Mbedzi regarding the allegations made by the residents about their possible involvement in the construction of shacks in and/or collection of rent from the residents of Usindiso building.
56. Psycho-social support must be continued in respect of the victims who still need it to deal with the trauma that was caused by the fire.
57. Calls by both SERI and Norton Rose Attorneys for monetary compensation to the victims and their families, as well as for assistance to be provided for housing



and gainful employment, though understandable, fall outside the ambit and mandate of the Commission given the terms of reference of the Commission as framed.

58. The process by the DHA to replace identity documents destroyed in the fire must continue for those entitled to them.
59. There ought to be a coordinated system to synchronize and harmonize the cooperation between the various City entities to offer an effective and consistent service delivery, which the Constitution and relevant statutes enjoins the City to do, and the City entities must adhere to the By-laws of the City, particularly those aimed at protecting the inhabitants of the City from harm.
60. Given that the role and powers of SAPS and JMPD in dealing with crime are not the same, the heads of law enforcement, namely JMPD and SAPS, must take steps to ensure an integrated and complementary approach to effective crime prevention and investigation. The heads of law enforcement, namely JMPD and SAPS, must also review their operations to ensure compliance with laws and By-laws.
61. Those detained at Lindela to give evidence before the Commission may be processed in the ordinary course. No further evidence from them will be required to discharge the mandate of the Commission under Part (a)(i) of the Terms of Reference.
62. The mayor should consider the position of the MMC for the Department of Human Settlements and Public Safety, whose political responsibility or lack of oversight conduced to bring about the disaster that was Usindiso and that the accounting officers of the City's entities, namely, the JPC, Johannesburg Water, City Power,



and PIKITUP must be subjected to disciplinary processes where there is evidence of the contraventions of their duties, which, if they had been performed, would have avoided the Usindiso building tragedy.

LIABILITY AND RESPONSIBILITY

63. The COJ and its entities, including JPC, must bear the responsibility, in part, for what ultimately became the tragedy of the 31 August 2023 fire. In the limited time that the Commission was to probe the circumstances surrounding the fire and its aftermath, there was no opportunity to drill down to the individuals in the various entities who must bear responsibility and/or accountability.
64. While desperate living conditions of the residents of the building exacerbated the outcome of the fire, some partial and contributory apportionment of wrongdoing must follow. This is important to vindicate the rule of law, which must apply equally to all.
65. The further police investigation into the conduct of X and Y and their accomplices, who bear equally some liability and responsibility regarding the fire and the tragedy, must continue.

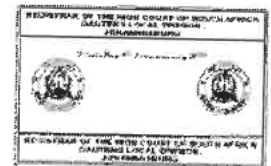


LESSONS LEARNT

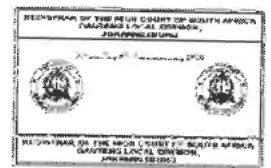
66. No case amply demonstrates the consequences of failure to comply with the obligations the law placed on a municipality and owner compared to the calamity that was Usindiso, precisely in part because the City contravened the laws and the By-laws. This magnifies the gravity of the problem and must be avoided in the future.

GLOSSARY

1. **BMA:** Border Management Authority
2. **COJ:** City of Johannesburg Metropolitan Municipality
3. **CPA:** Criminal Procedure Act 51 of 1977
4. **CPF:** Community Policing Forum
5. **DHA:** Department of Home Affairs
6. **DR:** Death Register
7. **EMS:** Johannesburg Emergency Management Services
8. **FBA:** Fire Brigade Services Act 99 of 1987
9. **Fire Ops:** Fire Operations South Africa (Pty) Limited
10. **GFIS:** Group Forensics and Investigation Services
11. **GDP:** Gross Domestic Product
12. **ICF:** Inner City Federation
13. **JPC:** Johannesburg Property Company (SOC) Limited
14. **JMPD:** Johannesburg Metropolitan Police Department
15. **JOBURG WATER:** Johannesburg Water (SOC) Limited
16. **JOSCHO:** Johannesburg Social Housing Company (SOC) Limited
17. **LINDELA:** Lindela Repatriation Centre
18. **MNS:** Mncedisi Ndlovu & Sedumedi Attorneys Inc, legal representatives of the COJ
19. **MSA:** Local Government: Municipal Systems Act 32 of 2000
20. **MFMA:** Local Government: Municipal Finance Management Act 56 of 2003
21. **NRF:** Norton Rose Fulbright South Africa Inc, legal representatives of the Johannesburg Fire Victims Support Group
22. **PIKITUP:** Pikitup (SOC) Limited
23. **SAPS:** South African Police Service



- 24. **SANS:** South African National Standards
- 25. **SYSTEMS ACT:** Local Government Municipal Systems Act 32 of 2000
- 26. **SERI:** Social Economic Rights Institute of South Africa



COMMISSION OF INQUIRY INTO CIRCUMSTANCES SURROUNDING THE DEATH OF AT LEAST 77 PEOPLE AND DOZENS MORE OTHERS INJURED AND HOMELESS AT THE CORNER OF ALBERT AND DELVERS STREETS MARSHALLTOWN, JOHANNESBURG CENTRAL (REGION F)

REPORT ON PART (a) (i)

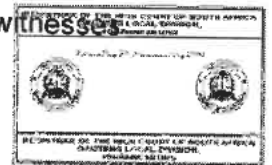
A. INTRODUCTION

1. On 31 August 2023, around 01h00, a fire erupted and engulfed the Usindiso building situated at the corners of Delvers and Albert Streets in Marshalltown, Johannesburg ("Usindiso"), killing at least 76 people, injuring scores of other including women and children. Many victims of the fire who survived were displaced.
2. In the exercise of his powers, in terms of section 2 of the Provincial Commissions Act, 1 of 1997, read with section 127(2)(e) of the Constitution, the Premier of Gauteng Province, Mr Andrek (Panyaza) Lesufi, established the Commission of Inquiry to inquire into the circumstances surrounding the fire at the Usindiso building in a Provincial Gazette dated 13 September 2023. The Commission's Terms of Reference split the Commission's assignment into two parts. The Commission is required in relation to Part (a)(i) to make findings as to who must shoulder the liability or responsibility for the state of affairs, deaths and injuries, as well as what lessons can be drawn from those circumstances and, taking account of the investigations by South African Police Services ("SAPS") and other relevant competent authorities; and to make recommendations in so far as the appropriate steps that must be taken, and by whom and any other matter the



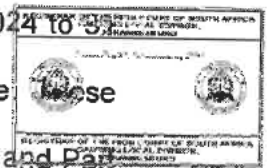
Commission considers necessary or appropriate to address any relevant matter arising in relation to the Terms of Reference.ⁱ

3. To the Terms of Reference were added Regulationsⁱⁱ published in a Provincial Gazette, Extraordinary, dated 13 September 2023, which addressed matters relating to the conduct of the proceedings of the Commission and the various oaths which were to be taken by anybody close to the workings of the Commission; procedures for witnesses before the Commission and circumstances under which interested participants can cross-examine witnesses with the permission of the Chairperson of the Commission.
4. On 17 October 2023, the Rules governing the proceedings of the Commission were published in a General Notice 1193 of 2023.ⁱⁱⁱ The Rules concerned themselves with the witnesses presented by the Evidence Leader and implicated persons, the process by which implicated persons should be informed and advised on how they are to deal with the evidence implicating them and matters such as the order of evidence of witnesses to be presented before the Commission and matters related to the proceedings generally.
5. I was appointed as a member and Chairperson of the Commission with Advocate Thulani Makhubela and Ms. Vuyelwa Matilda Mabena as assistant commissioners; Advocate IAM Semanya SC together with Advocates N Moloto, R Matiza were appointed as evidence leaders; Seanego Attorneys Incorporated were appointed as the Secretary to the Commission. The Socio-Economic Rights Institute of South Africa ("SERI"), a public interest law clinic registered in terms of the Legal Practice Act 20 of 2014 and a non-governmental organization that placed themselves on record as representing themselves as an entity as well as representing the Inner City Federation, a self-organizing coalition of tenants, and



residents of inner city buildings; Norton Rose Fulbright Attorneys ("Norton Rose Attorneys") participated in the hearings of the Commission on behalf of the Johannesburg Fire Victims Support Group; and Mncedisi Ndlovu-Sedumedi Attorneys ("MNS Attorneys") held instructions and represented the City of Johannesburg ("the COJ or City") as well as its officials.

6. The life of the Commission, in terms of the original Proclamation, had its commencement date, being 1 October 2023 to 30 November 2023, in relation to Part (a) (i) of the Commission's Terms of Reference and 1 January 2024 to 31 March 2024 with respect to Part (a) (ii) of the Terms of Reference. These timelines were later amended, with Part (a) (i) ending on 30 April 2024 and Part (a)(ii) ending on 30 August 2024, in terms of Proclamation Notice 152 of 2023 dated 18 December 2023.
7. The Commission set about its preparatory work in the first week of October 2023. This involved the appointment of investigators, the legal team and the setting up of the secretariat. It also entailed procuring and preparing offices, the hearing venue and associated materials and equipment. The Commission also began with the work of organising evidence and witnesses in October 2023.
8. The hearings of the Commission commenced on 26 October 2023 and were not without its challenges.
9. The first challenge was that after the commencement of the hearings, and on 27 October 2023, the Commission was issued a non-compliance certificate by the Johannesburg Emergency Management Services ("EMS"), who pointed to the venue as having insufficient capacity to seat all interested public and media members.



10. The second was that on 28 October 2023, SERI brought an application for the recusal of Commissioner Makhubela. The application rested on undisputed evidence that there was a reasonable apprehension, held by a reasonable person armed with evidence, that Commissioner Makhubela will not bring an impartial mind to the conduct of the hearing. The evidence was that Commissioner Makhubela had posted sentiments on social media that were hostile to foreign nationals for five or more years. The evidence was that Commissioner Makhubela associated himself with social media messages that were inimical to foreigners in the country.



11. Norton Rose Attorneys have filed several letters of complaint. We have considered them and the responses from the Evidence Leader and the Commission. By way of illustration, we point to a few.
12. Norton Rose Attorneys, in their submissions, filed a complaint regarding the limited capacity of the building to house members of the public and various participants, which they concede was a complaint that was addressed. The other complaint in the Norton Rose Attorney's submissions was that the fire victims were only assisted with transport some ninety-three (93) days after the initial request for assistance was made. The other complaint related to not being allowed to make opening statements at the commencement of the hearings. Norton Rose Attorneys was afforded an opportunity, and the opportunity was taken before leading the evidence of the victims. We are satisfied that the Commission and the Evidence Leader made the best effort to address what Norton Rose Attorneys complained of in their letter dated 28 October 2023 and the response given by the Commission dated 26 January 2024. In its submissions, Norton Rose Attorneys states, "*With respect, it is unlikely that the*

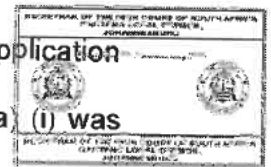
evidence leaders on behalf of the Commission, would have had sufficient capacity to facilitate the large scale data gathering process during the allotted time for Part A."

13. On 15 and 29 November 2023, Norton Rose Attorneys made a formal request for the Commission to issue an urgent directive that the conduct of the authorities in forcibly removing the fire victims from their temporary emergency accommodation be terminated immediately and that the fire victims be permitted to remain where they are, pending meaningful consultation and due process, and further that they be afforded 15-day window period within which to consult their clients. The Commission informed Norton Rose Attorneys that, in its considered view, such directives would fall outside the remit of its mandate. A directive of a Commission has no force of law. Ultimately, the relief that Norton Rose Attorneys sought for its clients was a Court interdict, a power the Commission does not have. The request for an inspection in loco of the Usindiso building was not acceded to in the light of the expert opinion by the COJ that the Usindiso building was structurally unsafe to accommodate such an inspection.
14. The EMS notice necessitated the adjournment of the proceedings to obtain a suitable venue. In the third week of November 2023, the Commission secured the Sci-Bono Discovery Centre, where the hearings of the Commission resumed for the first time on 5 December 2023 with the hearing of the recusal application.
15. On 20 December 2023, as Chairperson, I ruled that Commissioner Makhubela must be recused. The papers relevant to Commissioner Makhubela's recusal application and ruling on that application are attached to the report in a separate file. In the light of the Ruling recusing Advocate Makhubela as an assistant



Commissioner, and on 26 April 2024, the Premier issued an amendment to the Terms of Reference dated 16 January 2024 authorizing the continuation of the Commission as a two-member Commission.

16. On or about 7 February 2024, Commissioner Makhubela instituted proceedings on an urgent basis to review and set aside the ruling of the Chairperson in the South Gauteng High Court. The matter is pending adjudication at the date of the report.
17. The first hearings of the Commission after the hearing of the recusal application commenced on 17 January 2024. The hearing of evidence on Part (a) (i) was completed on 27 March 2024. Evidence was tendered mainly by the former residents of the Usindiso building who survived the fire; officials of the City of Johannesburg; the SAPS; the Border Management Authority ("BMA"); the Department of Home Affairs ("DHA"), and other public officials.
18. The oral evidence of fifty-nine (59) witnesses, including four (4) expert witnesses, was heard. In addition, and to avoid a possible risk of harm were their identities to be disclosed, the Commission permitted the evidence of two (2) witnesses to be heard in camera. Most of this evidence was heard in person, and some was through a virtual medium, particularly from the detained witnesses at Lindela Repatriation Centre ("Lindela") and Professor Alan Hirsch.
19. The Evidence of thirty-nine (39) witnesses was read into the Record, and the statements of two hundred and eighty-one 281 witnesses were admitted into the record.
20. Section 212 of the Criminal Procedure Act, 51 of 1977 ("CPA") was also employed to have documentary evidence in the form of affidavits completed by officers of



the state, admitted as prima facie proof on its mere production before a Court or a tribunal that an act, transaction or occurrence referred to therein did not take place or did. With parity of reasoning, the application of section 212 of the CPA would apply to a Commission. The body of the section 212 statements included that of L A Mokubela ("Mokhubela"), M Mongane ("Mongane"), and M A Senye ("Senye") attached to the Chemistry Section Fire Investigation Subsection and the chain of custody documents relating to the deceased bodies.

21. The Rules of the Commission provide for notices to be given to parties implicating by the evidence of others, informing them of that evidence and of the opportunity to apply for leave for cross-examination.
22. The Commission also sent Rule 3.3 notices to MNS Attorneys regarding COJ officials Messrs Rapulana Monageng ("Monageng"), Fana Mnguni ("Mnguni") and Lucas Thipe ("Thipe"); Mongameli Mnyameni ("Mnyameni"), Mbangiseni Mbedzi; and Operation Dudula. Of these, only Operation Dudula failed to heed the invite. The COJ successfully brought an application for the cross-examination of Wynand Engelbrecht ("Engelbrecht"), an expert in firefighting. SERI brought a successful application for the cross-examination of Helen Botes ("Botes"). Norton Rose Attorneys brought a successful application for the cross examination of the following COJ officials: Monageng, Mnguni, Arsenio Cossa, Mnyameni, Neil Rooi, Botes, Ernst Mbanu and Siphindile Sikhosana.
23. The record of the oral evidence led before the Commission comprises 2 603 pages of transcribed evidence, and the Exhibits forming part of the record total of approximately 6000 pages.



24. We wish to express our appreciation for the work and support the Commission has enjoyed from everyone who has assisted the Commission, including the investigators, witnesses, secretariat, SERI, ICF, Norton Rose Attorneys Johannesburg Fire Action Group, COJ, and the Evidence Leader. A special thanks to those legal representatives who gave their time pro bono (including members of the Pan African Bar Association of South Africa, those of the Johannesburg Society of Advocates, and the members of the KZN Society of Advocates) in the compilation of the witness statements as well as those who made appearances before the Commission. We acknowledge the support and assistance Mr Chinnah has given to the fire victims.
25. We have considered the submissions by SERI, Norton Rose Attorneys, and MNS Attorneys. They are in agreement with the introductory parts submitted by the Evidence Leader. There was no material difference besides the phraseology of the various submissions.
26. This report accepts, as a matter of law, that a Commission's work is inquisitorial and not adversarial; there are no parties before the Commission; that its role is investigative as opposed to adjudicative; that it cannot make binding orders, but rather recommendations which the executive may or may not accept. The factual findings are made regarding evidence that had no rebuttal to it. The factual findings and conclusions we arrived at are supported by the evidence presented before the Commission.
27. We have also considered the evidence of the victims of the fire regarding their suffering; loss of their belongings; lack of adequate shelter for women and children; some with physical disabilities; lack of adequate sanitary facilities; personal safety; detention; and the violent flooding at the temporary



accommodation facilities at Denver. These matters are of grave concern to the Commission.

B. LEGAL FRAMEWORK

28. Before dealing with what the evidence before the Commission reveals; what factual findings can be made; what recommendations would be appropriate to make in the light of the facts found to have been established; what decisions can be drawn from the facts established; who must shoulder the liability or responsibility for the state of affairs, deaths and injuries; what lessons can be learnt, we deem it prudent first to place the legal framework that is germane to the issues the Commission was mandated to inquire into.



The Constitution of the Republic of South Africa, 1996 ("the Constitution.")

29. Purely by way of chronology, section 1 of the Constitution^{iv} provides that the Republic of South Africa is one sovereign, democratic state founded on the following values: (a) human dignity, the achievement of equality, and the advancement of human rights and freedoms (b) non-racialism and non-sexism; (c) supremacy of the Constitution and the rule of law; (d) universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.
30. Section 2 of the Constitution,^v in turn, provides that the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations it imposes must be fulfilled.
31. In section 8(1), the Constitution^{vi} provides that a Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all state organs.

32. In turn, section 10 of the Constitution^{vii} entrenches everyone's inherent dignity and demands that their dignity be respected and protected. To this must be added the right to life that everyone has under the Constitution as provided for under section 11^{viii} thereof.
33. Section 12(1)(c) of the Constitution^{ix} states in plain language that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.
34. Regarding the environment, section 24 of the Constitution^x provides, in part, that everyone has the right to an environment that is not harmful to their health or wellbeing.
35. With regard to housing, section 26 of the Constitution^{xi} entrenches everyone's right to adequate housing. There is an internal limitation that the state must take reasonable legislative and other measures, within its available resources to achieve the progressive realization of the right. It also provides that no one may be evicted from their home or have their home demolished without an order of the Court made after considering all the relevant circumstances. Furthermore, no legislation may permit arbitrary evictions.
36. The objectives of local government include ensuring the provision of services to communities in a sustainable manner, the provision of a democratic and accountable government for local communities, and the promotion of a safe and healthy environment. Again, this is provided for in section 152 of the Constitution, with an internal limitation that this object should be realized within its financial and administrative capacity.



37. Organs of state are defined in section 239 of the Constitution^{xii} to include any department of state or administration in the national, provincial or local sphere of government or any other functionary or institution exercising a public power or performing a function in terms of the Constitution or a provincial Constitution, or exercising a public power or performing a public function in terms of any legislation, but does not include a Court or a judicial officer.

Local government: Municipal Systems Act 32 of 2000 ("the Systems Act") and Municipal Finance Management Act 56 of 2003 ("MFMA").



38. The Systems Act defines "basic municipal services" as "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would engage public health or safety or the environment." "Municipality" refers to, inter alia, an entity as described in section 2 of the Systems Act. Section 2, in part, then provides that a municipality is an organ of the state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998.^{xiii}
39. Section 11(3)(i) of the Systems Act places an obligation on the municipality in the exercise of its legislative or executive authority to promote a safe and healthy environment.^{xiv}
40. The municipal entities are established as wholly owned entities of the COJ in terms of section 86C of Chapter 8A of the Municipal Systems Act 32 of 2000 ("the MSA"). The MSA, read with the MFMA, makes the following relevant provisions:
- 40.1. In terms of section 81(1), if a municipal service is provided through a service delivery agreement in terms of section 76 (b), the municipality

remains responsible for ensuring that, that service is provided to the local community;

40.2. In terms of section 93H read with 93J of the MSA, the oversight of municipal entities vests with the board of directors, which is empowered to appoint the chief executive officer; and

40.3. In terms of section 93 of the MFMA, the chief executive officer of a municipal entity is its accounting officer and is accountable to the board for its management.



41. Sections 63, 94, 96, 171 and 172 of the MFMA provide for the duties and liabilities of the accounting officers of the COJ and municipal entities in the following terms:

"63. Asset and liability management.

(1) *The accounting officer of a municipality is responsible for the management of*

(a) *the assets of the municipality, including the safeguarding and the maintenance of those assets...*

94. Fiduciary duties of accounting officers.

(1) *The accounting officer of a municipal entity must*

(a) *exercise utmost care to ensure reasonable protection of the assets and records of the entity;*

...

96. Asset and liability management.

(1) The accounting officer of a municipal entity is responsible for the management of

(a) the assets of the entity, including the safeguarding and maintenance of those assets; and

(b) the liabilities of the entity.

171. Financial misconduct by municipal officials.

(1) The accounting officer of a municipality commits an act of **financial** misconduct if that accounting officer deliberately or negligently—



(a) contravenes a provision of this Act;

(b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;”

Water Services Act, 108 of 1997 (“The Water Services Act”)

42. Section 1 of the Water Services Act defines basic sanitation and water supply as the prescribed minimum standards applicable to households, “including informal households”.

43. Section 3 of the Water Services Act establishes the following rights and obligations in respect of access to basic water supply and sanitation:

“(1) Everyone has a right of access to basic water supply and basic sanitation.

(2) Every water services institution must take reasonable measures to realise these rights.”

Fire Brigade Services Act ("FBA")

44. The Fire Brigade Services Act, 99 of 1987 ("FBA")^{xv} provides for the establishment, maintenance, employment, coordination, and standardization of fire brigade services as well as matters connected therewith. In section 3 of the FBA, a local authority has the power to establish and maintain a service in accordance with the requirements of the FBA.
45. In section 15 of the FBA, the Minister has the power to make Regulations regarding, amongst others, the safety requirements to be complied with on the premises to reduce the risk of a fire or other danger or to facilitate the evacuation of the premises in the event of such danger.
46. Section 16 of the FBA gives a local authority the power to make By-laws for its area of jurisdiction regarding any matter deemed necessary or expedient to employ its service effectively.
47. The Minister has the power provided in section 17 of the FBA to make a written notice to any local authority to comply with the requirement, standard or direction in case of failure.
48. Section 5 allows a local authority to appoint a person with the prescribed qualifications and experience as Chief Fire Officer to be in charge of its service.
49. For the enforcement of the provisions of the FBA, a Chief Fire Officer may at any reasonable time enter any premises in the area of the municipality concerned to determine whether the provisions regarding the safety requirements in order to reduce the risk of fire or other danger; regarding the use, manufacture, storage or transportation of explosives, fireworks and like substances or regarding any



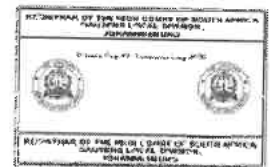
matter which he may deem necessary or expedient in order to achieve the objects of the FBA. This is in terms of section 18 of the FBA.

The National Building Regulations and Building Standards Act 103 of 1977

50. Section 12 of the National Building Regulations and Building Standards Act 103 of 1977 places obligations on a municipality regarding buildings and or lands that pose a danger to the public in the following terms:

“12. Demolition or alteration of certain buildings.

- (1) *If the local authority in question is of the opinion that—*

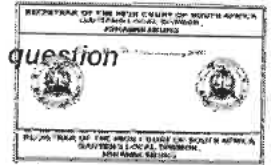


- (a) *any building is dilapidated or in a state of disrepair or shows signs thereof;*
- (b) *any building or the land on which a building was or is being or is to be erected or any earthwork is dangerous or is showing signs of becoming dangerous to life or property,*

it may by notice in writing, served by post or delivered, order the owner of such building, land or earthwork, within the period specified in such notice to demolish such building or to alter or secure it in such manner that it will no longer be dilapidated or in a state of disrepair or show signs thereof or be dangerous or show signs of becoming dangerous to life or property or to alter or secure such land or earthwork in such manner that it will no longer be dangerous or show signs of becoming dangerous to life or property: Provided that if such local authority is of the opinion that the condition of any building, land

or earthwork is such that steps should forthwith be taken to protect life or property, it may take such steps without serving or delivering such notice on or to the owner of such building, land or earthwork and may recover the costs of such steps from such owner.

- (2) *If the condition of any building or the land on which a building was or is being or is to be erected or any earthwork is such that it is dangerous to life or property, the owner of such building, land or earthwork shall forthwith notify the local authority in question thereof.*



- (3) (a) *If the condition of any building or the land on which building was or is being or is to be erected or any earthwork is such that it is dangerous or is showing signs of becoming dangerous to life or property, the local authority, irrespective of whether it was notified in terms of subsection (2), may by notice in writing, served by post or delivered, order the owner of such building, land or earthwork to instruct at the cost of such owner an architect or registered person to investigate such condition and to report to such local authority on the nature and extent of the steps to be taken, in the opinion of such architect or registered person, in order to render such building, land or earthwork safe.*

- (b) *The local authority in question may by notice in writing, served by post or delivered, order that any activities be stopped or prohibit the performance of any activities which may increase the danger or*

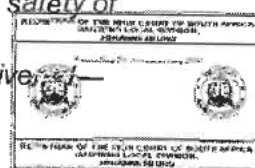
hinder or obstruct the architect or registered person referred to in paragraph (a) from properly carrying out the investigation referred to in that paragraph.

[Para. (b) substituted by s. 3 (a) of Act No. 49 of 1995.]

(c)...

(d)...

- (4) If the local authority in question deems it necessary for the safety of any person, it may by notice in writing, served by post or delivered by hand, order the owner of any building to remove, within the period specified in such notice, all persons occupying or working or being for any other purpose in such building therefrom, and to take care that any person not authorised by such local authority does not enter such building;*



- (a) order the owner of any building to remove, within the period specified in such notice, all persons occupying or working or being for any other purpose in such building therefrom, and to take care that any person not authorised by such local authority does not enter such building;*
- (b) order any person occupying or working or being for any other purpose in any building, to vacate such building immediately or within a period specified in such notice.*
- (5) No person shall occupy or use or permit the occupation or use of any building in respect of which a notice was served or delivered in terms of this section or steps were taken by the local authority in question in terms of subsection (1), unless such local authority has granted permission in writing that such building may again be occupied or used.*

- (6) Any person who contravenes or fails to comply with any provision of this section or any notice issued thereunder, shall be guilty of an offence and, in the case of a contravention of the provisions of subsection (5), liable on conviction to a fine not exceeding R100 for each day on which he so contravened.

National Building Regulations and Building Standards Act, 1977 (Building Regulations")

51. In the relevant parts, SANS 10400 – T:2011 provides as follows:



"T1

- (1) Any building shall be so designed, constructed and equipped that in case of fire-
- (a) The protection of occupants or users, including persons with disabilities, therein is ensured, and that provision is made for the safe evacuation of such occupants or users;
 - (b) The spread and intensity of such fire within such building and the spread of fire to any other building will be minimized;
 - (c) Sufficient stability will be retained to ensure that such building will not endanger any other building, Provided that in the case of any multi-storey building no major failure of the structure system shall occur;
 - (d) The generation and spread of smoke will be minimized or controlled to the greatest extent reasonably practicable; and
 - (e) Adequate means of access, and equipment for detecting, fighting, controlling and extinguishing such fire, is provided.

- (2) The requirements of sub regulation (1) shall be deemed to be satisfied where the design, construction and equipment of any building complies with SANS 10400-T; provided that where any local authority is of the opinion that such compliance would not comply with all the requirements of sub regulation (1), such local authority shall, in writing, notify the owner of the building of its reasons for its opinion and may require the owner to submit for approval a rational design prepared by an approved competent person.

T2 OFFENCES



- (1) Any owner of any building who fails to-
- (a) Provide sufficient fire extinguishers to satisfy the requirements of sub regulation T1(1)(e), or who installs fire extinguishers that do not comply with the relevant South African national standard, or who fails to ensure that such fire extinguishers are installed, maintained and serviced in accordance with SANS 10105; or
- (b) Maintain any other provision made to satisfy the requirements of sub regulation T1(1)(e) shall be guilty of an offence."

52. In terms of the National Building Regulations, GN R2378 in GG 12780 of 12 October 1990 the following is provided:

- (1) Any room or space shall have dimensions that will ensure that such room or space is fit for the purpose for which it is intended.
- (2) The floor area of any dwelling unit shall not be less than that necessary to provide one habitable room and a separate room containing toilet facilities.

...

M1 provides in relation to stairways as follows:

“(1) Any stairway, including any wall, screen, railing or balustrade to such stairway, shall

(a) Be capable of safely sustaining any actions which can reasonably be expected to occur and in such a manner that any local damage (including cracking) or deformation do not compromise its functioning;

(b) Permit safe movement of persons from floor to floor; and

(c) Have dimensions appropriate to its use.”



CITY OF JOHANNESBURG BY-LAWS (“COJ By-laws”)

Land Use Scheme 2018

53. In terms of section 15 of the COJ Land Use Scheme, 2018, if the use of a building which has been approved, erected and used for a specific purpose is to be changed, the use for such different purpose shall not be commenced with until the provisions of the scheme relating to such different purpose have been complied with, including the submission of an amended building plan and/or site Development Plan. Though commencing in 2018, in terms of section 3(2), the 2018 scheme recognises the rights pre-existing in terms of the 1979 scheme, provided an application for the preservation of the rights is submitted within 24 months from the inception of the current 2018 scheme.

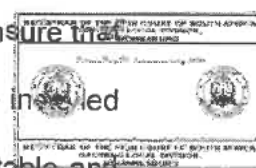
Emergency Services By-laws

54. Pursuant to the provisions of the FBA, the COJ published By-laws for the prevention and fire protection, firefighting equipment and emergency evacuations, certificate of fitness for certain buildings, water supply for firefighting purposes, storage of flammable substances, as well as fire brigade services in Chapter 9 of the By-law.^{xvi}
55. In terms of section 95 of the Emergency Services By-laws of the COJ municipality, the council established a fire brigade service as contemplated in section 3 of the FBA. The service includes the appointment of a Chief Fire Officer and the necessary members of the service, ensuring that they are properly trained and that they acquire and maintain the necessary vehicles, machinery, equipment, devices, and accessories to ensure that the service is effective and able to fulfil its objects.
56. Section 96 of the By-law describes the objects of the service to be the prevention of the outbreak and spread of fire; to fight and extinguish any fire that endangers any person or property; to protect any person and property against any fire hazard or other danger contemplated in the By-laws; and to rescue any person and property from any fire or other danger contemplated in the By-laws.
57. Section 3(1) of the Emergency By-laws states, *"No person may make or allow any other person to make a fire that may endanger any person, animal or property."* Apart from such conduct satisfying the common law requirements of arson, it is a criminal offence in terms of section 107 of the EMS By-laws.
58. Section 13 of the By-law deals with the duty of an owner of the building to ensure that any escape door in that building is fitted with hinges that open in the direction



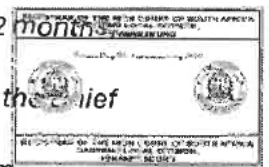
of escape; and is equipped with a fail-safe locking device or devices that do not require a key in order to exit; such owner must ensure that any door on a feeder route is a double-swing type door; and is not equipped with any locking mechanism as well as that no person may obstruct or allow the obstruction of any escape route from any premises that may prevent or hinder the escape of any person or animal from the premises in an emergency.

59. Section 16 provides for the installation and maintenance of firefighting equipment. The section provides that every owner of a building must ensure that all firefighting equipment and service installations on the premises are installed in a manner and condition ready for use in an emergency; that all portable and mobile fire extinguishers and all hose reels on the premises are serviced and maintained in accordance with SABS 0105 and SABS 1475; that all firefighting equipment are (i) maintained in a good working condition by a competent person; (ii) are inspected and serviced in accordance with manufacturer specifications and (iii) are inspected by an appropriately registered and competent person at least once every 12 months; and a comprehensive service record of all firefighting equipment and service installations on the premises is maintained and furnished to the Chief Fire Officer every 12 months.



60. Section 16 (2) provides that every person who inspects, services or repairs any fire-fighting equipment or service installation must, on completion of such installation or service, certify in writing that the equipment or installation concerned is fully functional and furnish the certificate to the owner of the premises.
61. Section 18 of the by-laws stipulates the duties of the owner or occupier of the designated premises and provides that:

“(1) The owner, or with the approval of the Chief Fire Officer, the occupier, of any premises designated in terms of section 17 must - (a) prepare a comprehensive emergency evacuation plan for the premises in accordance with the guideline contained in Schedule 1 and submit it to the Chief Fire Officer in triplicate within 30 days of service of the designation notice; (b) establish a fire protection committee comprised of occupiers of the premises to assist the owner or occupier to organise a fire protection programme and regular and scheduled fire evacuation drills; (c) ensure that the emergency evacuation plan is reviewed- (i) at least every 12 months; (ii) whenever the floor layout of the premises is changed; and (iii) whenever the Chief Fire Officer requires revision of the plan; (d) ensure that an up-to-date emergency evacuation plan, any fire protection programmes, evacuation drills and any related documents are kept, maintained and all times available in a control room on the premises for inspection by any member of the Service; and (e) identify a place of safety off the designated premises, but in the immediate vicinity of the premises, where persons who reside or work on the premises may gather during an emergency for the purpose of compiling a list of survivors. (2) The Chief Fire Officer may in respect of premises designated in terms of section 17 - (a) require the review of any emergency evacuation plan by the owner or occupier and may provide directions in this regard; 36 (b) instruct the owner or occupier to implement a fire protection program that the Chief Fire Officer believes is necessary to ensure the safety of persons and property on the premises; and (c) require the owner or occupier to provide the Chief Fire Officer with a certified copy of the emergency evacuation plan and any associated documents at a specified time and place. Part 4: Certificates of fitness for certain buildings.”



62. Furthermore, section 107 provides that:

“Any person who – (a) contravenes or fails to comply with any provision of these by-laws; (b) fails to comply with any notice issued or displayed in terms of these By-laws; (c) fails to comply with any lawful instruction given in terms of these Bylaws; or (d) obstructs or hinders, or improperly influences or attempts to do so, any authorised representative or employee of the Council in the execution of his or her duties or performance of his or her powers or functions under these By-laws; is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment, to imprisonment not exceeding one day, for every day during the continuance of such offence, after a written notice has been issued by the Council, and served on the person concerned, requesting the discontinuance of such offence.”



63. SANS 10090 stipulate that the response time to a category A fire must be not more than 8 minutes.

Water services^{xvii}

64. There is a general provision, namely, section 17 of the COJ By-laws, placing responsibility on an owner for non-compliance in respect of all or any matters relating to the installation, and if the owner is not the consumer who actually uses the water services, the owner is jointly and severally liable with such consumer in respect of all matters relating to the use of any water services on his or her property, including any financial obligation.

65. Section 54 (3) and (4) provide that where there is an existing connection pipe for fire extinguishing services, it may only be used for that purpose. It prevents the take-off of any kind from such a connection pipe intended for firefighting.
66. Regarding contraventions of the water Services By-laws, section 119 provides that it is an offence for any person to inter alia, contravene or fail to comply with any provisions of the COJ-By-laws.

Electricity

67. Sections 14 and 15, read with section 20 of the Electricity By-laws of 1999, provide that there shall be no tampering with service connections and that when tampering exists, the engineer must disconnect the electricity supply constituting a danger or potential danger to others and not reconnect it until the danger or potential danger is removed. Where the supply is reconnected after it was disconnected despite the danger or potential danger, the owner of the building must ensure that no electricity is consumed on the premises and notify the engineer.^{xviii}



Waste Management By-laws

68. Below are the relevant provisions of the COJ's Waste Management By-laws, 2021:

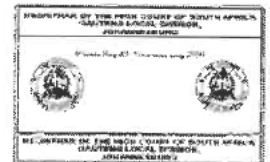
"24. Environment.—*Everyone has the right -*

- (a) *to an environment that is not harmful to their health or well-being;*
- and*

- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
- (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

...

27. Removal and disposal



- (1) The owner or occupier of premises on which bulky waste is generated must ensure that such waste is removed or disposed of in terms of this By-law within 14 days after generation thereof at a waste handling facility determined by the Council unless Council determines otherwise.
- (2) At the request of the owner or occupier of any premises, the Council may remove bulky waste from the premises concerned, provided that the Council shall be able to do so with the refuse removal equipment available and that the costs involved are paid by the owner or occupier of the premises concerned.

...

70. Accumulating waste

- (1) *Every owner and occupier of premises must keep those premises clean and free from any waste which is likely to cause a nuisance, harm to human health or damage to environment.*
- (2) *If waste accumulates on premises so as to constitute a nuisance, or in such a way that it is likely that nuisance will be created, harm to human health or damage to the environment may be caused, the Council may at the owner's or occupier's cost remove the waste or cause the waste to be removed.*
- (3) *Where the Council removes such waste, the owner of the premises or the occupier shall be liable for the tariff charge of collecting and removing the waste.*



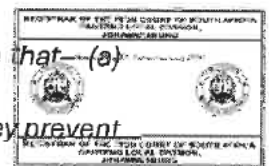
73. Prohibition of littering

- (1) *No person may—(a) cause litter; (b) sweep any waste into a gutter, onto a road reserve or onto any other public place; (c) disturb anything in, or remove anything from any receptacle which has been placed for the purposes of collecting litter in such a manner as to cause any of the contents of the receptacle to spill from it; or (d) allow any person under his or her control to do any of the acts referred to in paragraph (a), (b) or (c).*
- (2) *Notwithstanding the provisions of subsection (1), the Council, or the owner in the case of privately owned land to which the public has access, must within a reasonable time after any litter has been*

discarded, dumped or left behind, remove such litter or cause it to be removed from the premises concerned to prevent the litter from becoming a nuisance.

- (3) *The owner of private land to which the public has access must ensure that sufficient containers are provided to contain litter which is discarded by the public.*

- (4) *If the provisions of subsection (1) are contravened, the Council may direct, by way of a written notice to persons responsible that—(a) they cease the contravention, in a specified time; or (b) they prevent a further contravention or the continuation of the contravention; (c) they take whatever measures the Council considers necessary to clean up or remove the waste, and to rehabilitate the affected facets of the environment, to ensure that the waste and any contaminated material which cannot be cleaned or rehabilitated is disposed of lawfully.*



- (5) *The Council may in respect of the notice contemplated in subsection (4)(c) state that the person must, within a maximum of 5 working days remove the waste or litter, provided the Council may grant a further 2 days, on request of the person, to remove the litter or waste.*

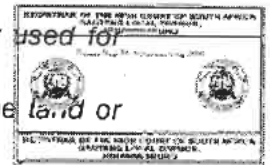
- (6) *A person who owns land or premises, or who is in control of or has a right to use land or premises, may not use or permit the use of the land or premises for unlawful dumping of waste and must take*

reasonable steps to prevent the use of the land or premises for that purpose.

- (7) *If the Council elects to remove the waste or litter the person concerned shall be liable for the cost of such removal.*

74. Duty to prevent land or building used for dumping

- (1) *The owner or occupier of any land or building must take reasonable measures to prevent such land or building from being used for dumping and to clean up all waste dumped on or at the land or building.*



- (2) *The measures required in terms of subsection (1) may include: (a) fencing-off the land or building; (b) erecting "no dumping" signs; and (c) security measures to monitor and enforce anti-dumping measures on the land or building.*

- (3) *If any land or building is used for dumping and, in the reasonable opinion of the Council, the owner or occupier has failed to take reasonable measures to prevent dumping and to clean-up waste dumped on the property, the Council may direct the owner or occupier to fence-off the land or building and/or to erect notices to prevent further dumping.*

- (4) *Should the owner or occupier of any land or building, fail to comply, with a directive under subsection (3), the Council or authorised official may take reasonable measures to prevent dumping on the*

property and may recover its costs of doing so from the owner or occupier.

- (5) *Failure to comply with a directive issued in terms of subsection (3) is an offence.*

Public Health By-laws^{xix}

69. Sections 1, 5 to 7; 16; 19 and 38 of the Public Health By-laws, 2004, read with Schedule 1:



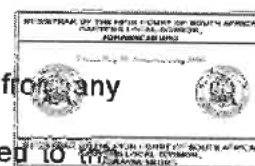
- 69.1. define a public health hazard as any actual threat to public health including unsanitary conditions and circumstances which make it easier for an infectious disease to spread;

- 69.2. define a public health nuisance as the use of any premises in any manner that increases the risk of the occurrence of a public health hazard or comprising any aspect of public health, including conduct in Schedule 1, which includes:

- 69.2.1. the accumulation of refuse;
- 69.2.2. the usage of a building in a manner dangerous to health;
- 69.2.3. a dwelling occupied without sufficient supply of potable water within a reasonable distance; and
- 69.2.4. any building, room, or structure to be used wholly or partly by a greater number of persons than will allow 11.3 m³ of free air space and 3.7 m² of floor space for each person aged ten (10)

years or more and 5.7 m³ of free space and 1.9 m² for each person less than ten (10) years of age;

- 69.3. prohibit any person from creating a public health hazard or public health nuisance; and
- 69.4. every owner or occupier must report, prevent and eliminate a public health hazard or health nuisance, including obtaining a Court order to demolish the building;
- 69.5. requires every owner to ensure that all waste drainage pipes from any bath, hand-basin, toilet, shower or kitchen sink to be connected to the municipal sewer in an approved manner and to provide every resident with adequate readily available potable water supply at all times.



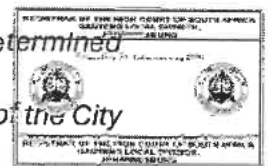
Problem Properties By-law

- 70. The Problem Properties By-law, 2014, which provides as follows:

"7. Powers of authorised official

- (1) *The authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof a Problem Property, provided that one or more of the following circumstances exist at the property:*
 - (a) *the building appears to have been abandoned by the registered owner or responsible person with or without the consequence that rates or other municipal services charges have not been paid for a period of more than three (3) months during any period of twelve (12) months.*

- (b) *the building does not comply with existing legislation and/or is not maintained in accordance with the health, fire-safety and town planning and building control By-laws;*
- (c) *the building has no or limited use of lifts installed in the building;*
- (d) *is overcrowded as envisaged in any law, By-law, town planning scheme in operation or any other relevant legislation;*
- (e) *is unhealthy, unsanitary, unsightly or objectionable as determined by the personnel in the Building Control Sub-Directorate of the City of Johannesburg with formal architectural qualifications and experience ;*
- (f) *has overloaded or illegally connected electricity supply;*
- (g) *has illegally connected water supply;*
- (h) *has no electricity supply;*
- (i) *has no water supply;*
- (j) *has illegal connections to sewer mains;*
- (k) *has overflown or blocked sewer drains;*
- (l) *is subject to complaints of criminal activities, including but not limited to drug dealings, prostitution, money laundering;*
- (m) *is occupied illegally;*



- (n) where refuse, waste material, rubble, scrap or any similar material is accumulated, dumped, stored or deposited, unless so stored in terms of a valid approval by the local authority;
- (o) is partially completed and the responsible person has not complied with a notice issued in terms of Section 11 of the National Building Regulations and Building Standards Act, 1977;
- (p) is structurally unsound;
- (q) is a threat or danger to the safety of the occupiers, registered owners, responsible person or the public in general.

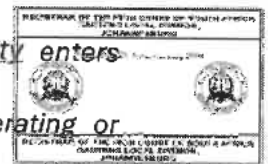


8. Notice to comply

- (1) The authorised official shall serve a written notice on the responsible person that the property has been declared a Problem Property, requiring such responsible person within a specified period to comply with the provisions of these By-laws and any other relevant legislation or By-laws and the responsible person shall forthwith comply with the notice.
- (2) Despite the provisions of sub section (1), and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building or property is such that steps should immediately be taken to protect the safety and health of persons or property, he or she may take such steps as may be necessary in the circumstances to alleviate that condition, without serving or delivering such notice on or to the responsible

person and may recover the cost of such steps from the responsible person.

- (3) If the authorised official deems it necessary for the safety of any person, he or she may, by notice in writing, and subject to any applicable legislation:
- (a) Order the responsible person of any Problem Property to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in or on the Problem Property, and to take care that no person who is not authorised by the local authority enters the Problem Property; (b) Order any person occupying, operating or working from, or who for any other purpose is in or on any Problem Property, to vacate the Problem Property.



- (4) No person shall occupy, use or permit the occupation or use of any Problem Property or continue to occupy, use or permit, the occupation or use of any Problem Property in respect of which a notice was given of sub section (3) or steps were taken by the local authority in terms of this section, unless he or she has been granted permission by the local authority in writing that the Problem Property may be occupied or used, as the case may be."

C. ANALYSIS OF EVIDENCE

71. We have, amongst others, considered the evidence G Weldschidt, a pastor who chaired the board of the Usindiso Ministries; Monageng, the Chief Fire Officer and the acting head of the Emergency Management Services; Thipe, the Platoon Commander at the Emergency Management Services and the first responder to the structural fire at Usindiso building; Eric Raboshakga ("Raboshakga"), the

Executive Director for Development Planning in the department of Human Settlement; Botes, the Chief Executive Officer and accounting officer of the Johannesburg Property Company (SOC) Limited ("JPC"); and the evidence of the victims of the Usindiso fire, KVS Dube; S Zungu; N Lamula and S Ngcobo regarding the history and living conditions of the residents of the Usindiso building. We have also heard the submissions by all the legal representatives of those affected by the fire including the submissions of the Evidence Leader. They are broadly in agreement relating to the conditions of the residents of the Usindiso building. The evidence shows that the Usindiso building was erected in 1954 as a "Pass Office" for "natives" and under the heading "Non-European Affairs Department". With the coming into operation of the Constitution of the Republic of South Africa in 1996, the building fell under the ownership of the COJ.¹



72. Usindiso Ministries later used the building as a shelter to house victims of abuse in the form of women and children. Usindiso ministries were funded by the Department of Social Development. Usindiso building is located in Region F, which is zoned as industrial. The zoning would permit seven types of land use rights, namely, for industrial purposes; public garages; public or private parking areas; stops; business purposes; dwelling units; and residential buildings. Despite the evidence of Raboshakga, the executive Director: Development Planning, that the City has no records of the Usindiso building being converted from a pass office to residential land use right, the ineluctable conclusion to draw is that no such procedural conversion processes were undertaken for the change of the land use rights of the Usindiso building.²

¹ See Title Deed F3047/1954.

² Transcript, P2224 line 9 – 2226 line 25 [Day 37 – Botes].

73. After the Department of Social Development stopped funding the shelter in 2015 and the threats were issued to the life of Pastor Bradley,³ who was managing the shelter, the building was occupied by many people, with the estimate ultimately pointing north of five hundred (500), according to Dube and eight hundred (800), according to Colonel Wiseman Sifiso Sithole of the SAPS.⁴
74. In their submissions, Norton Rose Attorneys articulated the relevant sequence of events once the COJ had decided to conclude a lease agreement with the Usindiso Ministries. The deterioration of the living conditions in the Usindiso building started immediately after the COJ refused to renew the lease agreement of the Usindiso Ministries in July 2018. JPC attempted to renegotiate the use of the Usindiso building with the Department of Social Development and, at another stage, with the Johannesburg Social Housing Company (SOC) Limited. During an inspection in July 2018 by the JPC, it was established that Usindiso Ministries had vacated the building. Further engagements by the JPC, the Department of Social Development and certain of the occupants of the building took place, and two (2) joint site inspections were conducted on 18 August 2018 and 6 September 2018.⁵
75. On 7 October 2018, JPC was advised that certain persons had forcibly entered and occupied the Usindiso building. In one of the raids, JPC and the Johannesburg Metropolitan Police Department ("JMPD") removed some seventy

³ Transcript, p1822 line 16 [Day 29 – G Weldschidt, Exhibit GW1]. Statement of Botes, Exhibit COJ 5, para 37.

⁴ Transcript, p615 lines 15 – 25 [Day 11 - KVS Dube, Exhibit NRF 1]. [Day 42, Col WS Sithole Exhibit WSS1].

⁵ Statement of Botes, para 59 – 64, Exhibit COJ5]

(70) occupiers and, after that, procured repairs and maintenance services with security upgrades for the amount of R75,000,00.⁶

76. On 6 and 11 December 2018, the Department of Social Development conducted an audit of the building. Only nineteen (19) occupants were assessed and interviewed. In their submissions, SERI sharply points to the fact that after the assessments in question, the Department of Social Development recommended that the JPC should shut down the facility at the Usindiso building and assist qualifying occupants with temporary emergency accommodation and made the observation in its report that the Usindiso building did not have “legitimate management and administration”. The JPC did not heed the recommendation to shut the facility down.⁷



77. On 24 December 2018, some 150 persons took occupation of the building. In response and during early 2019, the JPC, the COJ's Citizen Relations and Urban Management, the DHA, the JMPD and Group Forensic Investigation Services (“GIFS”) planned a “blitz”. The raid revealed that there were two men, Messrs Mpilo Mhlango and Seagul Mnkandla, who were collecting rent from the residents and got arrested.⁸
78. On 17 October 2019, the “blitz” was conducted, and a report by GFIS was produced on 31 August 2023, the date of the fire. This operation resulted in the arrest of 150 people and the opening of a criminal case with SAPS.⁹

⁶ Transcript, p1444 line 10 – p1445 line 1 -10 [Day Day 24 – Botes, Exhibit COJ5].

⁷ Transcript, P2208 line 10 – 20 [Day 37- Botes].

⁸ Transcript, P 1451 line 11 – 1454 line 1 – 3 [Day 24 – Botes].

⁹ Transcript, P 1451 line 11 – 1454 line 1 – 3 [Day 24 – Botes].

79. Botes gave evidence and to questions by the Evidence Leader and in cross examination, made concessions indicating awareness of the following relevant facts spanning from at least 2015 until the fire occurred. Since at least 2015, Usindiso Ministries had vacated the building; the building was not zoned for residential purposes; the building had been hijacked, remained occupied illegally and was overcrowded; crime was rife in the building, and the building was not habitable; the building had illegal electricity connections and water consumption; the building lacked firefighting equipment and installations; and that the JPC had failed to maintain the property since 2003.¹⁰



80. All this underscores, in our view, that since 2019, JPC was aware of the appalling deterioration of living conditions in the building. So, for approximately four (4) years, the JPC and the COJ did nothing to address the ringing alarm bells.
81. In the submissions of the evidence leaders, they correctly point out that when the Usindiso building became overpopulated, the residents were not receiving any basic municipal services such as water services, electricity services, and waste management from the COJ. The building became a hazard because the tenants used fire equipment, such as fire extinguisher hoses, to draw water for domestic use.¹¹ The tenants also made illegal connections to the transformer to obtain electricity.¹²
82. The building was partitioned with flammable material to divide the living space and to erect shacks.¹³ The building became a crime-infested site, with witnesses

¹⁰ Transcript, p 2217 line 22 – 25; p 2210 line 22 – p 2211 line 1 – 9; p 2218 line 7 – 10; p 2218 line 4 – 6; p 2226 line 7 – 25 [day 37 – Botes].

¹¹ Transcript, p855 lines 6 - 8 [Day 15 - S Zungu, Exhibit NRF18].

¹² Transcript, p704 lines 11 -12 [Day 12 – N Lamula, Exhibit NRF6].

¹³ Transcript, p120 lines 11 – 19 [Day 1 – Thipe, Exhibit TC 1].

testifying to the fact that there would be gunshot fire in the building, bodies of people killed in the building,¹⁴ and people who would run into the building to avoid any possible arrest after committing crimes.¹⁵

83. The tenants in the building would pile waste of combustible material all over the place.¹⁶ There were also drug peddlers, with evidence pointing to some of the drug lords making incomes of up to R50 000,00 per day.¹⁷

84. The structural integrity of the building was compromised when the building was vandalized before the fire by the removal and recycling for cash of steel reinforcement material supporting the building structure, namely, columns, pillars, and slabs.¹⁸



85. The vandalization of the building extended to tampering with and removing firefighting, sanitation, and potable water connections and installation materials, further compromising the safety of the building, which was also not designed for residential purposes, and necessitated that the former residents obtain water from the firefighting installations for their domestic needs.

86. Safety was compromised when the built-in emergency evacuation features in the form of passageways and doors were blocked through the creation of living spaces in between stairways, interfered with through the reduction of evacuation passageways, and the construction in the emergency passageways of steel burglar gates to secure residents and their property.¹⁹

¹⁴ Transcript, p702 lines 1 – 6 [Day 12 – N Lamula, Exhibit NRF 6] & Transcript, p11 lines 1 -2 [Day 9].

¹⁵ Transcript, p672 lines 1 – 5 [Day 12 – S Ngcobo, Exhibit NRF 4].

¹⁶ Transcript, p36 lines 23 – 25 & P 37 line 1 – 2 [Day 1 Monageng, Exhibit RM1].

¹⁷ Transcript, p20 lines 2 – 6 [Day 10].

¹⁸ Transcript, p596 lines 3 – 9 [Day 11 - KVS Dube].

¹⁹ Transcript, p23 line 20 -25 & P 24 line 1 – 25 [Day 1 – Monageng & Exhibit TC 1].

87. The safety features of the building were compromised, with exit doors being welded and, therefore, not operable as escape routes.²⁰ Some of the stairwells in the building were used as rooms, and so were toilets, which were converted into rooms to house some families.²¹
88. A fair number of tenants in the building were foreign nationals from countries like Tanzania, Malawi, Zimbabwe, Mozambique, Lesotho, and Kenya.²² The evidence was that a fair number of the foreign nationals were undocumented. This was corroborated by the fact that some of the deceased persons were not capable of proper identification because there was no record of their particulars in the country's database.
89. The startling evidence of X was that young children as young as 15 years were abused and trafficked as prostitutes.²³ A resident, Yandisa Mngandi, testified that her child was robbed of a cell phone at gunpoint in the corridors of the building on the way to a tuck shop located inside the building.²⁴
90. The evidence further reveals that the residents used various highly flammable materials, like plastic, wood, plywood, and material containing laminated glue, as partitions to construct their shacks.²⁵ At times, the structures were built adjacent to fire doors, serving as a fire source and undermining the role of fire doors in stopping the transfer of fire, in contravention of South African National Standards



²⁰ Transcript, p776 line 2 – 13 [Day 14 – JM Shelufumo, Exhibit NRF13].

²¹ Transcript, p670 line 24 – 25 [Day 12 – Ngcobo, Exhibit NRF 4].

²² Transcript, p660 line 3 – 10 [Day 12 – D Mboza, Exhibit NRF 3].

²³ Transcript, p10, lines 15 – 19 [Day 10].

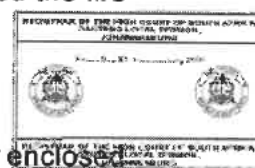
²⁴ Transcript, p967, lines 18 – 19 [Day 17 – Y Mngandi, Exhibit NRF 28].

²⁵ Transcript, p11 lines 21 – 25 p12 lines 1 – 11 [Day 1 – Monageng]; Transcript, p126 lines 2 – 5 [Day 2 – Thipe]; Transcript, p856 lines 11 – 18 [Day 15 – Zungu, Exhibit NRF 15]; Transcript, p165 lines 11 -13 [Day 2 – Mngadi read with Exhibit TC1 image 455].

10400 -T:2011 ("SANS").^{xx} Suppliers of the material were stationed on the south side of the building.²⁶

91. Residents used paraffin primer stoves for cooking. Some of the stoves discovered after the incident had rusted, showing a likelihood of collapsing and causing fire.²⁷

92. Residents converted bathrooms with no windows into living quarters and spaza shops.²⁸ The lack of ventilation and the combustible material increased the fire load, and smoke and fire did not have an escape outlet.²⁹



93. On all the floors, firefighting and fire suppression equipment was either enclosed within newly constructed rooms, deinstalled, not working, vandalized, or tampered with to supply potable water, precluding their use for firefighting purposes.³⁰

94. A firefighter of approximately 50 years' experience, Engelbrecht, described the building as *"one of general neglect with total disregard for fire safety and thus for preservation of life"*.³¹

95. Live uncovered electrical wires also added to the hazards in the building.³²

²⁶ Transcript, p11 line 16 – p12[Day 1 – Monageng]; Transcript, p20 line 20 – 24 [Day 1 – Monageng]. Transcript, p25 line 21 – p 26 line 1 - 4[Day 1 Monageng].

²⁷ Transcript, p16 lines 20 – 24 [Day 1 – Monageng]; Transcript, p1793 lines 8 -24 [Day 28 – Exhibit SAPSREP1 1.72 – 1.348 images 88 and 89].

²⁸ Transcript, p31 lines 7 – 13 [Day 1 Monageng].

²⁹ Transcript, p1785 lines 11- 25 and p1786 lines 1 -25 – Exhibit SAPSREP .1.1 – 1.7].

³⁰ Transcript, p30 lines 20 -25 [Day 1 – Monageng]; Transcript, p176 lines 2 -3 [Day 2 – Mngadi].

³¹ Transcript, p372, lines 5 – 7 [Day 6 – Engelbrecht].

³² Transcript, p28 lines 24 – 25 & p9 lines 1 – 2 [Day 1 - Monageng].

96. The current information is that there are legal proceedings to demolish the Usindiso building. The reason is that the structure of the building has been compromised and is no longer safe for habitation.³³
97. In its submissions, the Evidence Leader details the obstacles faced by the residents in evacuating the building. The evidence of Monageng, the Acting Fire Chief, was that on the eastern side of the building, on Delvers Street, was an entrance leading to the basement. EMS found this access point closed off for entry and exit. EMS had to use forcible entry to gain access to undertake firefighting and rescue services.³⁴ The sole and main entrance ordinarily used for access and exit was on the northern side of the building, on Albert Street (the main entrance"). That entrance and another, the two main entrance points into and out of the building, were locked, requiring forced entry.³⁵
98. Just past the main entrance was another single-file door used daily for further access and exit from the building. It was the door used on the day of the incident. It does not meet the prescribed safety standard because its width is half what it should be. Next to it is a door that meets the prescribed standard. EMS found it blocked, chained, and locked on the day of the incident.³⁶ EMS had to force it open. This, too, was in contravention of the SANS and safety By-laws.
99. The building had an emergency door leading to the out-space courtyard on the fourth floor. EMS found it blocked with steel bar gates, which were chained and locked to prevent movement through it from either side. The blockages rendered



³³ Transcript, p1237 – 1340 [Day 21 - Exhibits COJ1 - COJ2].

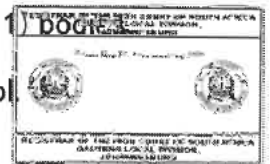
³⁴ Transcript, p8 lines 2 – 4; p9 lines 20 – 25 [Day 1 - Monageng].

³⁵ Transcript, p119 lines 2 - 4 [Day 1 – Thiye]; Transcript, p938 lines 5 – 6 [Day 16 – M Rashid, Exhibit NRF 23]; Transcript, p947 lines 14 – 21 [Day 16 H Ramadan Exhibit NRF 25].

³⁶ Transcript, p14 lines 3 – 24 [Day 1 – Monageng].

evacuation impossible.³⁷ EMS had to force it open. Its locks were still intact immediately after the fire.³⁸ This blockage was in contravention of SANS and the safety By-laws.

100. The generally tiny rooms and passageways on all floors, some leading to emergency evacuation routes, which, together with some of the windows, were blocked with steel mesh, had burglar doors, and some had steel gates installed, chained, and locked. While designed for security purposes, these impeded emergency evacuation routes.³⁹ On the second floor alone, eleven (11) doors were found behind locked gates after the fire was brought under control.



101. Emergency routes designed for evacuation leading to safe spaces were used to store boxes and plastering material, blocked by doors and steel barrier gates, chained, locked and dead ends in themselves.⁴¹ These also did not comply with SANS.⁴²

102. Emergency routes in the form of stairwells were blocked when they were converted into living rooms fitted with furniture. Residents built walls and doors at the top and bottom of a flight of stairs from one floor to the next to make living spaces. The blockages, too, made escape impossible.⁴³

³⁷ Transcript, p13 lines 12 – 24 [Day 1- Monageng].

³⁸ Transcript, p14 line 8 [Day 1 -Monageng].

³⁹ Transcript, p15 lines 11 – 21 [Day 1 – Monageng], Transcript, p16 lines 8 -13[Day 1 – Monageng]; Transcript, p17 lines 18 – 19[Day 1 – Monageng], Transcript, p27, line 10 – 23[Day 1 - Monageng], Transcript, p861 lines 20 – 25 and p862 line 1[Day 15 – Zungu, Exhibit NRF 18].

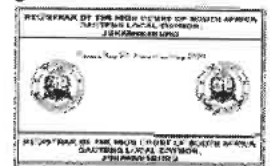
⁴⁰ Transcript, P 74 line 2 – 6 [Day 1 - Monageng] and Transcript, p169, line 19 – 25[Day 2 - Mngadi].

⁴¹ Transcript, p33 lines 13 -19 [Day 1 – Monageng].

⁴² Transcript, p27, lines 10 – 23[Day 1 – Monageng].

⁴³ Transcript, p24 lines 1 – 4[Day 1 – Monageng], Transcript, p679 lines 11 – 25, p 680 lines 1 – 25 & p681 lines 1 – 12[Day 12 - S Ngcobo Exhibit NRF 4] and Transcript, p704 lines 4 – 6 [Day 12 – N Lamula, Exhibit NRF 6]

103. Shacks and makeshift rooms built by residents inside the building, along emergency evacuation routes, reduced the width of the routes and increased the fire load and risk of harm.⁴⁴
104. Blockages to evacuation routes impeded smoke from escaping, as borne out by the presence of significant smoke, as opposed to fire damage on the upper floors of the building.⁴⁵
105. In the words of Mnguni, the Deputy Director of Fire Rescue, the building did not comply with fire safety requirements.⁴⁶



D. CAUSE OF FIRE.

106. We have, amongst others, considered the evidence of X, Y, [REDACTED] as well as the expert evidence of SAPS personnel, namely, Mokhubela and Mongane relating to the cause of the fire.
107. The evidence of witness X given *in camera* was an admission that X caused the fire that gutted the Usindiso building, killing at least seventy-six (76) persons and injuring dozens more others, including women and children.⁴⁷
108. His evidence, in summary, was that he was a member of a group of drug peddlers who would use all forms of threats and violence against those of their clients who

⁴⁴ Transcript, p28 lines 10 -12[Day 1 – Monageng].

⁴⁵ Transcript, p16 lines 1 -19, p19 lines 12 – 24 [Day 1 – Monageng].

⁴⁶ Transcript, p108 lines 2 – 6 [Day 1 – F Mguni].

⁴⁷ Transcript, p21 lines 19 -21 [Day 10].

would not pay. They had a room on the ground floor of the Usindiso building. Stated differently, it was a torture room.⁴⁸

109. On 31 August 2023, X was in the building and, being high on the crystal methamphetamine drug, he assaulted an individual to the point of strangulating him to death.⁴⁹ To conceal the evidence of his crime, he went to the filling station nearby and bought petrol. He doused his victim with the petrol and set him alight.⁵⁰ The consequence was that the entire building was engulfed in the fire, causing both death and the tragedy, which is now known as the Usindiso tragedy.



110. There was also evidence of witness Y, obtained in camera, for the same reason that there was a risk of possible harm to the witness. In this regard, the evidence of Y was that she had visions pointing to witness X as the cause of the fire that gutted the Usindiso building and caused the tragedy.⁵¹

111. SERI points out that Y, who testified in camera, must have known more than she made out. Her evidence that she, through her visions, was “seeing what exactly happened” means that she knows more, particularly when her visions dovetail with X's evidence.

112. There was evidence of [REDACTED]⁵² who is a SAPS Captain attached to the Chemistry Section, Fire Investigation Subsection at the Forensic Laboratory, who filed a report, and another report filed by [REDACTED]⁵³ from the same department. The affidavits prepared in terms

⁴⁸ Transcript, P14 lines 5 – 25 [Day 10].

⁴⁹ Transcript, P21 lines 4 [Day 10].

⁵⁰ Transcript, p21 lines 19 - 21 [Day 10].

⁵¹ Transcript, p8 – 15 [Day 9].

⁵² Transcript, p1780 – 1813 [Day 28 – L Mokebela, Exhibits SAPS REP 1, SAPSREP 1.1 – 1.6, SAPSREP 1.7 – 1.15 SAPSREP 1.16 – 1.71, SAPSREP 1.72 – 1.348, SAPSREP 1.349 – 1.452, SAPSREP 1.453 – 1.58, SAPSREP 1.459 – 1.466].

⁵³ Transcript, p1813 – 1816 [Day 28 – MJP Mongane, Exhibit SAPSREP 2].

of section 212 of the Criminal Procedure Act describe the fire's origin as the ground floor of the Usindiso building, and there was no evidence of ignitable liquids detected.

113. There was the evidence of [REDACTED], who testified to seeing the fire when it started flowing as though there was an accelerant like petrol.⁵⁴

114. Several witnesses could not say what the cause of the fire was. When the fire erupted, they would have been asleep and could not have contributed more to the origin and cause of the fire. SERI also, correct in our view, holds the view that the evidence of [REDACTED] bears relevance where she testified that on the night in question, just before the fire, she was operating her spaza shop just outside the building and heard some screams of someone saying they were sorry, and assumed the person was being harmed. As soon as the screaming stopped, she heard others screaming warnings there was a fire.⁵⁵



E. THE DECEASED.

115. Seventy-six persons (76) persons met their unfortunate demise in the Usindiso fire, of which fifty-seven (57) were positively identified, and nineteen (19) have not yet been identified. Of those who were positively identified, twenty-three (23) were South African; twenty (20) were Malawian; six (6) were Zimbabweans; four (4) were Tanzanian; and four (4) were Mozambican. A summary of the contents of affidavits presented as evidence is as follows:

115.1. Exhibit PRI-1 accounts for the identified body of [REDACTED] lu that was retrieved from the scene by [REDACTED], who registered it as

⁵⁴ Transcript, p1017 lines 16 -19 [Day 17 – MG Phiali, Exhibit, NRF 33].

⁵⁵ Transcript, p672 lines 10 – 21 [Day 12 – S Ngcobo – Exhibit NRF 4].

DR 2775/2023 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED] whose finding was that the cause of death of the deceased was consistent with fourth-degree burns and smoke inhalation. A DNA sample was retained from the body but not necessary to analyze because the deceased was positively identified by the father, [REDACTED]. The deceased was a South African citizen.

115.2. Exhibit PRI-2 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED] who registered it as DR 2811/23 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED], whose finding was that the cause of death of the deceased, whose body was in a state of early decomposition, is consistent with smoke inhalation. A DNA sample was retained from the body, but there were no results because no family member had come forward to donate a matching sample. The body was positively identified against the fingerprint records of the DHA and by [REDACTED]. The deceased was a South African citizen.



115.3. Exhibit PRI-3 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED] who registered it as DR 2762/23 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED] whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning from smoke inhalation. A DNA sample was retained from the body, but there were no results because no family member had come forward to donate a matching sample. [REDACTED] positively identified the

body as being that of [REDACTED]. The deceased was a South African citizen.

115.4. Exhibit PRI-4 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED], who registered it as DR 2787/2023 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED], whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning from smoke inhalation. A DNA sample was retained from the body, but it was not necessary to analyze because the deceased was positively identified by [REDACTED]. The deceased was born in Johannesburg and appears to be a South African citizen born of Zimbabwean mother.

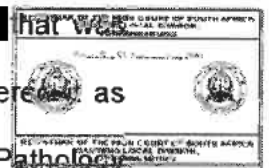


115.5. Exhibit PRI-5 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED], who registered it as DR 2797/2023 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED], whose finding was that the cause of death of the deceased was consistent with smoke inhalation. A DNA sample was retained from the body but was not necessary to analyze because the deceased was positively identified through the South African fingerprint database and by the father, [REDACTED]. The deceased was a South African citizen.

115.6. Exhibit PRI-6 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED] who registered it as DR 2792/2023 and handed it over to [REDACTED] of the Forensic Pathology

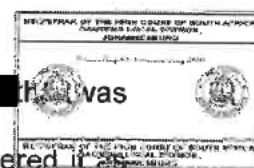
office. The body was examined by [REDACTED] whose finding was that the cause of death of the deceased was consistent with fourth-degree burns, charring and smoke inhalation. A DNA sample was taken, and the outcome is that the sample used matched that of the deceased, indicating that there is a strong chance that the donor was the mother of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Mozambican national.

115.7. Exhibit PRI-7 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED], who registered it as DR 2794/2023 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED] whose finding was that the cause of death of the deceased was consistent with flame burns and smoke inhalation. A DNA sample was retained and analyzed, and the outcome is that the sample indicates a strong chance that the donor is a sibling of the deceased. The deceased was also positively identified by R [REDACTED]. The deceased was a Zimbabwean national.



115.8. Exhibit PRI-8 accounts for the identified body of [REDACTED] that was retrieved from the scene by [REDACTED], who registered it as body number DR 2754/2023 and handed it over to [REDACTED] of the Forensic Pathology office. The body was examined by [REDACTED] whose finding was that the cause of death of the deceased is the charring of the body. A DNA sample was taken and analyzed with the result that there was a strong chance that the donor of the sample, [REDACTED] was the biological father of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Zimbabwean national.

115.9. Exhibit PRI-9 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it DR 2796/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was consistent with smoke inhalation. A DNA sample was retained from the body but was not necessary to analyze because [REDACTED] positively identified the deceased. The deceased was a Zimbabwean national.



115.10. Exhibit PRI-10 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it DR 2783/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was consistent with flame burns and smoke inhalation. A DNA sample was taken and analyzed, with the result that there was a strong chance that the donors of the sample, Mr and Mrs [REDACTED] were the biological parents of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Malawian national.

115.11. Exhibit PRI-11 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2758/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken and analyzed, with the result that there was a strong chance that the donors of the sample,

Mr and Mrs [REDACTED], were the biological parents of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Malawian national.

115.12. Exhibit PRI-12 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it with the body number DR 2780/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was consistent with flame burns and smoke inhalation. A DNA sample was taken and analyzed, and the result was a strong chance that the donor of the sample was the biological sibling of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Malawian national.



115.13. Exhibit PRI-13 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Senyolo, who registered it as DR 2868/2023 and handed it over to C Machaba of the Forensic Pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was flame burns complicated by acute kidney injury. The cousin, [REDACTED], positively identified the deceased. The deceased was a Malawian national.

115.14. Exhibit PRI-14 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2795/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was consistent with

flame burns and smoke inhalation. A DNA sample was taken and analyzed, with the result that there is a strong chance that [REDACTED], the donor of sample tests, is the biological sibling of the deceased. The deceased was also positively identified by [REDACTED]. The deceased was a Malawian national.

115.15. Exhibit PRI-15 accounts for the body of [REDACTED] that was retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2760/2023 and handed it over to D Thobane of the Forensic Pathology office. [REDACTED] body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was consistent with burns. A DNA sample was retained but not necessary to analyze because the cousin, [REDACTED] positively identified the deceased. The deceased was a Malawian national.



115.16. Exhibit PRI-16 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant T Mokwena, who registered it as DR 2834/2023 and handed it over to V Thwala of the Forensic Pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased is consistent with a history of jumping off a burning building, as shown by head and chest injuries. A DNA sample was retained and was unnecessary to analyze because the uncle, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

115.17. Exhibit PRI-17 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2757/2023 and handed it over to D Thobane of the Forensic

Pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with burning. A DNA sample was taken and analyzed with the result that there is a strong chance the donor of the sample is the biological mother of the deceased. [REDACTED] also positively identified the deceased. The deceased was a Zimbabwean national.

115.18. Exhibit PRI-18 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Mudanalwo, who registered it as DR 2801/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was flame burns and smoke inhalation. A DNA sample was taken, and the result shows that there is a strong chance that the deceased is the mother of the donor. [REDACTED] also identified the deceased. The deceased was a Zimbabwean national.



115.19. Exhibit PRI-19 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as number DR 2798/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Fourie, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken and was unnecessary to analyze because the cousin, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

115.20. Exhibit PRI-20 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as

DR 2774/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Fourie, whose finding was that the cause of death of the deceased was consistent with burns and the complications thereof. A DNA sample was taken and was unnecessary to analyze because the cousin, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

115.21. Exhibit PRI-21 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2776/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Skosana, whose finding was that the cause of death of the deceased was consistent with burns and carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the uncle, [REDACTED] positively identified the deceased. The deceased was a South African citizen.

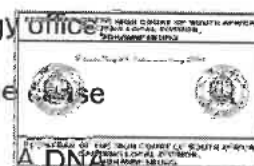


115.22. Exhibit PRI-22 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2769/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morule, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the niece, [REDACTED] positively identified the deceased. The deceased was a South African citizen.

115.23. Exhibit PRI-23 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2784/2023 and handed it over to D Thobane of the Forensic

Pathology office. The body was examined by Dr Apatu, whose finding was that the cause of death of the deceased was consistent with severe burns and smoke inhalation. A DNA sample was taken and was unnecessary to analyze because the sister, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

- 115.24. Exhibit PRI-24 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2790/ handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Apatu, whose finding was that the cause of death of the deceased was consistent with extensive burns. A DNA sample was taken and was unnecessary to analyze given the fact that the mother, [REDACTED], positively identified the deceased. The deceased was a Mozambican national.

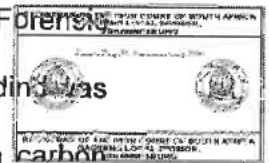


- 115.25. Exhibit PRI-25 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it DR 2770/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morule, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the niece, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

- 115.26. Exhibit PRI-26 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2744/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Stuart, whose finding

was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the deceased was positively identified by [REDACTED] whose relationship to the deceased is not disclosed in the affidavit. The deceased was a Malawian national.

115.27. Exhibit PRI-27 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2748/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Pule, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the father, [REDACTED] positively identified the deceased. The deceased was a South African citizen.



115.28. Exhibit PRI-28 accounts identified the body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2743/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Stuart, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze given the fact that the deceased was positively identified by the brother, [REDACTED]. The deceased was a Malawian national.

115.29. Exhibit PRI-29 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2745/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Stuart, whose finding

was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the nephew, [REDACTED], positively identified the deceased. The deceased was a Malawian national.

- 115.30. Exhibit PRI-30 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2742/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Stuart, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken and was unnecessary to analyze because the deceased was positively identified by the mother, [REDACTED]. The deceased was a South African citizen.



- 115.31. Exhibit PRI-31 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Lokoloane, who registered it as DR 2772/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Skosana, whose finding was that the cause of death of the deceased was consistent with charring. A DNA sample was taken and was unnecessary to analyze because the cousin, [REDACTED], positively identified the deceased. The deceased was a Mozambican national.

- 115.32. Exhibit PRI-32 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Modise, who registered it as DR 2761/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Moar, whose finding was that the cause of death of the deceased was burn injuries. A DNA sample

was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by a person from the Tanzanian High Commission, [REDACTED]. The deceased was a Tanzanian national.

115.33. Exhibit PRI-33 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2747/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Pule, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken from the deceased and was unnecessary to analyze because the mother, [REDACTED], positively identified the deceased. The deceased was a South African citizen.



115.34. Exhibit PRI-34 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2807/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Gobile, whose finding was that the cause of death of the deceased was consistent with inhalation burns. A DNA sample was taken from the deceased and was unnecessary to analyze because [REDACTED] positively identified the deceased. The deceased was a South African citizen.

115.35. Exhibit PRI-35 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2779/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mahuluhulu, whose finding was that the cause of death of the deceased was consistent with

fourth-degree burns and smoke inhalation. A DNA sample was taken from the deceased and was unnecessary to analyze because the niece, [REDACTED] positively identified the deceased. The deceased was a South African citizen.

115.36. Exhibit PRI-36 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2789/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Shongwe, whose finding was that the cause of death of the deceased was consistent with smoke inhalation. A DNA sample was taken from the deceased and was unnecessary to analyze because the nephew, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

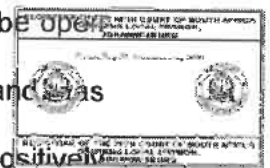


115.37. Exhibit PRI-37 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2755/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken from the deceased and was unnecessary to analyze because the son, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

115.38. Exhibit PRI-38 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2785/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased was consistent with open

flame burns. A DNA sample was taken from the deceased and was unnecessary to analyze because the brother, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

115.39. Exhibit PRI-39 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2808/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased is determined to be open flame burns. A DNA sample was taken from the deceased and was unnecessary to analyze because the father, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

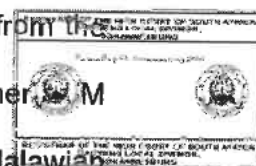


115.40. Exhibit PRI-40 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Mudanalwo, who registered it as DR 2809/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased was consistent with open flame burns (charred). A DNA sample was taken from the deceased and was unnecessary to analyze because the father, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

115.41. Exhibit PRI-41 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tsotetsi, who registered it as DR 2814/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was consistent with smoke inhalation. A DNA sample was taken from the deceased and was

unnecessary to analyze because the brother, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

115.42. Exhibit PRI-42 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2793/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was consistent with flame burns and smoke inhalation. A DNA sample was taken from the deceased and was unnecessary to analyze because the brother, [REDACTED] positively identified the deceased. The deceased was a Malawian national.



115.43. Exhibit PRI-43 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2752/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with smoke inhalation – carbon monoxide poisoning. A DNA sample was taken from the deceased and was unnecessary to analyze because the uncle, [REDACTED], positively identified the deceased. The deceased was a Malawian national.

115.44. Exhibit PRI-44 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2765/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased was consistent with open

flame burns (charred). A DNA sample was taken from the deceased and was unnecessary to analyze because the cousin, [REDACTED] positively identified the deceased. The deceased was a Malawian national.

115.45. Exhibit PRI-45 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tsotetsi, who registered it as DR 2800/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Hollard, whose finding was that the cause of death of the deceased was related to **smoke** inhalation. A DNA sample was taken from the deceased and was unnecessary to analyze because the sister, [REDACTED] positively identified the deceased. The deceased was a Malawian national.



115.46. Exhibit PRI-46 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Baloyi, who registered it as DR 2741/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased was consistent with multiple blunt force injuries. A DNA sample was taken from the deceased and was unnecessary to analyze because his brother, [REDACTED], positively identified the deceased. The deceased was a South African citizen.

115.47. Exhibit PRI-47 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Mudanalwo, who registered it as DR 2751/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken from the deceased

and was unnecessary to analyze because his brother, [REDACTED], positively identified the deceased. The affidavit deposed by the relative is missing. However, other residents from the building with the same surname were Malawian nationals.

115.48. Exhibit PRI-48 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2799/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Morule, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was taken from the deceased and was unnecessary to analyze because his sister, [REDACTED], positively identified the deceased. The deceased was a South African citizen.



115.49. Exhibit PRI-49 accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Mudanalwo, who registered it as DR 2804/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Gobile, whose finding was that the cause of death of the deceased was consistent with inhalation burns. A DNA sample was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by her mother, [REDACTED]. The deceased was a Malawian national.

115.50. Exhibit PRU-1⁵⁶ accounts for the identified body of [REDACTED] retrieved from the scene by Constable Lekoloane, who registered it as DR 2766/2023 and handed it over to D Thobane of the Forensic

⁵⁶ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

Pathology office. The body was examined by Dr N Dladla, whose finding was that the cause of death of the deceased was consistent with burns. The deceased's fingerprint could not be matched with a particular name because it is not in the DHA and Criminal Record Centre databases. The deceased was positively identified by [REDACTED] and is a South African citizen.

115.51. Exhibit PRU-3⁵⁷ accounts for the identified body of [REDACTED]

retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2759/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr N Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by a person from the High Commission, [REDACTED]. The deceased was a Tanzanian national.



115.52. Exhibit PRU-4⁵⁸ accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2767/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was consistent with burns. A DNA sample was taken from the deceased and was unnecessary to

⁵⁷ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

⁵⁸ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

analyze because the nephew, [REDACTED] positively identified the deceased. The deceased was a South African citizen.

115.53. Exhibit PRU-7⁵⁹ accounts for the identified body of [REDACTED] that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2778/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mahuluhulu, whose finding was that the cause of death of the deceased was consistent with fourth-degree burns and smoke inhalation. A DNA sample was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by a person from the Embassy, J. J. [REDACTED]



[REDACTED] The deceased was a Tanzanian national.

115.54. Exhibit PRU-8⁶⁰ accounts for the identified body of [REDACTED] that was retrieved from the scene by Constable Kgomo, who registered it as DR 2782/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mantanga, whose finding was that the cause of death of the deceased was flame burns and smoke inhalation. A DNA sample was retained from the body and handed over to the biology section for analysis, but it was unnecessary to analyze because [REDACTED] positively identified the body. The deceased was South African.

⁵⁹ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

⁶⁰ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

115.55. Exhibit PRU-11⁶¹ accounts for the is the identified body of [REDACTED] that was retrieved from the scene by Sergeant L ekoloane, who registered it as DR 2764/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken from the deceased and was unnecessary to analyze because it was positively identified by a person from the High Commission, [REDACTED] o. The deceased was a Tanzanian national.



115.56. Exhibit PRU-15⁶² accounts for the identified body Of [REDACTED] o that was retrieved from the scene by Sergeant Kgomo, who registered it as DR 2791/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr Apatu, whose finding was that the death of the deceased was consistent with smoke inhalation and severe burns. A DNA sample was taken from the deceased and was unnecessary to analyze because the father, [REDACTED], positively identified the deceased. The deceased was a Mozambican national.

115.57. Exhibit PRU-25⁶³ accounts for the identified body of [REDACTED] that was retrieved from the scene by Constable Tsotetsi, who registered it as DR 2786/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Shongwe, whose finding

⁶¹ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

⁶² Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

⁶³ Profile was initially presented as unidentified, but subsequently updated with documentation attesting to positive identification.

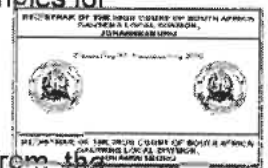
was that the cause of death of the deceased is determined to be consistent with smoke inhalation. A DNA sample was retained from the body and handed over to the biology section for analysis, but it was unnecessary to analyze because [REDACTED] identified the body. While the nationality of the deceased is unclear from the documents, the surname of the deceased and person identifying the deceased are similar to those in Exhibit PRI 9, suggesting that the deceased could be a Zimbabwean national.



115.58. Exhibit PRU-2 accounts for the unidentified body retrieved from the scene by Constable Lekoloane, who registered it as DR 2756/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased is determined to be charring of the body. A DNA sample was retained from the body and handed to the biology section for analysis. However, there are no results because no family members or relatives have come forward to provide matching samples for identification.

115.59. Exhibit PRU-5 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2768/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Dladla, whose finding was that the cause of death of the deceased was consistent with burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

115.60. Exhibit PRU-6 accounts for the unidentified body retrieved from the scene by Constable Tsotetsi, who registered it as DR 2777/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased is determined to be open flame burns (charred). A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

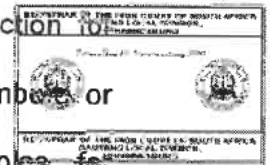


115.61. Exhibit PRU-9 accounts for an unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2815/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased is determined to be open flame burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

115.62. Exhibit PRU-10 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2753/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Mondzanga, whose finding was that the cause of death of the deceased is determined to be charring of the body. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family

members or relatives had come forward to provide matching samples for identification.

115.63. Exhibit PRU-12 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2773/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Skosana, whose finding was that the cause of death of the deceased is determined to be severe burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

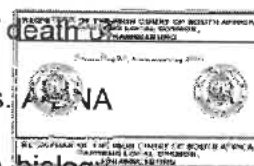


115.64. Exhibit PRU-13 accounts for the unidentified body retrieved from the scene by Constable Lekoloane, who registered it as DR 2763/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Skosana, whose finding was that the death of the deceased is determined to be consistent with carbon monoxide poisoning. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

115.65. Exhibit PRU-14 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2788/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Apatu, whose finding was that the cause of death of the deceased is determined to be consistent with smoke inhalation

and severe burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

- 115.66. Exhibit PRU-16 accounts for the unidentified body retrieved from the scene by Constable Mudanalwo, who registered it as DR 2812/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Moar, whose finding was that the cause of death of the deceased is determined to be consistent with burn injuries. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.



- 115.67. Exhibit PRU-17 accounts for the unidentified body retrieved from the scene by Constable Lekoloane, who registered it as DR 2746/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Pule, whose finding was that the cause of death of the deceased is determined to be consistent with carbon monoxide poisoning. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

- 115.68. Exhibit PRU-18 accounts for the unidentified body retrieved from the scene by Constable Kgomo, who registered it as DR 2771/2023 and handed it over to D Thobane of the Forensic Pathology office. The body

was examined by Dr Morule, whose finding was that the cause of death of the deceased is determined to be consistent with carbon monoxide poisoning. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

- 115.69. Exhibit PRU-19 accounts for an unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2750/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Pule, whose finding was that the cause of death of the deceased is determined to be consistent with carbon monoxide poisoning. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.



- 115.70. Exhibit PRU-20 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2805/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Gobile, whose finding was that the cause of death of the deceased is determined to be consistent with inhalation burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

COURT ONLINE COVER PAGE

**IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg**

CASE NO: 2025-125365

In the matter between:

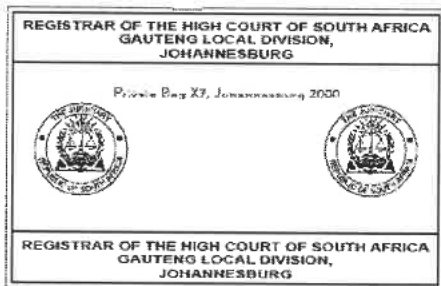
ORGANISATION UNDOING TAX ABUSE NPC Plaintiff / Applicant / Appellant

and

**HELEN MARGARET BOTES ,CITY OF
JOHANNESBURG PROPERTY
COMPANY SOC LTD,CITY OF
JOHANNESBURG METROPOLITAN
MUNICIPALITY** Defendant / Respondent

Annexure 06

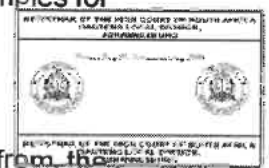
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ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

115.71. Exhibit PRU-21 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2810/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Gobile, whose finding was that the cause of death of the deceased is determined to be consistent with inhalation burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

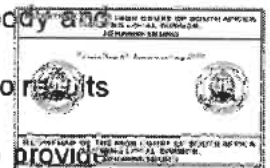


115.72. Exhibit PRU-22 accounts for the unidentified body retrieved from the scene by Constable Kgomo, who registered it as DR 2806/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morare, whose finding was that the cause of death of the deceased is determined to be consistent with open flame burns (charred). A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

115.73. Exhibit PRU-23 accounts for the unidentified body retrieved from the scene by Constable Tshabalala, who registered it as DR 2781/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Holland, whose finding was that the cause of death of the deceased is determined to be consistent with burns. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family

members or relatives had come forward to provide matching samples for identification.

115.74. Exhibit PRU-24 is an unidentified body retrieved from the scene by Constable Lekoloane, who registered it as DR 2749/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Morare, whose finding was that the death of the deceased is determined to be consistent with partial skin thickness burns and smoke inhalation. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

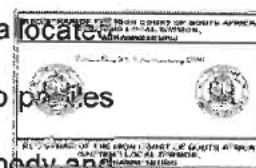


115.75. Exhibit PRU-26 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2813/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Moar, whose finding was that the cause of death of the deceased was consistent with carbon monoxide poisoning. A DNA sample was retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

115.76. Exhibit PRU-27 accounts for the unidentified body retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2803/2023 and handed it over to D Thobane of the Forensic Pathology office. The body was examined by Dr Moar, whose finding was that the cause of death of the deceased was consistent with burn injuries. A DNA sample was

retained from the body and handed over to the biology section for analysis, but there were no results because no family members or relatives had come forward to provide matching samples for identification.

116. The Proclamation and Terms of Reference refer to seventy-seven (77) deceased persons. It will be apparent that the total number of the deceased is seventy-six (76) instead of seventy-seven (77). The variance in the one body is because an arm found without a body and a body missing parts were initially allocated to different death register numbers 2755/2023 and 2802/2023. These two profiles were consolidated when it was discovered that the arm belonged to the body and reported under profile DR2755/2023, Exhibit PRI-37. At the close of the hearings, out of the total seventy-six (76) deceased bodies accounted for, sixteen (16) remain unclaimed in the morgue.



117. The evidence regarding the 76 deceased individuals can conclusively be accepted as fact, having had the chain of custody documents admitted in terms of section 212 of the CPA, absent evidence rebutting the presumption that such documents are prima facie proof of their contents.

F. THE ROLE OF THE EMS

118. We have, amongst others, heard the evidence of Messrs Monageng, Mnguni, Thipe, B Mngadi, Engelbrecht, Colonel Jevu and sergeant Baloyi. Their evidence is captured in the submissions of the Evidence Leader, which summary we accept. We express our deep appreciation for the sterling effort EMS and Fire Operations South Africa (Pty) Ltd ("Fire Ops") made in responding to the emergency calls, tackling the fire, rescuing those in danger and easing what could have been a worse disaster.

119. In summary, EMS dispatched numerous resources to the scene. The first, Fire Engine 6, departed from Fairview with an Air truck six (6) at 01h25 and arrived at the scene at 01h36.⁶⁴ The second, Fire Engine 7, departed from Malvern at 01h30 and arrived at the scene at 01h45. Each of Fire Engines 6 and 7 was operated by five well-equipped and trained firefighters and platoon command officers from Malvern and Fairview fire stations, bringing the total number of firefighters to twelve (12). 2 crew members manned the Airtruck at the scene. Nyathi was the first senior officer to arrive a little later on site.⁶⁵

120. Upon arrival at the scene, the first responders found a five-storey building on fire.

Thipe assumed the role of Incident Commander, to whom members of the SAPS JMPD and Disaster Management would report. The Incident Officer immediately conducted an assessment, commonly called a scene size-up in the industry. The fire incident was eventually escalated up to alarm level 4. This escalation necessitated the gradual summoning of additional equipment, human resource, the solicitation of other forms of assistance from fire stations in other municipalities, emergency medical response and pathological services rendered by the Provincial Gauteng Department of Health and other non-public service providers.⁶⁶

121. The fire was raging. An offensive firefighting method was implemented from the northern wing of the building through Fire Engine 6, using two 38mm hoses drawing water supply from a hydrant at the corner of Albert and Troy Streets, and

⁶⁴ Transcript, p103 lines 20 -24[Day 1 F Mguni, Exhibits FM 1 and FM2].

⁶⁵ Transcript, p97 lines 2 -7, p98 lines 14 – 18, p103 line 25 & p104 lines 1 -2[Day 1 - F Mguni, Exhibit FM2].

⁶⁶ Transcript, p54 lines 6 – 7, p54 line 24 & p55 lines 4 -5[Day 1 - Monageng].

another similar offensive was mounted from the southern side using Fire Engine

7.⁶⁷

122. In fighting the fire from the interior of the building, it was discovered that escape routes were inaccessible due to locked gates. Access had to be gained by forcible entry through the entrances on the northern and eastern sides. Firefighting was also delayed by the number of bodies that were found and had to be removed from the scene before progressing to other parts of the building.⁶⁸

123. A ladder truck departed Sandton at 01h35 and arrived at the scene at 02h00, accompanied by Air Truck 15. They were manned by a crew of 6 and positioned next to Fire Engine 6. The ladder was used on the northern side to initiate rescue operations; it was instrumental in saving four people, and it was later used to attack the exterior fire, using the master stream fitted with a 38 mm hose to fight fire on the third floor.⁶⁹



124. Station Commander Nyathi from Malvern Fire Station was the first senior officer to arrive, followed by Divisional Chief Khoza and then Director Masenge, who took turns as Incident Commanders.⁷⁰

125. A water Tanker was dispatched with five crew members from Diepsloot at 02h00 and arrived on the scene at 03h40.⁷¹

⁶⁷ Transcript, p98 lines 3 – 12[Day 1 – Mnguni], p119 lines 9 –21 [Day 1 – Thipe].

⁶⁸ Transcript, p 99 lines 3 -9 [Day 1 – Mnguni], Transcript, p118 lines 15 – 25; p119 lines 1 - 4[Day 1 – Thipe].

⁶⁹ Transcript, p52 lines 13 – p54 line 5[Day 1 - Mnguni], Transcript, p55 lines 2 – 6[Day 1- Monageng]. Transcript, p98 lines 5 -9[Day 1 – Mnguni]. Transcript, p98 lines 14 – p99 lines 1 – 2, p104 lines 2 - 7[Day 1 – Mnguni].

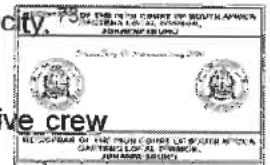
⁷⁰ Transcript, p99 lines 10 – 17[Day 1 – Mnguni]. Transcript, p 124 lines 1 – 22[Day 2 – Mr Thipe].

⁷¹ Transcript, p104 lines 8 – 10[Day 1 – Mnguni].

126. Parallel to the response by EMS was that of Fire Ops, a private firefighting company based in Rosebank. Fire Ops received the distress call at 01h45 and arrived at the scene at 01h57. Fire Ops's response was that of assisting the COJ on a social responsibility basis, in the same way the COJ helps Fire Ops on request.⁷²

127. Significantly, Fire Ops confirmed that upon its arrival, EMS already had 2 Fire Engines and one air truck at the scene, with an adequate water capacity of three thousand eight hundred and fifty (3 850) litres per minute pumping capacity.⁷³

128. Northview Fire Station dispatched a Heavy Rescue 13 at 03h00 with five crew members, and it arrived at the scene at 03h02. It conducted search and rescue operations alongside the fire attack operations.⁷⁴



129. Based on cooperation agreements between the respective service providers, EMS approached Ekurhuleni Emergency Services with a request, and it was obliged to provide a water tanker, which was not utilized because the fire had been extinguished when it arrived.⁷⁵

130. Two vehicles, Eagles 2 and 4, were set up as Incident Command Units, which, in the end, comprised C Masenge as Incident Commander, assisted by JMPD, SAPS, and EMS representatives.⁷⁶

⁷² Transcript, p435 lines 8 – 9[Day 6 – Engelbrecht].

⁷³ Transcript, p 1261 lines 1 – 13 [Day 22 – Engelbrecht].

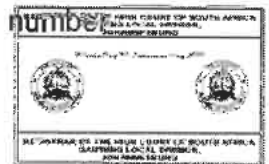
⁷⁴ Transcript, p99 lines 19 – 24 [Day 1 – Mnguni].

⁷⁵ Transcript, p59 lines 4 – 10[Day 1 – Monageng], Transcript, p64 lines 18 -21 [Day 1 – Monageng], Transcript, p68 lines 12 14[Day 1 – Monageng], Transcript, p103 lines 11 - 14 [Day 1 – Mnguni]; Transcript, p127, lines 12 – 22 [Thipe].

⁷⁶ Transcript, p59 lines 4 – 10[Day 1 – Monageng], Transcript, p64 lines 18 -21 [Day 1 – Monageng], Transcript, p68 lines 12 14[Day 1 – Monageng], Transcript, p103 lines 11 - 14 [Day 1 – Mnguni]; Transcript, p127, lines 12 – 22 [Thipe].

131. The firefighters on site, EMS and FireOps, contained the fire within four (4) hours (around approximately 05h00) from arrival on site, and the time after that until 19h00 on 31 August 2023 and the following day, was spent initially dowsing down material with the potential to reignite and rescue activities.⁷⁷

132. Lt Colonel Jevu, Sergeant Baloyi, Warrant Officer Block, and Sergeant Mngadi are the SAPS duty officers who attended the scene for investigation purposes, took pictures submitted in evidence as Exhibit RM2,⁷⁸ identified witnesses for statement taking, and caused the opening of the incident under case number 1276/08/203.⁷⁹



133. We have also heard the evidence of residents in this regard. Some maintain that EMS was not efficient in dealing with the fire, was unprepared, was inadequately resourced to deal with the size of the fire, delayed unduly in responding to the call for rescue and commencing with the rescue operations, while others testify that the firefighters had inadequate water, which they had to replenish and

⁷⁷ Transcript, p59 lines 4 – 10 [Day 1 – Monageng], Transcript, p64 lines 18 -21 [Day 1 – Monageng], Transcript, p68 lines 12 14[Day 1 – Monageng], Transcript, p103 lines 11 - 14 [Day 1 – Mnguni]; Transcript, p127, lines 12 – 22 [Thipe].

⁷⁸ Photos 1 - 26

⁷⁹ Transcript, p142 lines 5 -25 [Day 2 – Mngadi].

brought two trucks, one without water.⁸⁰ Others maintain the response was adequate and on time.⁸¹

G. EVIDENCE OF THE VICTIMS

134. Twenty-eight (28) witnesses, being former residents, gave oral evidence. Other evidence of former residents totaling thirty-two (32) was received by being read into the records and are exhibits WS 1, WS 2, WS 3, WS 4, WS 5 WS 6, WS 7 NRF 9, NRF 10, NRF 11, NRF 12, NRF 30, NRF , 31 , NRF 32 , NRF 33, NRF 34, NRF 35, NRF 36, NRF 38, NRF 39, NRF 47, NRF 48, NRF 49, NRF 50, NRF 51, NRF 52, NRF 53, NRF 54, NRF 55, NRF 56, NRF 57, NRF 58, NRF 59 and NRF 60. A further body of evidence was unsigned and un-commissioned statements totaling two hundred and eighty-one (281), and admitted into evidence as exhibits NRF 61 to NRF 341. They were the survivors of the fire on 31 August 2023.



⁸⁰ Transcript, p568, lines 4 – 5 [Day 10 - Mandlenkosi Bhengu, Exhibit WS2]. Transcript, p572, lines 13 – 19 [Day 10 - M Ngobani, Exhibit WS4]. Transcript, p743, lines 24 – 25 – p744, line 1 – 2 [Day 13 - N Tshabalala, Exhibit NRF8]. Transcript, p 755, lines 8 – 10 [Day 13 - J Mwingira, Exhibit NRF9]. Transcript, p829, lines 5 – 12 [Day 15 - O Hanya, Exhibit NRF16]. Transcript, p 844, lines 13 – 17 [Day 15 - Q Dladla, Exhibit NRF17]. Transcript, p864, lines 8 -17 [Day 15 - S Zungu, Exhibit NRF18]. Transcript, p 883, line 8 -9 [Day 15 - Z Petshe, Exhibit NRF 19]. Transcript, p899, lines 16 – 17 [Day 16 - T Mthembu, Exhibit 20]. Transcript, p 903, lines 2 – 14 & p906, line 3 – p907, line 20 [Day 16 - S Sibiyi, Exhibit NRF 21]. Transcript, p 892, lines 5 – 9 [Day 16 - Z Kumalo]. Transcript, p 933, line 3 -7; p933, line 8 -12 [Day 16 - R Machabane, Exhibit NRF 22]. Transcript, p949, lines 6-24 [Day 17 - Y Mnqandi, Exhibit NRF 28]. Transcript, p 991, lines 16-18 [Day 17 - R Shabani, Exhibit NRF 32]. Transcript, p1084, lines 5-13 & p1089, lines 6-25 [Day 17 - M Ramatsoso, Exhibit 37]. Transcript, p1100, lines 1-4 [Day 18 - A Ally, Exhibit 39]. Transcript, p1108, lines 23-24 and p1109, lines 1-19 [Day 18 - A Garwe, Exhibit NRF 40]. Transcript, p1131, line 25 – p1133 line 16 [Day 18 - S Ndebele, Exhibit NRF 41]. Transcript, p1153 line 21 – 1154 line 4 [Day 19 -T Biyela, Exhibit NRF 43. Transcript, p1172, lines 12-25 [Day 19 - A Mzimela, Exhibit NRF 44]. Transcript, p1186, line 19 – p1185, line 9 [Day 19 - A Dlephu, Exhibit 45].

⁸¹ Transcript, p565, lines 9 -10; p659, line 12 [Day 13 - Simphiwe Ngcobo, Exhibit WS7 and Exhibit NRF4]. Transcript, p 744, line 25 – p 745, p 758 [Day 13 - J Shelufumo, Exhibit NRF13]. Transcript, p784, lines 9 -10 Day 12 - P Mbwambo, Exhibit NRF14].

135. The testimony of the victims was that they were asleep at night ⁸². The building was under loadshedding, and therefore no electricity was there to provide, amongst others, light ⁸³. They were awoken from their sleep by screams and shouts of fire ⁸⁴. Upon waking up, they were overwhelmed by the amount of fire, smoke and intensity of darkness to see possible escape routes ⁸⁵. Some survived the fire by jumping off the building from heights up to the fourth floor ⁸⁶. There were consequent injuries sustained by those who survived and fatal injuries to those who perished. ⁸⁷



136. The evidence also describes the life in the building defined by the overcrowding, the crime, the lack of proper sanitation, illicit electricity supply, ⁸⁸ illicit water supply, poor waste management and hazardous equipment such as gas cylinders, paraffin stoves, two plate electricity stoves and one photo a brazier that was used. ⁹⁰

137. In amplification, the evidence was that, apart from being used for residential purposes, others conducted tuck and spaza shops in the building. ⁹¹

⁸² Transcript, p655, line 3 [Day 12] – Daniel Mboza, Exhibit NRF 3. Transcript, p 741, line 3 [Day 13], Promise Tshabalala, Exhibit NRF 8. Transcript, p759, line 4 [Day 13] - Xoliswa Nkabi, Exhibit NRF 10. Transcript, p690, line 7 -8 [Day 12] – Isaac Simon, Exhibit NRF 5

⁸³ Transcript, p724, line 7 -8; P722, LINE 22 -23 [Day 13] – Busisiwe Mhlebi, Exhibit NRF7. Transcript, p654, line 19 -20 [Day 12] – Daniel Mboza, Exhibit NRF 3

⁸⁴ Transcript, p 655, line 11 [Day 12] – Daniel Mboza, Exhibit NRF 3

⁸⁵ Transcript, p705, line 7 -9 [Day 12] – Nqobile Lamula, Exhibit NRF 6. Transcript, p 655, line 10 [Day 12] – Daniel Mboza, Exhibit NRF 3

⁸⁶ Transcript, p724, line 7 -21; [Day 13] – Busisiwe Mhlebi, Exhibit NRF7.

⁸⁷ Transcript, p725, line 16 -23; [Day 13] – Busisiwe Mhlebi, Exhibit NRF7.

⁸⁸ Transcript, p 552, line 5 -6 [Day 10] - Sfiso Nchangase, Exhibit NRF WS 3. Transcript, p549, line 7 -8 [day 10] - Mandlankosi Bengu, Exhibit NRF WS2. Transcript, p746, line 19 – 20 [Day 16] Exhibit NRF 12, Zabi Ben Khumalo. Transcript, p 563, line 13 - 18, [Day 10] - Simphiwe Ngcobo, Exhibit NRF WS 7. Transcript, p 881, line 6 – 10, [Day 16] - Thobisile Beauty Mthembu, Exhibit NRF NRF 20.

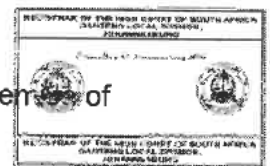
⁸⁹ Transcript, p 563, line 18 – 19 [Day 12], Simphiwe Ngcobo, Exhibit NRF 4. Transcript, p 64, line 9 - 15, [Day 16] - Tsholofelo Mokgoko, Exhibit NRF 26

⁹⁰ Transcript, p672, line 10 -15 [Day 12] – Simphiwe Ngcobo, Exhibit NRF 4

⁹¹ Transcript p177 line 2, p177, lines 10 – 13 [Day 1] Bongani Mngadi. Transcript, p 564, lines 2 – 8 [Day 10] - S Ngcobo, Exhibit WS6. Transcript p733, lines 15 – 24 [Day 13] J Mwingira,

138. The occupants of Usindiso building acquired rooms either on a first mover basis or paid other third parties, mostly unidentifiable and known only by first name or nicknames, once-off or monthly amounts for the “right” to build shacks or occupy existing rooms, which, once constructed or occupied, would in turn be further partitioned for sub-letting. The evidence from some residents suggests that a ward councillor and a member of the Community Police Forum were either aware⁹² of or involved in the facilitation of the construction of the shacks and/or the occupation of Usindiso.⁹³

139. The general living conditions of the occupants of the building after the demolition of the shelter were terrible.⁹⁴



NRF. Transcript, p806, lines 9 -11 [Day 12] - O Hanya, Exhibit NRF15. Transcript, p 926, lines 5 – 6 [Day 16] – Transcript, p948, lines 11-12 [Day 16] -H Ramadhan, Exhibit NRF 25. Transcript, p950 line 24, p951 line 1 [Day 16-T Mokgoko, Exhibit NRF 26). Transcript, p992 lines 1 – 2 [Day 17] - R Shabani, Exhibit NRF 32. Transcript, p1080 lines 3-10 [Day 18 M Ramatsoso, Exhibit 3].

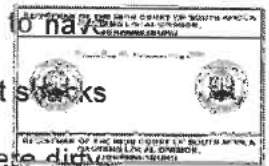
⁹² Transcript, p962, lines 8 – 12 [Day 17] – Yandisa Mnqandi, Exhibit NRF 28

⁹³ Transcript, p548, lines 18 – 21 [Day 10] - Mandlenkosi Bengu; Transcript, p551, line 14 – 17 (S Nchangase). Transcript, p633, line 21 – p634, line 23; p639, line 14 – p, line 6. [Day 12] D Mboza, Exhibit NRF3. Transcript, p 743, lines 15 – 16 [Day 13] - M Lepele, Exhibit NRF 11. Transcript, p 746, lines 19 – 20 & Transcript, p765, lines 3-4 [Day 13 - Z Kumalo, Exhibit NRF12]. Transcript, p753, line 25 – p754, line 4 & p755, line11 – p756, line 4 [Day 14] - J Shelufumo, Exhibit NRF12. Transcript, p 820, lines 7 – 12 [Day 15] - Q Dladla, Exhibit NRF17. Transcript, p837, lines 10 – 17 [Day 15] - S Zungu, Exhibit NRF18. Transcript, p879, lines 19 – p880, line 4 [Day 16] - T Mthembu, Exhibit NRF 20.

⁹⁴ Transcript, p570, lines 1 -11 [Day 10 - S Nchangase]. Transcript, p567, paragraph 1 - 11, [Day 10] - M Bengu. Transcript, p577, lines 7 – 12 [Day 10 - P Mkheto, Exhibit WS5]. Transcript, p 58, lines 13- 20, [Day 10 - Simphiwe Ngcobo]. Transcript, p 579, lines 8 - 11 [Day 10 - R Machavane, Exhibit WS6]. Transcript, p 596, lines 3 - 25 – p 597, line 1 – 20 [Day 11 - S Dube, Exhibit NRF1]. Transcript, p 624, line 16 – 25, p629 [Day 11 -N Cele]. Transcript, p633, lines 19 – 20 & p636, lines 7 – 9; Transcript, p651, lines 25, p652, lines 1 - 5 [Day 12 - D Mboza, Exhibit NRF3]. Transcript, p 653, lines 21 – 25; p 666, lines 8 - 15 [Day 12- S Ngcobo]. Transcript, p689, lines 1 – 25, [Day 12- I Simon, Exhibit NRF5]. Transcript, p 704, lines 1 – 19 [Day 12 - N Lamula]. Transcript p719, line 3 - 20 – p720, line 1 - 7 [Day 13 - B Mhlebi, Exhibit NRF]. Transcript, p951, line 4 - 24, [Day 16 - T Mokgoko]. Transcript, p1000, lines 1 – 16 and p1001, lines 1 – 25, [Day 17 - A R Miuza, Exhibit NRF 30]. Transcript, p970, lines 22 – 25; p971, lines – 2 [Day 17] - Y Mnqandi. Transcript, p1036, lines 3 -20, [Day 18 - M Ramatsoso]. Transcript, p1049, lines 16 – 25, [Day 18 - M Hamisi]. Transcript, p1125, lines 1 -25 and p1126, lines 1 – 25 and p 1127 1 -23, [Day 19 - Andile N Mzimela]. Transcript, p1192, lines 16 -18[Day 19 - T Tshikitsha]. Transcript, p518, lines 20 – 25 [Day 10 - X]. Transcript, p773, lines 6 – 17 [Day 14 - J Shelufumo, Exhibit NRF13]. Transcript, p782, lines 11 – 17 [Day 12 -Mbwambo, Exhibit NRF14].

139.1. The building and its vicinity were crime-ridden and unsafe. Gunshots with fatalities were common. Murder, theft and armed robbery were rife inside and outside the building.⁹⁵ Drug trafficking and abuse was the order of the day, with noticeable police complicity. The building was vandalised by removing water taps, steel material (including by chipping off concrete around the concrete columns supporting the building), and copper wire for resale as scrap.⁹⁶

139.2. It was overpopulated; in one instance, a single room is said to have been occupied by nine (9) adults and children. Residents built shacks in open, more expansive spaces inside the building, which were dirty, littered with waste inside and outside, and unhygienic.⁹⁷



⁹⁵ Transcript, p838, lines 14 – 25 & p 839, lines 1 – 8 [Day 5 -Q Dladla, Exhibit NRF 14]. Transcript, p855, line 4 - 25 – p856, line 1 – 25; p 857, line 1 - 11 [Day 15- S Zungu, Exhibit NRF18]. Transcript, p 893, line 3 - 20 [Day 16 -Z Khumalo]. Transcript, p900, line 3-25; p901, line 9 - 25 Day 16] -T Mthembu, Exhibit 20. Transcript, p972, line 13 [Day 17 -Y Mqandi, Exhibit NRF 28]. Transcript, p1036, lines 3 -20[Day 18 - M Ramatsoso, Exhibit 37]. Transcript, p1071, line 15 -25 – p1072, line 1 -22 [Day 18 - A N Ncube, Exhibit NRF 41]. Transcript, p1082, lines 9-25 [Day 18 S Ndebele, Exhibit NRF 41]. Transcript, p1126, line 1 – 25, 1127 line 1 - 23 [Day 19-A Mzimela, Exhibit NRF 44]. Transcript, p1139, lines 8 -19 [Day 19 -A Dlephu, Exhibit NRF 45]. Transcript, p1149, line 7- 21 – p1150 line 1 & p1193, lines 1- 23 [Day 19 -T Tshikitsha, Exhibit NRF 46].

⁹⁶ Transcript, p897, lines 2 – 9 [Day 16 -Z Kumalo, Exhibit NRF 12]; Transcript, p 931, lines 20 – p932 line 1 -2 [Day 16 - R Machabane, Exhibit NRF 22]; Transcript, p 946, lines 18 - – 25 [Day 16 - H Ramadhan, Exhibit NRF 25]; Transcript, p1007 lines 15 -20 [Day 17 - J Omary, Exhibit NRF 31]. Transcript, p1050 line 13 – 19 [Day 18 M Hamisi, Exhibit NRF 38].

⁹⁷ Transcript, p 596, lines 1 – 25 [day 11 - S Dube, Exhibit NRF 1]. Transcript, p761 lines 20 – 21 [Day 13 M Lepele, Exhibit NRF11]. Transcript, p765, lines 1 -7 [Day 13] Z Kumalo, Exhibit NRF 12. Transcript, p747, lines 9 -11[Day 13 - Z Kumalo, Exhibit NRF 12. Transcript, p82, lines 15 – 25 [Day 15] - O Hanya, Exhibit NRF16. Transcript, p773, lines 5 – 10 [Day 14 - J Shelufumo, Exhibit NRF13]. Transcript, p779, line 35 & p780, line11 – 12 [Day 12] - P Mbwambo, Exhibit NRF14. Transcript, p781, lines 5 – 7 & lines 16–20 [Day 12 -P Mbwambo, Exhibit NRF14]. Transcript, p826, lines 20 – 23 [Day 15- O Hanya, Exhibit NRF 16]. Transcript, p836, lines 10 – 12 & line 24 [day 15 - S Zungu, Exhibit NRF18]. Transcript, p 860, line 24 – 25 [Day 15 Z Petshe, Exhibit 1]. Transcript, p 900, lines 16– 25 [Day 16 - T Mthembu, Exhibit NRF 20]. Transcript, p 918, lines 19 – 25 & p 919, line1– 20 [Day 16 - S Sibiya, Exhibit NRF 21]. Transcript, p893, lines 3 – 20 [Day 16] -Z Kumalo. Transcript, p 920, line 21 – p921, line 10 [Day 16] - M Rashid, Exhibit NRF 24. Transcript, p971, lines 2-8 [Day 17] - Y Mqandi, Exhibit NRF 28. Transcript, p982, lines 11-25 [Day 17 - M Ngulube, Exhibit 29]. Transcript, p 1017, lines 8-12 [Day 17] - M G Phiali, Exhibit NRF 33. Transcript, p1103, line 21 – 25 [Day