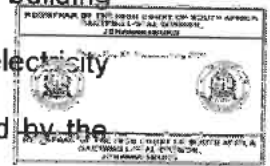


139.3. No municipal services were provided to the building in the form of water and electricity. Waste in the receptacle provided by COJ was removed.⁹⁸ There was no potable water. There were no functional toilets. Some toilets were converted to rooms and occupied.⁹⁹ Available toilets were flushed using bucket water. Sanitation and drinking water were sourced from firefighting installations, and connections were tampered with. While the electricity supply to the building was disconnected, the basement of the Usindiso building housed an electricity transformer, which continued to receive electricity supply because it supplied adjacent buildings and was used by the residents to receive electricity through illegal connections, with the assistance of unscrupulous officials of City Power.¹⁰⁰



140. Those in control of the allocation of rooms preferred foreign nationals as tenants because South African citizens were reputed to refuse to make payments once they learnt that the government owned the building.¹⁰¹

19] - T Biyela, Exhibit NRF 43. Transcript, p1140, lines 13-15 [Day 19 - A Dlephu, Exhibit NRF 45].

⁹⁸ Transcript, p1140, line 16 -24 – p1141, line 1 -11 [Day 19 -A Dlephu, Exhibit NRF 45].

⁹⁹ Transcript, p 758, lines 13 – 15 [Day 13 - X Nkabi, Exhibit NRF10]. Transcript, p761, lines 24 – 25 p762, line1 [Day 13] - M Lepele, Exhibit NRF 11].

¹⁰⁰ Transcript, p 840, lines 23 – 25 [Day 15] -Q Dladla, Exhibit NRF 17. Transcript, p855, lines 6 – 10 [Day 15] - S Zungu, Exhibit NRF18. Transcript, p 879, lines 15 – 20 & p 880, lines 4 – 8 [Day 15] - Z Petshe, Exhibit NRF19. Transcript, P 893, lines 5 – 20 [Day 16] - Z Kumalo. Transcript, p901, lines 8 – 14 [Day 16] - T Mthembu, Exhibit 20. Transcript, p951, line 16 – 24 [Day 16] -T Mokgoko, Exhibit NRF 26. Transcript, p981, lines 10-25; p982, line 1-25, [Day 17] - M Ngulube, Exhibit 29. Transcript, p1081, lines 1-2 [Day 18] - M Ramatsoso, Exhibit 37. Transcript, p1094, line 13-18 [Day 18] - M Hamisi, Exhibit 38. Transcript, p1106, lines 16-20 [Day 18] - A Garwe, Exhibit NRF 40. Transcript, p1115, line 11 – p1116, lines 4-12 [Day 18] -A N Ncube, Exhibit NRF 41). Transcript, p1127, lines 1-22 & 1128 line 16 – 1129 line 1 [Day 18] - S Ndebele, Exhibit NRF 41. Transcript, p1103, lines 3 -15 [Day 18] - T Biyela, Exhibit NRF 43. Transcript, p1124, line 19 – 25 & p1125, line 1 – 9 [Day 19] - A Mzimela, Exhibit NRF 44.

¹⁰¹ Transcript, p 597, lines 15 – 19 [Day 11] - S Dube, Exhibit NRF1].

141. The COJ is the registered owner of the building. Yet the occupants of the building paid parties other than the COJ, either a once-off or monthly amount, for "rights" to occupy the building. It cost residents up to R4000 to acquire once-off rights of occupation, while it cost between R800,00 to R5 000,00 for monthly room rentals.¹⁰² Accepting the COJ had officially earmarked and used the building for social objectives, the payments made by the occupants to others suggest that there existed a business case to alter the original purpose of the usage of the building to one for residential in a potentially sustainable manner, an avenue that the COJ and/or JPC did not explore.



142. There is a suggestion that a councillor at the time the shacks were built was the beneficiary of rentals paid for the shacks, while room rentals had numerous landlords, including former women residents, who took advantage of the situation to make money.¹⁰³

143. The then and current ward councillor disputes evidence levelled against him by numerous former residents, associating him with the construction of the shacks

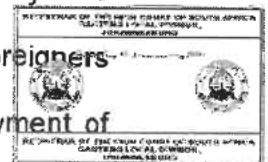
¹⁰² Transcript, p563, lines 21 – 25 [Day 10] - L Mtolo; Transcript, p 566 lines 19 – 22 [Day 10] - M Bhengu, Exhibit WS2; Transcript, p569 lines 15 – 20 [Day 10] - S Nchangase, Exhibit WS3. Transcript, p 595, lines 1 and 25 [Day 11] - S Dube, Exhibit NRF1; Transcript, p670, lines 10 – 15 [Day 12] - S Ngcobo. Transcript, p 688, lines 16 – 17 [Day 12] - I Simon, Exhibit NRF5. Transcript p799, line 14 – 15 [Day 14] - P Mbwambo, Exhibit 14. Transcript, p793, lines 17 – 18 [Day 12] - J Time, Exhibit NRF15. Transcript, p 839, lines 12 – 14 [Day 15] - Q Dladla, Exhibit NRF7. Transcript, p 897, line 24 – p898, line 5 [Day 16] S Sibiya, Exhibit NRF 21. Transcript, p951, lines 8 – 15 [Day 16] T Mokgoko, Exhibit NRF 2. Transcript, p980, line 2 – 8 [Day 17] M Ngulube, Exhibit 29. Transcript, p1035, lines 14-21 [Day 18] M Ramatsoso, Exhibit 37. Transcript, p1049, line 12 - 15 [Day 18] M Hamisi, Exhibit 381. Transcript, p1143, lines 7-25 [Day 19] (T Biyela, Exhibit NRF 43). Transcript, p1123, lines 5-22 [Day 19] A Mzimela, Exhibit NRF 44.

¹⁰³ Transcript, p660, lines 11 – 20 [Day 12 - D Mboza, Exhibit NRF3]; Transcript, p634, line 6 -9 – p635, line 22 - 25 [Day 11] N Cele. Transcript, p874 lines 15 – p875, line 8 [Day 15 - S Zungu, Exhibit NRF 18].

in the building and, further, that he derived financial benefit in the form of payments made by residents to acquire the “right” to occupy the building.¹⁰⁴

144. The residents of eMaxhoseni appear to have engaged with the COJ before and/or during their resolve to occupy the Usindiso building, and the unsafe and deteriorating general conditions of living in Usindiso came to the attention of the COJ.¹⁰⁵

145. The SAPS is stated to have responded to reports of criminal activity and frequented the building, at times four times a week, primarily to arrest foreigners for lack of documentation, who would soon be released after the payment of bribes.¹⁰⁶



146. Most witnesses were unable to tell what the cause of the fire was.

147. The victims of the fire testified about their loss of property, money, identity documents and personal belongings.¹⁰⁷

148. As previously stated, there were statements of witnesses that were read into the record and those whose contents were admitted as having been read. This process was precipitated by the fact that most witnesses were no longer traceable. The date when Part (a)(i) of the Terms of Reference should end, being

¹⁰⁴ Transcript, P1621 line 3 – P1625 line 1 -4 [Day 26 – Mnyameni].

¹⁰⁵ Transcript, p858, lines 3 – 9 [Day 15 - S Zungu, Exhibit NRF18]. Transcript, p 917, lines 20 – 24 [Day 16 - S Sibiya, Exhibit NRF 21].

¹⁰⁶ Transcript, p1001, lines 19 – 25 [Day 17 - A R Miuza, Exhibit NRF30]. Transcript, p1107, lines 5 – 8 and p1108, lines 9 -10 [Day 19 -T S Biyela]; Transcript, p902, line 15 –25 p903, line 1- 5 [Day 16 -T Mthembu, Exhibit 20]. Transcript, p 919, lines 24 -25 – p920, line 1 -2 [Day 16- S Sibiya, Exhibit NRF 21]. Transcript, p967, lines 1 -21 -Day 17 - Y Mnqandi, Exhibit NRF 28].

¹⁰⁷ Transcript, p756, line 9 -14 [Day 13 – V J Mwangira, Exhibit NRF 9], Transcript, p707 line 10 -15 [Day 12 – N Lamula, Exhibit NRF 6], Transcript, p816 line 10 -15 [[Day 12 – J Time, Exhibit NRF 15].

30 April 2024, would also not have been adequate to receive the evidence of two hundred and eight one (281) witnesses.

H. BORDER MANAGEMENT

Border Management Authority

149. Given the fact that a fair number of the victims of the fire were foreign nationals, as well as those injured, it was of some tangential relevance to hear the evidence relating to matters which are properly matters of national competence as opposed to ones in the provincial sphere. In this regard, we heard the evidence of Masiapato, the Chief Executive Officer of the BMA. The BMA was established in terms of section 4(1) of the Border Management Authority Act no 2 of 2020 on 1 April 2023. His evidence was that the BMA is solely responsible for and performs tasks previously performed by various departments, to manage ports of entry, control the borders of the Republic and balance the facilitation of legitimate trade, movement of goods and travellers while ensuring national security.
150. In exercising the powers delegated to it by the DHA, the BMA is responsible for detecting and preventing illegitimate movement of people within the border enforcement area, being a distance of 10 kilometres from the land border and inside internationally recognised borders or a distance of 10 kilometres of the landward side baselines extending seaward.
151. The BMA is also responsible for detecting illegal immigrants within the Republic through its inspectorate; remains responsible for the full administration of the Immigration Act and sets the immigration policy and the strategic direction



pertaining to the immigration function, such as the rights of migrants, systems of permits and visas.¹⁰⁸

152. To achieve its 100% target of detecting illegitimate (illegal) persons at the ports of entry the BMA will be pursuing three key initiatives. Firstly, it will deploy a force of approximately four hundred (400) in May 2024 with technology to enable the force to respond by interception and apprehension of transgressors. Secondly, it has now initiated engagement with Mozambique, Lesotho, Zimbabwe and Kingdom of Eswatini to collaborate on matters relating to cross border movement of people. Thirdly, it has plans to redevelop the Beitbridge, Lebombo, Maseru, Kopfontein, Ficksburg and Oshoek ports of entry on a private partnership basis. Lastly, it will be engaging with conveyancers such as bus companies for cross-border movements to request valid passports when travellers procure bus tickets and during the boarding of the bus and local farms and game reserves to assist it with the management of illegal cross border movements.¹⁰⁹



153. While its mandate has been priced at R2.9 billion, it only has an approved budget of R250 million.¹¹⁰

Department of Home Affairs.

154. The evidence of the DHA was that it is legally mandated to manage citizenship and civil registrations and migration and refugee protection, all of which allow it to serve as the key enabler of national security, citizen empowerment, efficient administration, and socio-economic development.

¹⁰⁸ Transcript, 2322 line 3 -17 [Day 38 – Masiapato].

¹⁰⁹ Transcript, 2325 line 2 -25 & p 2326 line 1 – 5 [Day 38 – Masiapato].

¹¹⁰ Transcript, 2332 line 9 -25 & p 2333 line 1 – 7 [Day 38 – Masiapato].

155. Regarding the Usindiso fire, DHA conducted a status determination and verification of those who were affected; made an assessment and provided assistance. The DHA provided a facility within Baragwanath Hospital, closer to the pathology and mortuary, to register deaths and issue the requisite certificates following notification of deaths.¹¹¹
156. The DHA visited survivors at Impilo, Ekhaya and Hofland shelters and managed to verify ninety-nine (99) survivors of the fire as South Africans, all of whom it assisted with processing applications for the issuance of new identity documents and the issuing of birth certificates for three children.
157. Further, seventy-eight (78) victims who were found at Hofland were undocumented foreign nationals. Of those, fifty-one (51) were from Tanzania, nineteen (19) were from Malawi, three (3) were from Zimbabwe, three (3) were from Kenya, and two (2) were from Mozambique. DHA requested the embassies of the affected nationals to assist their citizens, and no arrests were made during the DHA's first visit.
158. On 15 November 2023, the DHA arrested and charged thirty-three (33) illegal immigrants found at Hofland and had them detained at the Johannesburg Court, and the confirmation of their detention pending deportation occurred on 20 November 2023.
159. On 7 December 2023, the South Gauteng High Court issued an order interdicting the DHA from deporting illegal immigrants found at Hofland and who



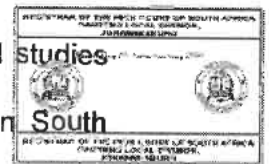
¹¹¹ Transcript, 2336 line 1 -23 [Day 38 – Masiapato].

were victims of the fire until their appearance before the hearings of the Commission.¹¹²

Expert Evidence

160. Recognising that the overall subject of migration policy and enforcement is much broader than the recommendations that a Provincial Commission can make, the Commission heard the expert evidence of Professor Alan Hirsch and Dr Anthony Kaziboni on migration.

161. Their evidence was obtained to share the outcomes of research and studies they have conducted regarding immigrants and their experiences in South Africa because numerous foreign nationals were affected by the fire at the Usindiso building.



162. Professor Hirsch is a Professional Research Associate at SOAS and, an Emeritus Professor of Development Policy and Practice at the Nelson Mandela School of Governance, University of Cape Town and a Research Fellow and Director of a research program on Migration Governance Reform in Africa at the New South Institute in London. He has authored and co-authored approximately eighty (80) publications, eleven (11) of which are on migration and the free movement across borders to foster integration. He has also presented ninety-seven (97) papers on multiple subjects, some on migration.

163. Professor Hirsch's testimony was that the DHA is inept and corrupt. Over thirty-six thousand (36 000) visas, permits, and status applications submitted and processed over sixteen (16) years ago were based on fraudulent

¹¹² See annexure A of Norton Rose Attorneys' written submissions.

documentation; eight hundred and eighty (880) were immediately approved; two hundred and eighty-eight (288) were pending, and four thousand one hundred and sixty (4160) were immediately rejected but accepted upon reconsideration.¹¹³

164. Further, his evidence was that all permit applications were manually processed with minimal to no electronic capability. There is continued illegal usage of replaced systems for suspicious purposes; applications were processed in zero days, and visa expiry dates granted beyond the legal limit. He stated further that there are discrepancies between the naturalisation and population databases administered by the same DHA.¹¹⁴ It was his evidence that applications were not responded to timeously or at all, necessitating the temporary exemption regime, like the one applicable to Zimbabweans. Multiple failures have occurred in providing visas to senior business managers and experts.¹¹⁵ To address these challenges, the government issued the November 2023 White Paper. Unfortunately, the White Paper seeks to curtail the rights of prospective refugees, restrict paths to citizenship and strengthen the BMA. It also uses immigration as an excuse for poor service delivery and joblessness when the reality is that research has shown that tighter restrictions lead to greater illegality, not less migration.¹¹⁶



165. Professor Hirsch stated that his research revealed that the South African proportion of migrants to the local population is about 4.8% against a global average of 3.5%. The United States of America is at 16%, while the highest in

¹¹³ Transcript, 2309 line 6 -12 [Day 38 – Prof A Hirsch].

¹¹⁴ Transcript, 2309 line 14 -19 [Day 38 – Prof A Hirsch].

¹¹⁵ Transcript, 2310 line 1 -16[Day 38 – Prof A Hirsch].

¹¹⁶ Transcript, 2311 line 12 -18 [Day 38 – Prof A Hirsch].

Africa, Ivory Coast, at 10%, does not make South Africa look extraordinary. It was also his evidence that there is a wide-ranging perception that low-skilled migrant workers compete with poor locals for social services, including housing. The perception is ill conceived according to his research. There is an unfounded perception that South Africans are xenophobic. Research has shown that poor urban South Africans dislike foreign nationals only because they compete with them for jobs and social services.¹¹⁷

166. The African Union Free Movement of Persons Protocol, adopted almost five (5) years ago, which has built-in safeguards against influxes, like excluding ~~other~~ elements, including procedures for specific categories of migrants, and suspension of or withdrawal from the Protocol.¹¹⁸



167. More poignantly, Professor Hirsch is of the opinion that the South African migration challenge is best addressed by resolving the operational shortcomings of the DHA described above by (i) reorganising existing systems; (ii) rooting out corruption; (iii) appointing competent officials to manage and implement the visa and permit system; (iv) improving immigration laws to offer amnesty to long-settled law-abiding citizens of Lesotho and Zimbabwe; (v) replacing the critical skills list with a point system based on predetermined objective criteria; (vi) modernising bilateral labour agreements to grant rights and naturalisation at the end of the contracts; (vii) the introduction a quota system administered by representatives of government, businesses, and labourers at the industrial level; (viii) implementing the "First safe country policy";

¹¹⁷ Transcript, 2311 line 19 -25 [Day 38 – Prof A Hirsch].

¹¹⁸ Transcript, 2329 line 13 - 25 [Day 38 – Prof A Hirsch].

and (ix) involving all three spheres of government in inclusion programs and support the settling process for refugees.¹¹⁹

168. On the other hand, and complementing the evidence of Dr Hirsch was Dr Anthony Kaziboni. He is a Senior Researcher at the University of Johannesburg's Centre for Social Development in Africa, where he leads the Socio-Economic & Environmental Justice thematic area. He has more than sixty (60) publications, including journal articles, book chapters, newspaper articles, reports, policy briefs, Op-Eds, and conference and symposium papers. Of these, at least twenty (20) are on immigrants and xenophobia.¹²⁰ Dr Kaziboni's testimony was that South Africa is a destination of choice for immigrant groups such as economic migrants, asylum seekers, and refugees, primarily because of its robust judicial system, anchored in the rule of law, and boasts one of the best refugee systems globally.¹²¹

169. His research and studies seek to test the validity of blame often put on immigrants by public officials and politicians for various social and economic problems in South Africa like crime, disease, unemployment, and poverty; the blaming and scapegoating of immigrants is not unique to South Africa and has been experienced in other countries like the United States against Mexicans, in Turkey against Syrians, and England and France.¹²²

¹¹⁹ Transcript, 2315 line 3 - 9 [Day 38 – Prof A Hirsch].

¹²⁰ Transcript, p2339 line 19 – 2343 line 1 – 3 [Day 39 - DR A Kaziboni].

¹²¹ Transcript, p2344 line 9 – 2345 line 1 – 2 [Day 39 - DR A Kaziboni].

¹²² Transcript, p2345 line 12 – 19 [Day 39 - DR A Kaziboni].

170. Dr Kaziboni testified that recently, in 2019, an anti-immigrant stance was spearheaded by politicians as part of the electioneering process, while in 2020, organisations like Operation Dudula started mobilising around an anti-immigration agenda, blaming and scapegoating immigrants for the country's socio-economic challenges. It departs from the premise that if there were no immigrants, overall service delivery, including housing and the incidence of crime, would improve.¹²³ It was his evidence further that some of the most common accusations against immigrants are that there are many millions of immigrants in Johannesburg CBD, of which more than 80% are foreign nationals; that the large number of immigrants cause unemployment; further that foreign nationals are the leading cause or contribute to crime; that foreign nationals place an undue burden on public services, which contributes to poor service delivery; also that immigrants do not want to be documented and choose to be in the country illegally. All these perceptions, Dr Kaziboni testified are not grounded on the facts and the evidence.¹²⁴



171. It was Dr Kaziboni's evidence that South Africa is globally acknowledged to be one of the most unequal countries in the world, and that about half the population lives in poverty, with an unemployment rate of 34,5% and a youth unemployment rate of almost 64%; his research findings indicate that around 6.5% of people living in South Africa are foreign-born.¹²⁵ This is in line with international norms. Contrary to the finding by the South African Social Attitudes Survey that 48% of South Africans believe that there are about 17 – 40 million foreign nationals in South Africa, according to the Statistician General, as of

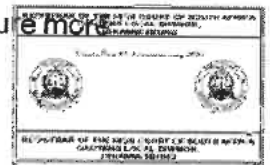
¹²³ Transcript, p2346 line 21 – 2347 line 1 – 25 [Day 39 - DR A Kaziboni].

¹²⁴ Transcript, p2347 line 1 – 9 [Day 39 - DR A Kaziboni].

¹²⁵ Transcript, p2348 line 7 – 10 [Day 39 - DR A Kaziboni].

2021, there were about 3,95 million immigrants in South Africa, irrespective of their legal status.¹²⁶

172. His evidence further was that instead of undermining the economy, immigrants contribute around 9% to the GDP of the country's economy and create employment for locals, and as of 2019, immigrants made up about 5.3% of the labour force.¹²⁷ He testified, that annually, South Africa loses about R27 billion to corruption and other illicit activities, which deplete available funds required for critical areas like housing, social grants, and public healthcare, a figure more than a third of South Africa's 2021/2022 national health budget.¹²⁸



173. He continued to testify that often, immigrants enter the country with a regular status but fall into irregular status due to poor immigration policy management.¹²⁹ The DHA struggles with a backlog, partly because of departmental dysfunction, and is plagued by corruption. Blaming and scapegoating arise primarily because of failure of government policy and implementation, mismanagement, and corruption in all the education, health and housing provision.¹³⁰ There is no statistical relationship between international immigration and crime in South Africa, Dr Kaziboni testified.¹³¹
174. It was Dr Kaziboni's evidence that poor immigration policy and implementation in Home Affairs and its backlog contribute to the status of illegality of foreign

¹²⁶ Transcript, p2347 line 7 – 20 [Day 39 - DR A Kaziboni].

¹²⁷ Transcript, p2353 line 12 – 15 [Day 39 - DR A Kaziboni].

¹²⁸ Transcript, p2349 line 7 – 21 [Day 39 - DR A Kaziboni].

¹²⁹ Transcript, p2350 line 5 – 11 [Day 39 - DR A Kaziboni].

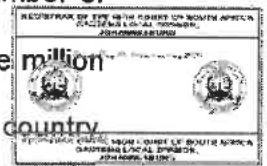
¹³⁰ Transcript, p2350 line 16 – 20 [Day 39 - DR A Kaziboni].

¹³¹ Transcript, p2346 line 17 – 25 [Day 39 - DR A Kaziboni].

¹³¹ Transcript, p2350 line 5 – 11 [Day 39 - DR A Kaziboni].

immigrants; the decline in local government service provisioning and is a breeding ground for economic strife.¹³²

175. Dr Anthony Kaziboni concluded his testimony by opining that the South African socio-economic problems are not caused by immigrants but by poor governance and corruption. It is unfortunate, he said, that many politicians, public officials and other high-profile people regularly make anti-immigrant statements that fuel xenophobia.¹³³ His research reveals that the number of migrants in South Africa is grossly exaggerated. There are about three million nine hundred and fifty thousand (3.95 million) migrants in the country compromising about 6.5% of the population. This is in line with international norms. Immigrants contribute positively to the country; they contribute about 9% of GDP and boost employment because every working immigrant creates two local jobs.



176. While the 2019 National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) is welcome, his opinion is that inadequate attention is being given to implementing proactive programmes that address xenophobia.¹³⁴

177. It was his evidence that the presence of numerous undocumented foreign nationals in the country points to inefficiencies in the DHA and ineffective border control management, which may have contributed to the thriving of the drug trafficking business witnessed in the Usindiso building. He also recommended that the COJ should engage with the White Paper, make suitable

¹³³ Transcript, p2352 line 9-16 [Day 39 - DR A Kaziboni].

¹³⁴ Transcript, p2354 line 7 – 12[Day 39 - DR A Kaziboni].

recommendations, and take appropriate steps to cooperate with both the BMA and DHA to discharge their duties.

I. BUILDING INTEGRITY POST FIRE.

178. The evidence of the former residents detailed herein indicates without any shadow of a doubt that the Usindiso building was dangerous or showed signs of becoming dangerous to life or property. In contrast, the evidence of Botes set out elsewhere above demonstrates that the JPC and, by extension, the COJ were aware that the Usindiso building was dangerous or showed signs of becoming dangerous to life or property, yet no steps appear to have been taken to uphold applicable laws to ensure public safety.



179. A firefighting expert, Engelbrecht, made the observation based on pictures that not only were some of the steel reinforcements removed, but the remaining ones expanded due to the fire, contracted when they came into contact with firefighting water, causing some of the parts of the building to start collapsing.¹³⁵
180. A practising Structural Engineer, Prendolin Moodley, was engaged by the COJ to conduct a visual assessment of and report on the structural integrity of the building based on his technical knowledge, qualifications, and expertise. He made the following relevant findings and recommendations, amongst others:
- 180.1. Steel, generally encased in concrete, is usually responsible for most of the strength of a building. Due to the high-temperature heat arising from the fire, the concrete encasing of the columns, beams and slab

¹³⁵ Transcript, 395, lines 1-9, Day 6 – Engelbrecht].

was damaged, came off and detached from the steel reinforcement, significantly reducing the strength of the building; and

- 180.2. The structure is temporarily condemned as its integrity is compromised and is not fit for its original residential occupancy until a full structural engineering assessment is complete, and further expressed an opinion, pending a thorough examination, that it would be more feasible to demolish and reconstruct the building.¹³⁶

J. ANALYSIS OF THE SUBMISSIONS

181. We now consider the factual findings, the recommendations and the lessons learnt by the legal representatives of the various interest groups as well as those made by the Evidence Leader.

182. The Evidence Leader seeks a factual finding that the Usindiso building was used as a residential building when it was zoned for industrial purposes, in contravention of the By-laws dealing with the conversion of land use rights.¹³⁷ Norton Rose Attorneys supported the Evidence Leader's stance.¹³⁸ The COJ's position was that even though the documentation and plans describing the status of the land use rights of the Usindiso could not be found and that the absence of the conversion of rights document was not a decisive indication that the land use rights were not lawfully converted.¹³⁹ SERI's stance during the oral submissions was that in the face of the evidence of the COJ pointing to the absence of the documentation, the Commission cannot make a definitive



¹³⁶ Transcript Day 22, p1328 line 20 – p1336 line 25 (P Moodley, Exhibits COJ 1 & COJ2).

¹³⁷ Paragraph 27.1 of the Evidence Leader's Submissions.

¹³⁸ Paragraph 164.3 of Norton Rose's Submissions.

¹³⁹ Paragraphs 37 – 44 of the COJ's Submissions.

finding that the building was incorrectly used for residential purposes when it was zoned for use as a "Pass Office".

183. The Evidence Leader also seeks a factual finding that the Usindiso building was a haven for crime.¹⁴⁰ The COJ's position was that Usindiso building was taken over by "criminal elements".¹⁴¹ Norton Rose Attorneys contended that there was evidence that much crime and drug abuse which endangered the safety of residents.¹⁴² In the oral submissions, SERI took issue with the description "haven for crime" on the basis that it implied that every resident was a criminal. SERI in its own description stated that the Commission should rather find that there was evidence of various crimes that appear to have been committed at Usindiso by various persons, including the SAPS, who are alleged to have taken bribes from some persons from Usindiso.



184. The other finding the Evidence Leader seeks is that water and electricity supply to Usindiso were used by the residents illegally.¹⁴³ Norton Rose Attorneys does not take issue with this proposed factual finding.¹⁴⁴ SERI's stance in its oral submissions is that the Commission should also find that the City failed to assist the residents to access free basic water, electricity and refuse removal in accordance with its policies. The COJ maintains that it could not determine the free basic water and electricity to which residents were entitled because they were illegally connected to the grid.¹⁴⁵

¹⁴⁰ Paragraph 27.f of the Evidence Leader's Submissions.

¹⁴¹ Paragraph 129 of the COJ's Submissions.

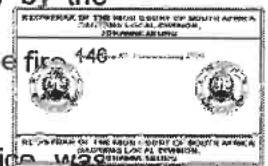
¹⁴² Paragraph 83, Norton Rose Submissions.

¹⁴³ Paragraph 27.5 of the Evidence Leader's Submissions.

¹⁴⁴ Paragraph 110, of the COJ's Submissions and paragraph 19.1 (12) of Norton Rose's Submission.

¹⁴⁵ Paragraph 110 of the COJ's Submissions.

185. In their written and oral submissions, SERI and Norton Rose Attorneys support the following factual findings called to be made by the Evidence Leader, namely, that the law enforcement responsibilities of SAPS and JMPD were virtually absent; that the building did not comply with the fire safety requirements in contravention of the By-laws; further at various times since 2013 to the date of the fire, Johannesburg Water terminated the supply of water services for non-payment; further that the building was overcrowded and was a public health hazard and nuisance; and that there was no political accountability by the officials of the COJ for the condition of the building in the aftermath of the fire.



186. The evidence of Sethagu, the Acting Head of the JMPD Chief of Police, was that the role of JMPD is to prevent crime by arresting those involved and to hand them over. Unlike SAPS, it does not have the mandate to investigate crimes.¹⁴⁷ The position adopted by the City is that no adverse finding should be made against it and its municipal entities. To the extent that the electricity and water By-laws were contravened is because the City officials were threatened with violence.¹⁴⁸

187. SERI also supports the Evidence Leader's recommendation in their submissions that the mayor should consider the position of members of the mayoral committee (MMC's) whose political responsibility or lack of oversight conduced to bring about the disaster that was Usindiso. The recommendation is also that the municipal manager of the COJ must be submitted to disciplinary

¹⁴⁶ Paragraphs 10; 11; 19.1(2); 19.1(9); 19.1(11); 19.1(12) - (14); 23; 35; 83; 143; 174 and page 29 of Norton Rose's Submissions. Paragraphs 73; 88 – 89; 144 – 149; 159 – 160; 161 – 169 and 189.

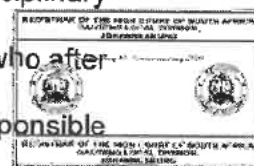
¹⁴⁷ Transcript p2418, line 21-25 to p2419, lines 1-11 [Day 40, Sethagu]

¹⁴⁸ Paragraphs 56; 76 – 83; 110 – 111; 120.3 of the COJ's Submissions

processes in so far as there is evidence that the obligations of the City were not discharged.

188. Further the accounting officers of the entities of the COJ such as the accounting officer for City Power, PIKITUP, Johannesburg Water must be submitted to disciplinary processes where there is evidence of the contravention of their duties.¹⁴⁹

189. Norton Rose Attorneys recommends in its submissions disciplinary proceedings and prosecution against those in the COJ and its entities who after investigations have been conducted are found to have been responsible directly or indirectly for the fire.¹⁵⁰



190. SERI recommends in its submissions the taking of disciplinary proceedings against Monganye; Botes of the JPC, and Monageng of EMS.¹⁵¹

191. The Evidence Leader recommends in its submissions the demolition of the Usindiso building.¹⁵² Norton Rose Attorneys expresses no view in this regard. The position of the COJ is that the JPC was in the process of obtaining authorization for the demolition of the Usindiso building.¹⁵³ SERI is in agreement with these recommendations, but qualified their support by saying that the Usindiso building must not be demolished to preserve evidence of civil and criminal proceedings, and for what it calls purposes of part (a)(ii) of the hearings of the Commission.¹⁵⁴

¹⁴⁹ Paragraphs 28 – 28.3 of the Evidence Leader's Submissions.

¹⁵⁰ Paragraphs 162.1 & 207 – 210 of Norton Rose's Submissions.

¹⁵¹ Paragraph 220 of the SERI Submissions.

¹⁵² Paragraph 28.3 of the Evidence Leader's Submissions.

¹⁵³ Paragraph 91 of the COJ's Submissions.

¹⁵⁴ Paragraphs 226 of SERI's Submissions.

192. The Evidence Leader recommends in its submissions that heads of law enforcement agencies entrusted with the enforcement of By-laws must review their operations to ensure compliance therewith.¹⁵⁵ While neither SERI and Norton Rose Attorneys address this aspect in their written submissions, SERI supports the recommendation in its oral submissions.
193. The Evidence Leader recommends in its submissions that there must be sharing of intelligence by and between the various departments and entities of the COJ.¹⁵⁶ The need for cooperation between the various COJ and information sharing is acknowledged by the COJ in its written submissions.¹⁵⁷ SERI supports the intelligence sharing and cooperation in its oral submissions. Norton Rose Attorneys does not take issue with intelligence sharing and cooperation by the various municipal entities.
194. The COJ endorses a lesson learnt advanced by the Evidence Leader, namely, that there should be strict adherence to the enforcement of By-laws, particularly those aimed at the safety of the public.¹⁵⁸ SERI expressly supports this lesson on condition that By-laws must be harmonized with legislation and other laws.
195. The Evidence Leader recommends in its submissions that part of the blame for the fire must be carried by the COJ and EMS, together with the political principal of the municipality's Public Safety; Health, JMPD, SAPS and the JPC.¹⁵⁹ In its oral and written submissions, SERI supports this recommendation.¹⁶⁰ Norton



¹⁵⁵ Paragraph 28.4 of the Evidence Leader's Submissions.

¹⁵⁶ Paragraph 28.5 of the Evidence leader's Submissions.

¹⁵⁷ Transcript, p 1554, lines 14 – 23; [Day 25, Mbanu] and p1600, lines 22 – 25 and p1601, lines 1 – 5 read with paragraph 131 of the COJ's submissions.

¹⁵⁸ Paragraph 29 of the Evidence Leader's Submissions. Paragraph 131.2 of the COJ's Submissions.

¹⁵⁹ Paragraph 30 and 101 of the Evidence Leader's Submissions.

¹⁶⁰ Paragraphs 20 read with 140 – 196 of the SERI's Submissions.

Rose Attorneys went a little further, suggesting that the City must be held accountable and responsible for culpable homicide for the deaths caused by the fire.¹⁶¹ The COJ maintains that no adverse findings should be made against it, its entities or any of its officials and laid the blame at the door of the “*criminal element*” which took over the building.¹⁶²

196. The Evidence Leader and SERI identify X as the person who caused the fire. Norton Rose Attorneys and the COJ do not express any views on the cause of the fire, nor do they detract from the evidence of X as the cause of the fire.¹⁶³

197. Following the above, SERI supports the Evidence Leader's recommendation that X be subjected to investigations by the relevant authorities. SERI recommends in its submissions the investigation of Y as well. The COJ and Norton Rose Attorneys express no view in this regard.¹⁶⁴

198. The Evidence Leader seeks a factual finding that the Usindiso building was non-compliant with laws and By-laws, with a recommendation that adherence to fire safety measures in the laws and By-laws must be respected.¹⁶⁵ The COJ's position still remain that no adverse findings be made against its officials, electing instead, to place the blame on the “*criminal element*” that hijacked the building, but it supports adherence to and enforcement of By-laws. Norton Rose Attorneys and SERI do not take issue with this factual finding and

¹⁶¹ Paragraphs 136.1 & 158 – 185 and 180 to 187; 201 of the Norton Rose's Submissions.

¹⁶² Paragraphs 127 to 129 of the COJ Submissions.

¹⁶³ Paragraphs 31 – 38 of the Evidence Leader's Submissions. Paragraphs 94 – 101, Paragraph 4 of the COJ's Submissions.

¹⁶⁴ Paragraphs 39 of the Evidence Leader's Submissions. Paragraphs 217 – 218 of the SERI's submissions. Paragraph 4 of the COJ's Submissions.

¹⁶⁵ Paragraphs 47 of the Evidence Leader's Submissions.

recommendation.¹⁶⁶ The only qualification SERI places to the factual finding in its oral submissions is that the fire would not have occurred had the City discharged its functions.

199. The Evidence Leader recommends in its submissions that the responsibility for the consequences of the fire be shared between the City, the JPC, JMPD, PIKITUP and the Department of Human Settlements, with the further recommendation for strict adherence with laws and By-laws to avoid another calamity.¹⁶⁷ Norton Rose Attorneys and SERI take no issue with this recommendation.¹⁶⁸ The COJ opposes any adverse finding against self, entities or officials, and blamed the “criminal element”, but agrees with the importance of adherence and enforcement of laws.¹⁶⁹



200. The Evidence Leader has accounted for seventy-six (76) deceased persons. Neither the COJ, SERI and Norton Rose Attorneys take issue with the total number of those deceased.¹⁷⁰
201. The Evidence Leader recommends in its submissions that a plaque or wall of remembrance be established at an appropriate place.¹⁷¹ While neither the COJ, Norton Rose Attorneys nor SERI take issue with the recommendation, SERI's qualification in its oral and written submissions is that a recommendation must be made for the Premier to either take steps or assign someone to ensure that

¹⁶⁶ Paragraphs 174 – 179 of the Norton Rose Submissions. Paragraphs 20 read with 140 – 196 of the SERI's Submissions. Paragraphs 128 – 129 of the COJ's Submissions.

¹⁶⁷ Paragraph 99 of the Evidence Leader's Submissions.

¹⁶⁸ Paragraphs 136.1 & 158 – 185 of Norton Rose's Submissions. Paragraphs 20 read with 140 – 196 of the SERI's Submissions.

¹⁶⁹ Paragraphs 129 – 131 of the COJ's Submissions.

¹⁷⁰ Paragraph 64 of the Evidence Leader's Submissions. Paragraph 1 of the COJ's Submissions. Paragraphs 9; 83; 199 of Norton Rose's Submissions.

¹⁷¹ Paragraph 65 of the Evidence Leader's Submissions. Paragraphs 209-210 of the SERI Submissions.

those who remain unidentified are identified, as well as to assist with their repatriation.¹⁷²

202. The Evidence Leader seeks a factual finding that there was non-compliance with the provisions of the FBA, read with the Emergency By-laws designed to ensure the safety of occupants of the Usindiso building.¹⁷³ In this regard, the COJ's position is still that it must not be held liable for non-compliance, which it attributes to "*criminal elements*" which hijacked the building.

203. The Evidence Leader recommends in its submissions that there must be continuing psycho-social services.¹⁷⁴ Norton Rose Attorneys makes a similar recommendation.¹⁷⁵ SERI supports the recommendation in its oral submissions. The COJ recognizes the trauma experienced and extends condolences but does not express any view on the matter.¹⁷⁶



204. The Evidence Leader further observes that in the light of the evidence and role of the JPC, the accounting officer of the JPC must be held partly responsible for the tragedy and that appropriate steps must be taken against her by the Board.¹⁷⁷ The COJ opposes any adverse finding against itself, entities or officials, and blames the "*criminal elements*".¹⁷⁸ The recommendation of the Evidence Leader finds support from both SERI and Norton Rose Attorneys.¹⁷⁹

¹⁷² Paragraphs 209 – 211 of SERI's Submissions.

¹⁷³ Paragraphs 136.1 & 158 – 185 of Norton Rose's Submissions. Paragraphs 20 read with 140 – 196 of the SERI's Submissions. Paragraphs 129 – 131 of the COJ's Submissions. Paragraphs 98 – 99 of the Evidence Leader's Submissions.

¹⁷⁴ Paragraph 116 of the Evidence Leader's Submissions.

¹⁷⁵ Paragraph 217.5 (2) of the Norton Rose's Submissions.

¹⁷⁶ Paragraph 1 and 116 of the COJ's Submissions.

¹⁷⁷ Paragraph 98 of the Evidence Leader's Submissions.

¹⁷⁸ Paragraphs 127 – 129 of the COJ's Submissions.

¹⁷⁹ Paragraphs 217.1 – 217.3 & 207 – 210. Paragraphs 220.2 of the SERI Submissions.

205. The Evidence Leader also seeks a factual finding that the Usindiso building was littered with waste and that the City must be held responsible for failure to enforce compliance with Waste Management Services and Public Health By-laws.¹⁸⁰ In response, the COJ's argument is that it removed all the litter deposited into the receptacles.¹⁸¹ SERI and Norton Rose Attorneys do not take issue with the proposed factual finding, together with the lessons learnt to prioritize service delivery, and recommendation for the various departments to share information and ensure the enforcement of By-laws.¹⁸² SERI suggests that the City must meaningfully engage with residents, in particular when addressing their living conditions and the delivery of basic services.



206. The Evidence Leader also seeks a finding that that City Power and the Engineer contemplated in the Electricity By-laws be held accountable for failing to ensure that no electricity was consumed at Usindiso building, and further that City Power and the JMPD were remiss in buckling down to the alleged resistance put up by residents at the expense of law enforcement.¹⁸³ SERI opposes this position which, it maintains, fails to take account of the fact that the residents qualified for free basic electricity and water, and rather sought that the Commission must find that the City failed to determine whether the residents qualified for free basic electricity and water. The COJ's position is no different from above, and it further states in evidence both that, firstly, the transformer in Usindiso was kept live for purposes of supplying adjacent buildings, and further

¹⁸⁰ Paragraphs 154 and 160.

¹⁸¹ Paragraphs 76 – 83 of the COJ's Submissions.

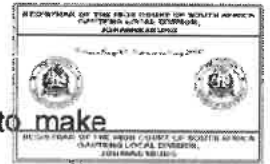
¹⁸² Paragraph 72.3; 147.3 – 147.4; 159.6; 163 & 186 of the SERI Submissions & paragraphs 19.1 (2); (3) & (17); 23; 35 & 172 of the Norton Rose Submissions.

¹⁸³ Paragraphs 173 – 175 of the Evidence Leader's Submissions.

that it is impractical and undesirable to determine entitlement to free electricity for those illegally connected to the grid.¹⁸⁴

207. The Evidence Leader also recommends in its submissions further investigations against Mnyameni, the ward councillor, and Mbedzi, the CPF member regarding their alleged involvement in the construction of the shacks and/or as beneficiaries of rental paid by residents. The COJ does not express any view regarding this recommendation. SERI supports the recommendation.¹⁸⁵

208. Norton Rose Attorneys, supported by SERI, seek the Commission to make findings of civil and criminal liability against the City.¹⁸⁶



209. Norton Rose Attorneys, supported by SERI, seek a finding by the Commission requiring the City to accept responsibility, directly and unreservedly, and to censure the City for its failure to accept responsibility and require it to acknowledge responsibility that it has failed to accept throughout.¹⁸⁷

210. SERI and Norton Rose Attorneys seek a recommendation by the Commission to refer a complaint to the Minister of Police, National Police Commissioner and the Independent Police Investigations Directorate against the conduct of the Jeppe and Central Police Stations' failure to enforce the law and allegations of bribery, corruption, seizure, unlawful detentions and unlawful raids conducted in the Usindiso building.

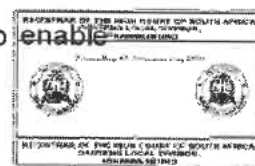
¹⁸⁴ Paragraph 110 of the COJ Submissions.

¹⁸⁵ Paragraphs 221 – 222 of the SERI Submissions.

¹⁸⁶ Paragraphs 189 – 198 of the Norton Rose Submissions.

¹⁸⁷ Paragraphs 201 – 202 of the Norton Rose Submissions.

211. The Commission is also requested to make a finding that the City and the DHA committed a criminal offence by impeding witnesses from giving evidence to the Commission when they arrested undocumented nationals who were the former residents of Usindiso, and detained them at Lindela.¹⁸⁸
212. Both Norton Rose Attorneys and SERI recommend in their submissions the payment of compensation to the victims and survivors of the fire. To this, SERI adds claims for alternative accommodation and for the Commission to make a recommendation that Legal Aid South Africa must provide funding to enable those affected by the fire to enforce their legal rights.¹⁸⁹
213. To ensure that there is accountability and performance by the officials of the City, SERI takes the view that the Commission should recommend that the current acting positions be made permanent.¹⁹⁰
214. Both SERI and Norton Rose Attorneys require the Commission to make a civil and criminal liability finding against the City, its entities and its officials.¹⁹¹
215. The Evidence Leader seeks factual findings and recommendations that were considered by SERI to bear relevance to Part (a)(ii). Those are that (i) hijacked building as described in the Terms of Reference must be fenced off to prevent any access by illegal occupiers or demolished and should generally not be used for a purpose contrary to their land use rights;¹⁹² and (ii) the implementation of the recommendations of the Mayor that to prevent further deterioration of the property assets of the City, regular building inspections must be undertaken,



¹⁸⁸ Paragraphs 115 – 131 of the SERI Submissions

¹⁸⁹ Paragraphs 213 – 217 of the Norton Rose Submissions and 208 – 216 of the SERI Submissions.

¹⁹⁰ Paragraph 220.1 of SERI's Submissions.

¹⁹¹ Paragraphs 188 – 191; 187 – 198 & 217

¹⁹² Para 40 and 28.5 of the evidence leaders submissions

inter-departmental cooperation be enhanced and that By-laws be stringently enforced by strengthening the JMPD's By-law enforcement and crime prevention capabilities and proceeding with the Inner City Sub-Mayoral Committee to address urban decay, grime, and crime, intended for the various departments to know how best to implement the Council-approved Inner City rejuvenation project; (iii) that the COJ engage with the White Paper, make suitable recommendations, and take appropriate steps to cooperate with both the BMA and DHA to discharge their duties.

216. Other factual findings and recommendations forming the subject matter of submissions by the City and which SERI maintains form part of Part (a)(ii), are
- (i) the recommendation for a constructive engagement between the various arms of the state on how best to provide resources and formulate laws to ensure a sustainable and safe environment for all citizens, especially the most vulnerable ones; (ii) the recommendation for a dialogue between the different spheres of government to deal with the apparent systemic challenges that face the City, coordinate regular inspections of all buildings in the Inner City to ensure constant compliance with all City By-laws and avoid another incident similar to the Usindiso tragedy, to document a conclusive strategy to deal with hijacked buildings; and pursue eviction and evacuation processes in relation to bad buildings and/or buildings occupied unlawfully.¹⁹³

K. FACTUAL FINDINGS

217. Having considered the totality of the evidence presented before the Commission, and the submissions of the various participants, we conclude that

¹⁹³ Paragraphs 131.1 – 131.4 of the COJ's Submissions.

the factual findings made hereunder accord with the evidence and can reasonably be made.

The state of the Usindiso building before the fire

218. The Usindiso building was never zoned for residential purposes despite JPC having concluded a lease agreement with the Usindiso Ministry. The absence of documents evidencing the change of land use rights from a "Pass Office" to residential was proof of the fact that no land conversion process was undertaken.¹⁹⁴



219. At the time of the fire, the Usindiso building had a high prevalence of crime.
220. As early as 2019, to the full knowledge of JPC and the COJ, the Usindiso building had not only been abandoned by the owner but was liable to be demolished within the meaning of section 12(1) of the Building Regulations and Building Standards Act, 1977. The section provides, in part that, "12 (1)(a) 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; or (b) any building or the land on which a building was or is being erected or any earth work 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 earth work, 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

¹⁹⁴ Refer to Land use Scheme Requirements set out in paragraph 53 above.

or property; Provided that if such local authority is of the opinion that the condition of any building, land or earth work is such that steps should forth with be taken to protect life or property, it may take such steps without serving or delivering such notices on or to the owner of such building, land or earth work and may recover the costs of such steps from such owner” (which requires a building that is a hazard to life, amongst others, to be demolished).¹⁹⁵ The evidence of Dube is that the building was vandalized by the removal and sale for cash of the steel reinforcement material supporting the columns, pillars and slabs.¹⁹⁶ The evidence, Botes conceded that the COJ and the JPC had not maintained the Usindiso building for years.¹⁹⁷ The vandalization indicates that the building showed signs of disrepair and danger to life and property in that its structural integrity was compromised.



221. There was evidence of contraventions of the City By-laws, namely sections 13; 15; 16; 17 Emergency Services By-laws, 2004, SANS 10400 T1 read with the FBA;¹⁹⁸

224.1 Section 13 reads “(1) every owner of a building must ensure that every escape door in that building – (a) is fitted with hinges that open in the direction of escape; and (b) is equipped with a fail-safe locking device or devices that do not require a key in order to exit. (2) every owner of a building must ensure that every door in a feeder route – (a) is a double swing type door, (b) is not equipped with any locking mechanism. (3) notwithstanding the provisions of subsection (2), if it is necessary that a door, in a feeder route

¹⁹⁵ Refer to paragraphs 73 and 80 above.

¹⁹⁶ Transcript, p596 lines 3 – 9 [Day 11 - KVS Dube].

¹⁹⁷ See paragraph 80 of the Report.

¹⁹⁸ Refer to paragraphs 65 – 67, read with paragraphs 87 – 88; 99, 100 – 103.

be locked for security reasons, the owner of the building must provide an alternative means of escape approved by the Chief Fire Officer. (4) 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” the “blitz” in 2019 must have amply demonstrated the breach of this By-law. That notwithstanding nothing was done by the City or its entities to comply with these by-laws. The evidence of the Acting Chief Fire Officer, Monageng, Shelufumo and Ngcobo shows that safety escape routes and doors ceased to operate as such because emergency doors were welded together in contravention of section 13(1)(a), (2)(a), (3) and (4) of the Emergency Services By-laws. His further evidence was that the escape doors were locked with chains; steel gates chained with locks for security purposes were installed in escape passageways of each floor; the construction of rooms which encroached onto the passageways reduced their width; and stairwells converted into rooms in contravention of section 13(4) of the Emergency Services By-laws.

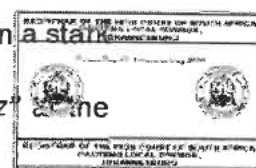


224.2 Section 16 of the Emergency Service By-laws, in turn, provides that “(1) every owner of a building must ensure that – (a) that all fire- fighting equipment and service installations on the premises are installed in a manner and condition ready for use in an emergency; (b) all potable and mobile fire – extinguishers and hose reels on the premises are serviced and maintained in accordance with SABS 0105 and SABS 1475 ; and (c) all

¹⁹⁹ See paragraph 87 – 88; 98 – 100 of the Report.

firefighting equipment and service installation on the premises are – (i) maintained in a good working condition by a competent person ; (ii) inspected and serviced in accordance with the manufacturer specifications; and (iii) are inspected by an appropriately registered and competent person at least once every twelve months ; and (d) a comprehensive service record of all firefighting equipment and service installations is maintained and furnished to the Chief Fire Officer every twelve months”. The contravention of this By-law must have been a stark

observation by the City and its entities, as early the 2019 “blitz” at the Usindiso building because the evidence of Dube shows that vandalism of the building over the years resulted in the removal of all firefighting installations and equipment to retrieve steel to sell to recyclers for cash and was tampered with to obtain water for domestic use²⁰⁰ in contravention of section 16(1)(a) of the Emergency Services By-law. In her evidence, Botes conceded that the building had not been maintained for some time²⁰¹ before the “blitz” and no action was ever taken about these non-compliance issues, in contravention of section 16(1)(b) and (c) of the Emergency Services By-law.²⁰²



224.3 The provisions of section 17 of the Emergency Service By-laws provide that “(1) the Chief Fire Officer may by written notice designate any premises as a premises requiring an emergency evacuation plan; (2) the notice contemplated in sub section (1), must be served on the premises

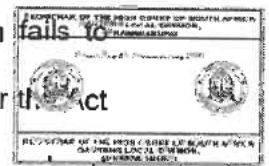
²⁰⁰ Transcript, p596 lines 3 – 9 [Day 11 - KVS Dube]

²⁰¹ See paragraph 80 of this Report.

²⁰² See paragraph 85 – 86 of the Report.

concerned and addressed to the owner or occupier". The "blitz" of 2019 at the Usindiso building necessitated that the Chief Fire Officer issue a notice of non-compliance against the City and JPC. Monageng, as the Acting Chief Fire Officer, did not issue the notice contemplated in this By-law.²⁰³

224.4 The FBA provides for the establishment, maintenance, employment, co-ordination and standardization of the FBA; and for matters connected there with. Section 17 of the FBA provides that if any person fails to comply with any requirement, standard or direction issued under the Act or regulation, the administrator may by written notice direct a local authority to comply with the requirements, standard or direction within the period stipulated.



224.5 Regarding SANS 10090, which is issued in terms of the FBA, Monageng, offered testimony relating to the fire safety and time periods of the COJ's response to the fire.²⁰⁴ He, categorised the risk of fire into five (5) categories. The highest category, he says, is category A, which would have been the structural fire in Usindiso building on 31 August 2023. The standard that SANS 10090 recommends is that a category A fire must be attended to within eight (8) minutes. The response times of eleven (11) and nineteen (19) minutes, described in the submissions of the COJ and

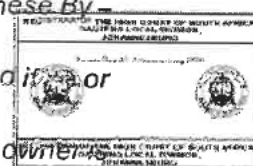
²⁰³ Transcript p1351, line 23 – p1353 line 21 [Day 22, Monageng]. Submissions by SERI, para 195.

²⁰⁴ Statement of Monageng in cross examination, Exhibit COJ COJ3, para 17 – 19.

SERI, respectively, exceed the SANS 10900 minimum prescribed response time of eight (8) minutes.²⁰⁵

225 There was also evidence of contraventions of sections 17; & 54 of the Water By-laws and section 1 read with section 3 of the Water Services Act, 108 of 1997.²⁰⁶

225.1 Section 17 of the Water By laws provides that "17 (1) the owner of premises is ultimately responsible for ensuring compliance with these By-Laws in respect of all or any matters relating to any installation, and if he or she 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 any use of water services on his or her property, including any financial obligation. (2) the consumer is primarily responsible for compliance with these By-laws in respect of matters relating to the use of any water services. (3) no approval given under these By-laws relieves any owner or consumer from complying with any other law relating to the abstraction and use of water, or disposal of affluent". The City and JPC, as owner and agent were in contravention of this By-law.



²⁰⁵ See paragraph 111 – 113 of SERI's Submissions and paragraphs 45.1 and 117 of the COJ's Submissions. Transcript, p1221, lines 17 – 25 [Day 21, Engelbrecht]

²⁰⁶ Extract of Act: section 1 "basic sanitation" means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic wastewater and sewage from households, including informal households; "basic water supply" means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene; section 3. Right of access to basic water supply and basic sanitation.-(1) Everyone has a right of access to basic water supply and basic sanitation.

225.2 Section 54(3) then provides that “where there is an existing connection pipe for the sole purpose of fire extinguishing services, such connection pipe may only be used for that purpose.” Section 54(4) provides that “No take-off any kind from any connection pipe referred to in sub section (3) may be made, nor may any water therefrom be used except in connection with an automatic sprinkler and a drencher, a hydrant connection or a hose-reel connection, or for any pressure tank connection therewith, and such tank must be controlled by an approved fitting”.²⁰⁷ The evidence of Mngadi and Monageng indicates that the City terminated the supply of water to the building, which caused residents to use firefighting connections to source water for domestic use,²⁰⁸ in contravention of section 54(3). Despite the 2019 “blitz” revealing the above, the COJ and JPC failed to ensure compliance with the By-laws.



226 There was also evidence of contraventions of Public Health By-laws, 2004.

226.1 Section 1 of the Public Health By-laws, 2004, read with Schedule 1 defines 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, and defines 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 the accumulation of refuse; the usage of a building in a manner dangerous to health; a

²⁰⁷ Refer to paragraphs 82; 86; 138 & 141.

²⁰⁸ See paragraph 94 of the Report and Transcript, p1556, lines 7 – 16 [Day 25, S Sikhosana.]

dwelling occupied without sufficient supply of potable water, within a reasonable distance; and 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.

226.2 The evidence of X, Dube, Colonel Sithole on overcrowding in the Usindiso building clearly shows the contravention of the Public Health By-laws.²⁰⁹ The evidence of Ngcobo, Dube, Lepele, Khumalo, Hanyu and Shelufumo on the presence of waste and unhygienic conditions in the Usindiso building shows the contravention of the Public Health By-laws.²¹⁰ The evidence of Zungu on the absence of water supply to the Usindiso building, shows the contravention of the Public Health By-laws.²¹¹



226.3 Section 5(2) of the Public Health By-laws provides that every owner or occupier of the premises must ensure that a public health hazard does not occur on those premises.

226.4 Section 6 provides that *"The owner or occupier of premises who knows of a public health hazard on those premises, must within 24 hours of becoming aware of its existence –(a) eliminate the public health hazard; or (b) if the owner or occupier is unable to comply with paragraph (a), take*

²⁰⁹ See paragraphs 74; 80; & 84 of the Report.

²¹⁰ See paragraphs 84 and 141.2 of the Report.

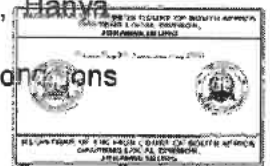
²¹¹ See paragraph 82 of the Report.

reasonable steps to reduce the risk to public health and forthwith report the existence of the public health hazard to the Council in writing."

226.5 Section 7 prohibits the causing of public health nuisances as follows: "(1)

No person may cause a public health nuisance anywhere in the municipal area. (2) Every owner or occupier of premises must ensure that a public health nuisance does not arise on those premises."

227 The evidence of Dube, Colonel Sithole, Ngcobo, Lepele, Khumalo, Hanyu Shelufumo, and Zungu on the presence of waste and unhygienic conditions shows the contravention of the Public Health By-laws.



228 Section 38 provides that "*Every owner of premises must provide every resident on the premises with an adequate and readily available potable water supply at all times.*"

229 The evidence of Nkabi, Lepele, Zungu, Ngcobo, Machabane, Omary, Hamisi, Ramadan, Khumalo and Mokgoko that there was no water supply, taps were removed, there were no functional toilets, and residents obtained water from firefighting installations shows the contravention of the Public Health By-laws.²¹²

230 There was additional evidence of contravention of sections 14 and 15 of the Electricity By-laws, 1999,²¹³ relating to electricity usage.

230.1 Section 14(2) of the By-law provides that "*when conditions are found to exist in an electrical installation which in the opinion of the engineer constitutes a danger or potential danger to person or property or interface*

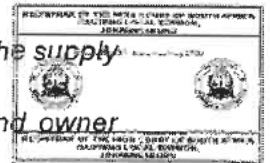
²¹² See paragraphs 88; 138 and 141.1; 141.3 of the Report.

²¹³ Refer to paragraphs 80; 82; 96 and 141

with a supply to any other consumer, the engineer may at any time without notice disconnect the supply to that installation or any part thereof until such conditions have been remedied or removed." The evidence of Lamula, Nchangase, Bengu, Khumalo, Ngcobo, Mthembu shows that the residents had illegal electricity connections.²¹⁴ Despite the findings of the "blitz" at Usindiso in 2019, the policing of this By- Law did not happen.

230.2 Regarding the prohibition against reconnection without a written

permission from the engineer, section 15 (2) provides that *"if the supply to any electrical installation is disconnected, the consumer and owner concerned shall take all reasonable steps within their power to ensure that such supply is not reconnected in contravention of subsection (1). (3) if such supply is nevertheless so reconnected after it has been disconnected by the council, the consumer and owner concerned shall forth with take reasonable steps within their power to ensure that no electricity is consumed on the premises concerned and shall, in addition, forth with notify the engineer of such reconnection. (4) if the consumer and owner contemplated in subsections (2) or (3) are not in occupation of the premises concerned then the occupier of those premises shall comply with the provisions of the above-mentioned subsections".* Non-compliance with this By -Law is a criminal offence. Yet again, despite the revelations of the 2019 "blitz", and the previous disconnection of electricity supply, the residents continued to have illegal, electricity connections from the



²¹⁴ See paragraphs 82; 141.3 & 138 of the Report.

transformer, creating a risk to all. The COJ failed to uphold this By-law to ensure that the residents did not receive illegal and unsafe electricity.

231 There was more evidence of the contravention of the Waste Management Services By-laws, 2021, relating to waste management services.²¹⁵

232 Sections 24; 27(1); 70; 73(2) and (4) & 74(1) of the Waste Management Services By-laws are relevant.

232.1 Section 24 provides that *"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 economic and social development."*



232.2 Section 27(1) provides that *"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 fourteen days after generation thereof at a waste handling facility determined by the Council unless Council determines otherwise."*

232.3 The evidence of Monageng, Ngcobo, Dube, Lepele, Kumalo, Hanya, Shelufumo, Mbwambo, Zungu, Mthembu, Sibiya, Rashid, Mngandi, Ngulube, Phiali and Petshe demonstrate the existence of waste in and

²¹⁵ Refer to paragraphs 82, 84, 138 & 141.

around Usindiso building and attest to the contravention of the Waste Management Services By-laws.²¹⁶

232.4 Section 70 prohibits the accumulation of waste in the following terms

“(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 the 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 occupier shall be liable for the tariff charge of collecting and removing the waste.”



232.5 The witnesses described in paragraph 232.3 of this Report also testified about the contravention of this By-law.

232.6 Section 73 prohibits littering in the following terms: *(1) No person may —(a) cause litter; (b) sweep any waste into a gutter, onto a road reserve or onto any other public place;”... “(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*

²¹⁶ See paragraphs 84; 138 & 141.2 of the Report.

such litter or cause it to be removed from the premises concerned to prevent the litter from becoming a nuisance.”

232.7 Once more, the witnesses described in paragraph 232.3 of this Report also testified about the contravention of this By-law.

232.8 Section 74(1) imposes duties on owners and occupiers to prevent buildings from being used for dumping as follows:

“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.”



232.9 Yet again, the witnesses described in paragraph 232.3 of this Report also testified about the contravention of this By-law.

233 There was other evidence of the City's failure to implement and contravention of the City By-laws, namely, section 7 of the Problem Properties By-laws, relating to the abandonment of the building, failure to maintain in accordance with applicable law, non-compliance with existing legislation. Section 7, as amended, provides as follows *“1(a) The authorized official may, subject to the provisions of this section, declare a property or building or any part thereof a Problem Property, provided that the responsible person allowed one or more of the following circumstances to exist at the property... (d) The building is overcrowded as envisaged in any law, By-law, and town planning scheme in operation or any relevant legislation. (e) The building 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) the building was overloaded or illegally connected electricity supply.*

(g) the building has (i) illegally connected water supply, (ii) illegally connected to sewer mains, over flown or blocked sewer drains. (h) the building is subject to complaints of criminal activities including but not limited to drug dealings, prostitution, money laundering. (i) the building is occupied illegally; (j)(i) the building is structurally unsound and (n) and the building is a threat or danger to the occupiers, registered owners, responsible person, or the public in general". For all the reasons indicating non-compliance with the By-laws discussed in paragraphs 220 to 233 above, the Usindiso building ticked all of the boxes of non-compliance since the "blitz" of 2019.²¹⁷



234 The National Building Regulations, GN R2378 in GG 12780 of 12 October 1990 provides as follows:

- "(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."

235 The evidence of Dube and Colonel Sithole on overcrowding show a clear breach of the National Building Regulations, GN R2378 in GG 12780 of 12 October 1990.²¹⁸

²¹⁷ Refer to paragraphs 74; 80; 82 – 87; 91 – 96; 104; 106; & 141.

²¹⁸ Refer to paragraphs 74; 82 and 141.4 of the Report.

236 Despite brave efforts by EMS to quell the fire and rescue those who could be rescued, seventy-six (76) persons lost their lives and scores of others sustained varying injuries.

237 Despite protestation by the City officials, the evidence shows that the City entities were working in silos without even necessary intelligence sharing regarding the problems that they documented in relation to the problems that were found to exist in the Usindiso building.²¹⁹

238 The City of Johannesburg as well as JPC (which has a Service Delivery Agreement with the City) did not discharge the obligations imposed on them by the By-laws, as “owner” and “manager” of the Usindiso building.



239 Law enforcement at 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.

Cause of fire

240 X admitted to have caused the fire when, after strangulating a victim, he sought to conceal the murder by setting his victims body on fire, which then triggered the conflagration that ensued.

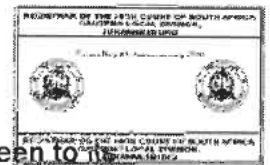
241 The consequences of the fire would have been mitigated had the City complied with its legal obligations as owner and municipality.

²¹⁹ Transcript, p1544, line 14 - 19 [Day 25, E Mbanu.]. Transcript, p1600, lines 8 – 18 [Day 26, A Cossa]

L. RECOMMENDATIONS

242 Having considered the totality of the evidence and the factual findings made in this report, we make the following recommendations:

242.1 The City must consider, at an appropriate place, to put 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;



242.2 The process for demolishing the Usindiso building must be seen to full and final implementation.

242.3 All contraventions of the national acts and the By-laws have been established, and the City must engage 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.

242.4 The Board of Directors of the JPC must consider taking appropriate action against Botes, the Chief Executive Officer of the JPC for the total disregard of managing the Usindiso building despite knowledge of the calamitous state since at least 2019.

242.5 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.

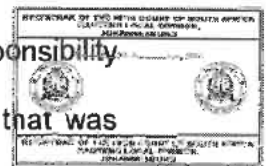
- 242.6 The SAPS must be requested to investigate Mnyameni and Mbedzi regarding the allegations made by the residents about their possible involvement in the construction of shacks in and/or collection of rent from the residents of Usindiso building.
- 242.7 Psycho-social support must be continued in respect of the victims who still need it to deal with the trauma that was caused by the fire.
- 242.8 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.
- 242.9 The process by the DHA to replace identity documents destroyed in the fire must continue for those entitled to them.
- 242.10 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.
- 242.11 Given that the role and powers of SAPS and JMPD to deal with crime are not the same, the heads of law enforcement, namely JMPD and SAPS, must take steps to devise integrated and complimentary law enforcement methods to ensure 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.

242.12 Those detained at Lindela for the purposes of giving 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.

242.13 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 conducted 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 tragedy.²²⁰

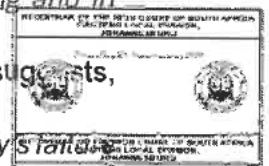


M. RESPONSIBILITY AND LIABILITY

243 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 of the COJ who must bear responsibility and/or accountability. Our view is that the omission on behalf of the CEO of JPC to discharge the duties of the owner is sufficiently supported by the evidence.

²²⁰ Paragraphs 28.1 and 28.3, read with 213 of the Evidence Leader Submissions.

244 There are varying positions on the liability of the residents. The position of the COJ was that, while it acknowledges that it failed to comply with the applicable laws and By-laws, the tragic event and the need to avoid its recurrence, the COJ should not be held accountable, and were it to be held accountable, such must be considered in the light of the illegal conduct of the residents, threats issued by residents to its officials and the hijacking of the building by the residents in the first instance. In its submissions, while SERI acknowledges that *"the high watermark of their potential responsibility lies in occupying the building and in contributing to the dangerous conditions of the building..."*, it also suggests, correctly, that their conduct must be *"understood in the context of the City's failure (as owner and municipality) to address these conditions, there should be no finding of responsibility in respect of the residents. Put simply, they should not be blamed for their own deaths and injuries."* We agree with SERI's approach. Regrettably, the desperate living conditions of the residents of the building exacerbated the outcome of the fire and some partial and contributory apportionment of wrongdoing must follow. This is important to vindicate the rule of law, which must apply equally on all.



245 The further police investigation on the conduct of X and Y and their accomplices who bear equally some liability and responsibility regarding the fire for the tragedy, must continue.

N. LESSONS LEARNT

246 There is no case that amply demonstrates the consequences of failure to comply with the obligations that the law placed on a municipality and owner than the calamity that was Usindiso, precisely in part because the City itself contravened

the laws and the By-laws. This magnifies the gravity of the problem, and must be avoided in the future.

- 247 The City must consider appointing officials in their permanent positions. A fair number of City officials are acting in their position and doing so for extended periods of time. This is undesirable.

Justice SV Khampepe
Chairperson

Ms VM Mabasa
Assistant Commissioner

30 APRIL 2024



i THE PREMIER

**CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996
PROVINCIAL COMMISSIONS ACT, 1997 (ACT NO. 1 OF 1997)
PROCLAMATION**

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

WHEREAS section 2(1) of the Provincial Commissions Act, 1997 (Act No. 1 of 1997) (the 'Act'), read with section 127(2)(e) of the Constitution of the Republic of South Africa, 1996 (the 'Constitution'), gives me the power, by proclamation in the Provincial Gazette, to—

- (a) appoint a commission of inquiry;
- (b) define the matter or matters to be inquired into by the commission and its other terms of reference;
- (c) make regulations providing—
 - (i) for the procedure to be followed at the inquiry and for the preservation of confidentiality; and
 - (ii) providing generally for all matters which I consider necessary or expedient to prescribe for the purposes of the inquiry;
- (d) appoint a secretary to the commission, and such other officials, as I may deem necessary to assist the commission; and
- (e) designate any member of the commission as the chairperson of the commission;

AND WHEREAS a building or immovable property situated at the corner of Albert and Delvers Streets, Marshalltown, Johannesburg Central Business District (Region F) (the 'Usindiso Building'), was on 31 August 2023 engulfed by fire that caused the death of at least 77 people, including women and children, and dozens more others seriously injured and homeless;

AND WHEREAS the Gauteng Provincial Government considers the deaths as a great tragedy and necessary to inquire into the circumstances surrounding the prevalence of buildings or immovable properties in the Johannesburg Central Business District (Region F) being abandoned by their legitimate landlords or owners and taken over by criminal syndicates or other groups and leased out to and populated with tenants, who do not have the means to afford other forms of housing, without providing basic services such as water,

electricity, refuse removal and sanitation and paying rates and taxes (the so-called 'hijacked buildings');

AND ACKNOWLEDGING that the South African Police Service (the 'SAPS') and other relevant competent authorities are currently seized with the conduct of investigations into the possible cause or causes of the fire and other matters related to the fire at the Usindiso Building;

AND RECOGNISING that the Gauteng Provincial Government seeks a comprehensive overhaul of all the underlying issues that place the dignity, health and wellbeing and lives of the residents of the Province of Gauteng in danger and considers the appointment of a commission of inquiry to inquire into the circumstances surrounding the prevalence of said buildings or immovable properties insofar as (1) they might have been influenced by the actions of others preceding and leading up to the fire or (2) they might have had an effect on the deaths, injuries and homelessness, at the Usindiso Building, and who must shoulder the liability or responsibility for the said state of affairs, deaths and injuries, to ensure that tragedies, like the one at the Usindiso Building, never happens again;

AND THEREFORE, I, Andrek (Panyaza) Lesufi, Premier of the Province of Gauteng, hereby, in terms of section 2(1) of the Act read with section 127(2)(e) of the Constitution, establish a commission of inquiry (the 'Commission') to—

(a) inquire, with expedition, into the circumstances surrounding—

(i) specifically, the fire at the Usindiso Building, situated at the corner of Albert and Delfers Street, Marshalltown, Johannesburg Central Business District (Region F), that caused the death of at least 77 people, including women and children, and dozens more others seriously injured and homeless; and

(ii) generally, the prevalence of buildings or immovable properties in the Johannesburg Central Business District (Region F) being abandoned by their legitimate landlords or owners and taken over by criminal syndicates or other groups and leased out to and populated with tenants, who do not have the means to afford other forms of housing, without providing basic services such as water, electricity, refuse removal and sanitation and paying rates and taxes (the so-called 'hijacked buildings'); and

(b) in the light of the above circumstances, make findings as to who must shoulder the liability or responsibility for the said state of affairs, deaths and injuries; and

(c) draw lessons from these circumstances and, taking account of the said investigations by the SAPS and other relevant competent authorities, make recommendations insofar as—

(i) the appropriate steps that must be taken and by whom; and

(ii) appropriate to address any relevant matter arising in relation to this scope of the inquiry; and

(b) in the light of the above circumstances, make findings as to who must shoulder the liability or responsibility for the said state of affairs, deaths and injuries; and

(c) draw lessons from these circumstances and, taking account of the said investigations by the SAPS and other relevant competent authorities, make recommendations insofar as—

(i) the appropriate steps that must be taken and by whom; and

(ii) appropriate to address any relevant matter arising in relation to this scope of the inquiry; and

(d) appoint and designate Justice Sisi Virginia Khampepe, as the member and Chairperson of the Commission;

(e) appoint and designate Adv. Thulani Makhubela and Ms Vuyelwa Mathilda Mabena, as additional members of the Commission, to assist the Chairperson of the Commission in conducting the inquiry and in her work as Chairperson and in preparing the report of the Commission;

(f) determine the matters to be inquired into by the Commission and define its terms of reference, as set out in Part A of the Schedule;

(g) make regulations applicable to the Commission as set out in Part B of the Schedule; and

(h) appoint and designate Seanego Attorneys Incorporated, a firm of attorneys, to assign one of its directors or partners, as the Secretary to the Commission, who is responsible for—

(i) with the concurrence of the Chairperson, arranging accommodation for the Commission;

(ii) servicing of the Commission;

(iii) managing its documentation; and

(iv) ensuring that the Commission is run with efficiency and has a good working relationship with all those who come into contact with it.



AND DETERMINING, in relation to the immediately preceding statement, that the inquiry must be conducted in two parts, dealing respectively with paragraph (a)(i) and paragraph (a)(ii), along with, in each case, paragraphs (b) and (c).

Given under my hand at Johannesburg on this 4th day of September, Two Thousand and Twenty Three.

ii REGULATIONS

1. In these Regulations, unless the context otherwise indicates—

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Commission of Inquiry into the circumstances surrounding the fire that caused the death of at least 77 people and dozens more others injured and homeless at the Usindiso Building, situated at the corner of Albert and Delvers Streets, Marshalltown, Johannesburg Central Business District (Region F);

"document" means any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture, in any format that is capable of being read;

"enquiry" means the enquiry conducted by the Commission;

"member" means a member of the Commission;

"officer" means a person in the full-time service of the Gauteng Provincial Government or State who has been seconded or designated to assist the Commission in the performance of its functions;

"premises" includes any land, building, structure, part of a building or structure, conveyance, vessel or aircraft;

"the Act" means the Gauteng Provincial Commissions Act, 1997 (Act No. 1 of 1997); and

"warrant" means a warrant to search any person or premises, or seize any article or document, that is issued by a magistrate or a judge of the High Court on the written application of an official of the Commission, if it appears to the magistrate or a judge that there are reasonable grounds for believing that the person, premises article or document is within their jurisdiction and is required by the Commission in the execution of its functions in accordance with its Terms of Reference.

2. The proceedings of the Commission must be recorded and transcribed in the manner determined by the Chairperson.

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded must, at the outset, take an oath or make an affirmation in the following form—

'I, AB, declare under oath / affirm and declare—

(a) that I shall faithfully and to the best of my ability take down / record the proceedings of the Commission of Inquiry into the circumstances surrounding the death of at least 77 people and dozens more others injured and homeless at the Usindiso Building, situated at the corner of Albert and Delvers Streets, Marshalltown, Johannesburg Central Business District (Region F) in shorthand / by mechanical means as ordered by the Chairperson of the Commission; and

(b) that I shall transcribe fully and to the best of my ability any shorthand notes / mechanical record of the proceedings of the said Commission made by me or by any other person.'

(2) No shorthand notes or mechanical record of the proceedings of the Commission may be transcribed except by order of the Chairperson.

4. Any person employed in the execution of the functions of the Commission, including any person referred to in regulation 3(1), must assist to preserve secrecy with regard to any matter, document or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions except, insofar as the publication of such matter, document or information is necessary for the purposes of the report of the Commission, and every such person, except the Chairperson, any member or any officer, must, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity and secrecy in the following form—

'I, AB, declare under oath / affirm and declare that except insofar as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into the circumstances surrounding the death of at least 77 people and dozens more others injured and homeless at the Usindiso Building, situated at the corner of Albert and Delvers Streets, Marshalltown, Johannesburg Central Business District (Region F) or by order of a competent court, I shall not communicate to any person any matter of information which may come to my knowledge in connection with the enquiry of the said Commission, or allow or permit any person to have



access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer.¹

5. No person may communicate to any other person any matter, document or information which may have come to his or her knowledge in connection with the enquiry of the Commission, or allow or permit any other person to have access to any records of the Commission, except insofar as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

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.

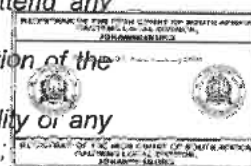
17. No person may, except insofar as is necessary in the execution of the Terms of Reference of the Commission, publish or furnish any other person with the report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication: Provided 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.

iii GENERAL NOTICE

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996
PROVINCIAL COMMISSIONS ACT, 1997 (ACT NO. 1 OF 1997)
COMMISSION OF INQUIRY INTO CIRCUMSTANCES RELATING TO THE DEATH OF AT LEAST 77 PEOPLE AND DOZENS MORE OTHERS INJURED AND HOMELESS AT THE USINDISO BUILDING, CORNER OF ALBERT AND DELVERS STREETS, MARSHALLTOWN, JOHANNESBURG CENTRAL BUSINESS DISTRICT (REGION F)

THE CHAIRPERSON

RULES GOVERNING THE PROCEEDINGS

WHEREAS the Premier of the Province of Gauteng, Mr Andrek (Panyaza) Lesufi, by virtue of the powers vested in him by or under section 2(1) of the Provincial Commissions Act, 1997 (Act No. 1 of 1997) (the 'Act'), read with section 127(2)(e) of the Constitution of the Republic of South Africa, 1996 (the 'Constitution'), by Proclamation, published in Premier's Notice 1 of 2003 under Provincial Gazette, Extraordinary, No. 324 dated 13 September 2003—



- (1) established and appointed members of the Commission of Inquiry, and designated Justice Sisi Khampepe (retired) as the Chairperson of the Commission, to—
 - (a) inquire, with expedition, into the circumstances relating to—
 - (i) specifically, the fire at Usindiso Building that caused the death of at least 77 people, including women and children, and dozens more others seriously injured and homeless; and
 - (ii) generally, the prevalence of buildings or immovable properties in the Johannesburg CBD (Region F) being abandoned by their legitimate owners and taken over by criminal syndicates or other groups and leased out to and populated with tenants who don't have the means to afford other forms of housing without providing basic services such as water, electricity, refuse removal and sanitation and paying rates and taxes; and
 - (b) in the light of these circumstances, make findings as to who must shoulder the liability or responsibility for the state of affairs, deaths and injuries; and
 - (c) draw lessons from these circumstances and findings, and taking account of the said investigations by the SAPS and other relevant authorities, make recommendations insofar as—
 - (i) the appropriate steps that must be taken and by whom; and
 - (ii) appropriate to address any relevant matter arising in relation to this scope of the inquiry; and
- (2) appointed and designated Seanego Attorneys Incorporated, a firm of attorneys, to assign one of its directors or partners, as the Secretary to the Commission, who is responsible for—
 - (a) with the concurrence of the Chairperson, arranging accommodation for the Commission;
 - (b) servicing of the Commission;
 - (c) managing its documentation; and
 - (d) ensuring that the Commission is run with efficiency and has a good working relationship with all those who come into contact with the Commission;

AND RECOGNISING that the Premier, in—

- (a) Part A of the Schedule to the Proclamation, determined the matters to be inquired into by the Commission and define its terms of reference; and
- (b) Part B of the Schedule to the Proclamation, made regulations that are applicable to the Commission;

AND FURTHER RECOGNISING that, clause 16 of the Terms of Reference in Part A of the Schedule to the Proclamation read with section 10 of the Act, empowers the Commission to make rules for its own guidance on the conduct and management of its proceedings by the publication thereof in the Provincial Gazette;

AND THEREFORE, the Commission, by virtue of the powers vested in the Commission by or under clause 16 of its Terms of Reference in Part A of the Schedule to the Proclamation read with section 10 of the Act, makes the Rules Governing its Proceedings, as set out in the Schedule.

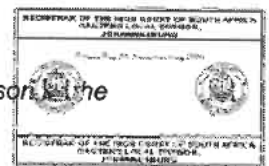
Given under my hand at Johannesburg on this 22nd day of September, Two Thousand and Twenty Three.

RULES GOVERNING THE PROCEEDINGS OF THE COMMISSION

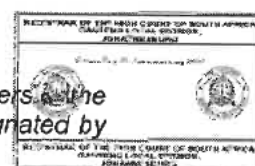
1. Definitions

In these Rules, unless otherwise stated or the context indicates otherwise—

- 1.1. "Chairperson" means Justice Sisi Virginia Khampepe in her capacity as Chairperson of the Commission;
- 1.2. "Commission" means the Commission of Inquiry into Circumstances Surrounding the Death of at Least 77 People and Dozens More Others Injured and Homeless at the Usindiso Building, Situated at the Corner of Albert and Delters Streets, Marshalltown, Johannesburg Central Business District (Region F), as constituted by the Premier of the Province of Gauteng by proclamation published in Premier's Notice 1 of 2023 under Provincial Gazette, Extraordinary, No. 324 dated 13 September 2023;
- 1.3. "evidence" includes but is not limited to any document, affidavit, video, sound recording or oral testimony submitted to the Commission;
- 1.4. "Evidence Leader" means the team of lawyers appointed by the Commission to assist it in the investigation and with the presentation of evidence and arguments before the Commission in regard to the matters referred to in the Terms of Reference;
- 1.5. "legal representative" means a practising advocate or attorney;
- 1.6. "person" includes both a natural and a juristic person;
- 1.7. "personal information" means information regulated and protected in terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), which includes information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—
 - 1.7.1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
 - 1.7.2. information relating to the education or the medical, financial, criminal or employment history of the person;
 - 1.7.3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - 1.7.4. the biometric information of the person;



- 1.7.5. *the personal opinions, views or preferences of the person;*
- 1.7.6. *correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;*
- 1.7.7. *the views or opinions of another individual about the person; and*
- 1.7.8. *the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;*
- 1.8. *"Regulations" mean the Regulations applicable to the Commission as set out in Part B of the Schedule to the Proclamation published in Premier's Notice 1 of 2023 under Provincial Gazette, Extraordinary, No. 324 dated 13 September 2023;*
- 1.9. *"Rules" means these Rules as from time to time are amended;*
- 1.10. *"Secretary to the Commission" or "Secretary" means one of the directors or partners of the Seanego Attorneys Incorporated, a firm of attorneys, that is appointed and designated by the Premier as the Secretary to the Commission; and*
- 1.11. *"Terms of Reference" means the Terms of Reference of the Commission published in Part A of the Schedule to the Proclamation published in the Premier's Notice 1 of 2023 under Provincial Gazette, Extraordinary, No. 324 dated 13 September 2023.*



2. Commission to keep the public informed

The Commission must regularly inform the public of the matters to be covered at its hearings by publishing relevant information on its website.

The Commission will issue guidelines on the media coverage of the proceedings of the commission.

3. Witnesses presented by Evidence Leader and implicated persons and their evidence

- 3.1. *Subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Evidence Leader bears the overall responsibility to present the evidence of witnesses to the Commission.*
- 3.2. *The Evidence Leader may put questions to a witness whose evidence is presented to the Commission by the Evidence Leader, including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the Chairperson's directions, the Evidence Leader may ask leading questions.*
- 3.3. *If the Evidence Leader intends to present to the Commission a witness, whose evidence implicates or may implicate another person, the Commission must, through the Secretary to the Commission, notify that person ("implicated person") in writing within a reasonable time before the witness gives evidence—*
- 3.3.1. *that he or she is, or may be, implicated by the witness's evidence;*
- 3.3.2. *in what way he or she is, or may be, implicated and furnish him or her with the witness's statement or relevant portions of the statement;*
- 3.3.3. *of the date when and the venue where the witness will give the evidence;*
- 3.3.4. *that he or she may attend the hearing at which the witness gives evidence;*

- 3.3.5. *that he or she may be assisted by a legal representative when the witness gives evidence, at the discretion of the Chairperson, and in such manner as may be determined by the Chairperson;*
- 3.3.6. *that, if he or she wishes—*
- 3.3.6.1. *to give evidence himself or herself;*
- 3.3.6.2. *to call any witness to give evidence on his or her behalf;*
- or*
- 3.3.6.3. *to cross-examine the witness,*
- he or she must, within one week from the date of notice, apply in writing to the Commission for leave to do so; and*
- 3.3.7. *that the Chairperson will decide the aforesaid application.*
- 3.4. *An application in terms of Rule 3.3.6 must be submitted in writing to the Secretary to the Commission within seven calendar days from the date of the notice referred to in Rule 3.3.6. The application must be accompanied by a statement from the implicated person responding to the witness's statement in so far as it implicates him or her. The statement must make it clear what parts of the witness's statement are disputed or denied and the grounds upon which those parts are disputed or denied.*
- 3.5. *If an implicated person believes that the Evidence Leader did not give him or her the notice referred to in Rule 3.3 within a reasonable time before the witness could or was to give evidence and that this may be prejudicial to him or her, he or she may apply to the Commission for such order as will ensure that he or she is not seriously prejudiced.*
- 3.6. *In deciding an application contemplated in Rule 3.3.6, the Chairperson may, at her discretion and on such terms and conditions as she may deem appropriate, grant leave to an implicated person (a) to give evidence (b) to call a witness to give evidence on his behalf or (c) to cross-examine the witness implicating him or her.*
- 3.7. *In accordance with Regulation 11, there is no right to cross-examine a witness before the Commission, but the Chairperson may permit cross-examination where she deems it necessary and in the best interests of the work of the Commission to do so.*
- 3.8. *If the Chairperson grants leave to an implicated person in terms of Rule 3.6, the Evidence Leader may put questions to any witness who gives evidence pursuant to that ruling, including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Evidence Leader may ask leading questions.*
- 3.9. *An implicated person may apply to the Commission for leave to make written or oral submissions on the findings or conclusions that the Chairperson is to make on the evidence placed before the Commission that relates to him or her.*
- 3.10. *The Chairperson may, at any time, direct any person against whom allegations are made in a witness's statement or evidence to respond in writing to the allegations relating to him or her in that statement or evidence, or to answer in writing specific questions put to him or her by the Chairperson arising from the witness's statement.*



4. Hearings to be held in public

- 4.1. *Subject to Rule 4.2, the hearings of the Commission are to be held in public.*

4.2. In an appropriate case, the Chairperson may make an order that a hearing be held in camera. In such a case, the Chairperson must specify in the order those persons that are permitted to attend the hearing in camera.

4.3. At the request of the witness whose evidence is to be heard in camera or, *mero moto*, the Chairperson must order that nobody may, directly or indirectly, disclose the identity of the witness who is to give evidence in camera.

5. Venue for hearings

5.1. Subject to Rule 5.2, the hearings of the Commission are to be held at a venue designated for this purpose at Sunnyside Office Park, 32 Princess of Wales Terrace, Wits Clinical Research Offices, Building C, Second Floor, Parktown, Johannesburg, 2193.

5.2. The Chairperson may, at her discretion, direct that a hearing or certain hearings of the Commission are to be held at a venue other than the venue referred to in Rule 5.1.

6. Evidence presented to Commission

6.1. The Commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the Commission.

6.2. Any person who has knowledge of the matters that fall within the Terms of Reference of the Commission may deliver to the Secretary to the Commission a statement or affidavit setting out that information and the Secretary to the Commission must hand it over to the Evidence Leader for consideration.

6.3. Affidavits or statements that are submitted to the Commission must—

6.3.1. be formatted in numbered paragraphs; and

6.3.2. include an index and subject matter headings if the statement or affidavit is more than five pages in length.

6.4. Where a person seeks to provide expert evidence to the Commission, his or her evidence must include a summary of relevant qualifications and experience, a summary of the expert's opinion, as well as an explanation of the relevance of the expert's testimony to the work of the Commission.

6.5. Where the evidence intended to be placed before the Commission has previously been placed before another Commission or tribunal or court or body, that fact must be disclosed by the person submitting that evidence in order for the Commission to secure the relevant transcript in respect of those proceedings.

7. Oral evidence at hearings

7.1. Witnesses are to be called to give oral evidence before the Commission at the discretion of the Chairperson. The Chairperson's decision to call a witness is to be informed by the likely significance of the evidence in advancing the mandate of the Commission.

7.2. The Chairperson may, in terms of section 4(1) of the Act, summon any person to give oral evidence.

7.3. A witness appearing before the Commission may, at the discretion of the Chairperson, and in such manner as may be determined by the Chairperson, be assisted by a legal representative.



- 7.4. The Chairperson, or another person who is generally or specifically authorised by the Chairperson to do so, must administer an oath or affirmation to a witness before the witness may commence giving evidence.

8. Order of evidence of witness

- 8.1. The order or sequence in which witnesses are to be called before the Commission is subject to the discretion of the Chairperson.
- 8.2. The Chairperson may, at her discretion, direct the cross-examination of a witness by an implicated person or his legal representative to take place after the Evidence Leader and the Chairperson have exhausted their respective questions to the witness.

9. Other witnesses

- 9.1. If any person considers that a particular witness must be called to give oral evidence, a written request to this effect must be made to the Commission and must include the reasons for the request and the likely value of the evidence of that witness. Such witness may be called at the discretion of the Chairperson.
- 9.2. A witness may apply to the Chairperson, at least one week before that witness is scheduled to appear at a hearing, to have his or her evidence taken in camera. Such application must be in writing and must give reasons why such an order must be made. The Chairperson may decide that application as she deem appropriate.



10. Call for documents

- 10.1. The Commission may, in terms of section 4(1) of the Provincial Commissions Act, summon any person to produce a document in his or her possession or under his or her control which has a bearing on the matter being investigated.
- 10.2. Any person to whom such a summons to produce a document is directed must, within seven days of receiving the summons, produce the documents requested or submit an affidavit to the Commission explaining why those documents cannot be produced.
- 10.3. Should a person claim that a document referred to in the summons is subject to legal professional privilege, he or she must—
- 10.3.1. identify the document in respect of which privilege is claimed; and
- 10.3.2. explain the basis for the claim of privilege in relation to each document.
- 10.4. Where a person claim that a document referred to in the summons is confidential for a reason other than that it is subject to legal professional privilege, such as that it is commercially sensitive or includes personal information, he or she must produce the document but must specify that the document, or part of it, ought not be made public and must make application for the document (or part of it) to be treated as confidential in the investigation of the Commission. The application must be in writing and must set out—
- 10.4.1. what portions of the document or documents are claimed to be confidential; and
- 10.4.2. why those portions should not be publicly disclosed.
- 10.5. The Chairperson must consider all claims of confidentiality for documents provided to the Commission and must rule on whether the document will be treated as confidential.
- 10.6. Where the document (or part of it) is determined to be confidential, it must not be included (or included only in redacted form to protect the confidentiality) in any of the Commission's publications nor referred to, in relevant part or parts, in public hearings.

- 10.7. Where the document is determined not to be confidential, it may be referred to in the Commission's publications and at public hearings.
- 10.8. The Commission must notify the person who made a claim of confidentiality for a document of the Chairperson's determination prior to the document being referred to in a publication or at a public hearing.

11. General

- 11.1. Any party wishing to make any application to the Commission which is not otherwise provided for in these Rules must do so on at least seven calendar days' notice in writing to the Commission, but the Chairperson may condone non-compliance with this notice period on good cause shown.
- 11.2. The Commission may condone non-compliance with, or extend, any timeframe provided for in these Rules on good cause shown or when it is in the interests of the work of the Commission to do so.
- 11.3. Wherever these Rules make provision for any person to apply to the Commission or to the Chairperson, the application must be a substantive application on affidavit with a notice of motion. The affidavit must, among other things, reflect the relevant facts, the order sought and the grounds relied upon to seek that order.
- 11.4. The application must be lodged with the Secretary of the Commission who will ensure that such application is delivered to the Chairperson and to the Evidence Leader. The applicant in that application must cite every other person whose rights may be adversely affected by the order sought and serve a copy on him, her or it.
- 11.5. As soon as possible after the Chairperson has become aware of such an application, she must issue such direction or order as to the future conduct of the matters as she may consider appropriate.

12. Practice directions

The Chairperson may issue practice directions from time to time in respect to the proceedings of the Commission.

13. Amendment of Rules

The Commission may from time to time amend these Rules.

iv 1. Republic of South Africa.—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.

v 2. Supremacy of Constitution.—This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled

vi 8. Application.—(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

vii 10. Human dignity.—Everyone has inherent dignity and the right to have their dignity respected and protected.

viii 11. Life.—Everyone has the right to life.

ix 12. Freedom and security of the person.—(1) Everyone has the right to freedom and security of the person, which includes the right—

(c) to be free from all forms of violence from either public or private sources;

x 24. Environment.—Everyone has the right—

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

xi 26. Housing.—

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.



xii 239 "organ of state" means—

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution—

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation,

but does not include a court or a judicial officer;

xiii 1..."basic municipal services" means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment;

2. Legal nature.—A municipality—

- (a) is an organ of 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;

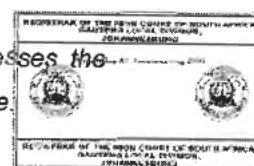
xiv 11 (3)- A municipality exercises its legislative or executive authority by—

- (i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;

xv 3. **Services of local authorities.**—(1) A local authority may establish and maintain a service in accordance with the prescribed requirements.

...

5. **Chief fire officer.**—(1) A controlling authority shall appoint a person who possesses the prescribed qualifications and experience, as chief fire officer to be in charge of its service.



...

15. **Regulations.**—(1) The Minister may, after consultation with the Board, make regulations which are not contrary to this Act or any other law—

...

- (d) regarding the safety requirements to be complied with on premises in order to reduce the risk of a fire or other danger, or to facilitate the evacuation of the premises in the event of such danger;

...

16. **By-laws and regulations.**—(1) A local authority may, after consultation with the Board, and subject to the provisions of any law applicable to the local authority in relation to the promulgation of by-laws or regulations, as the case may be, make by-laws or regulations, as the case may be, which are not contrary to any law, for its area of jurisdiction regarding any matter which it may deem necessary or expedient in order to employ its service effectively.

...

17. **Failure to comply with requirements.**—(1) If a person, including a local authority and a department of State, fails to comply with a requirement, standard or direction determined or issued under this Act or the regulations contemplated in section 15, the Administrator may by written notice direct a local authority, and the Minister may by written notice direct any other person, to comply with the requirement, standard or direction within the period mentioned therein. (2) If such a person fails to give effect to such a notice, the Administrator or Minister, as the case may be, may cause steps to be taken in order to comply with the requirement, standard or direction on

behalf of the person concerned and to recover the costs in connection therewith from that person.

(3) A direction referred to in subsection (1) shall not be issued before consultation with the local authority or person concerned, as the case may be.

...

18. Enforcement of provisions.—(1) A chief fire officer may at any reasonable time enter any premises in the area of the controlling authority concerned in order to determine whether the provisions contemplated in sections 15 (1) (a), (d), (e) and (g) and 16 are being complied with.

(2) If the chief fire officer finds that such provisions are not being complied with, he may issue to the owner of those premises, or his authorized agent, a written instruction to comply with the provisions in question within the period mentioned therein. (3) If an instruction contemplated in subsection (2) is not carried out within the period mentioned therein, the controlling authority concerned may cause the necessary steps to be taken in order to comply with the provisions in question on behalf of the owner concerned and to recover the costs in connection therewith from

the owner. (4) For the purposes of this section "owner" means the registered owner of the premises or in relation to a sectional title scheme, the body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986).



xvi 13. Requirements for emergency exits

(1) Every owner of a building must ensure that any escape door in that building—(a) is fitted with hinges that open in the direction of escape; and (b) is equipped with a fail-safe locking device or devices that do not require a key in order to exit. (2) Every owner of a building must ensure that any door in a feeder route—(a) is a double swing-type door; (b) is not equipped with any locking mechanism. (3) Notwithstanding the provisions of subsection (2), if it is necessary that a door, in a feeder route be locked for security reasons, the owner of the building must provide an alternative means of escape approved by the Chief Fire Officer. (4) 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.

...

15. Barricading of vacant buildings

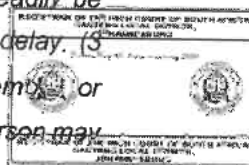
Every owner or person in charge of a building or portion of a building that is vacant must, at his or her own cost and to the satisfaction of the Chief Fire Officer—(a) remove all combustible waste and refuse from the building; and (b) block, barricade or otherwise secure all windows, doors and other openings in the building in a manner that will prevent the creation of any fire hazard caused by entering of the building by any unauthorised person.

...

16. Installation and maintenance of fire-fighting equipment

(1) Every owner of a building must ensure that—(a) all fire-fighting equipment and service installations on the premises are installed in a manner and condition ready for use in

an emergency; (b) all potable and mobile fire-extinguishers and all hose reels on the premises are serviced and maintained in accordance with SABS 0105 and SABS 1475; (c) all fire-fighting equipment and service installations on the premises are -(i) maintained in a good working condition by a competent person; (ii) 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 (d) a comprehensive service record of all fire-fighting equipment and service installations on the premises is maintained and furnished to the Chief Fire Officer every 12 months. (2) Every person who inspects, services or repairs any fire-fighting equipment or service installation must-(a) on completing the inspection, service or repairs, as the case may be -(i) certify in writing that the equipment or installation concerned is fully functional; and (ii) furnish that certificate to the owner of the premises; or (b) if the equipment or installation cannot readily be repaired to a functional state, notify the Chief Fire Officer of this fact in writing without delay. (3) Except for purposes of inspection, service, repair or fire-fighting, no person may remove or interfere with any fire-fighting equipment or service installation at any premises. (4) No person may alter, damage, misuse or render ineffective any fire-fighting equipment or service installation at any premises.



...

95. Establishment and maintenance of service

(1) The Council has established a Fire Brigade Service as contemplated in section 3 of the Fire Brigade Services Act. (2) The Council must maintain the Service, which includes - (a) appointing a Chief Fire Officer and the necessary members of the Service; (b) ensuring that they are properly trained; and (c) acquiring and maintaining the necessary vehicles, machinery, equipment, devices and accessories to ensure that the Service is effective and able to fulfil its objects.

...

96. Objects of service

The objects of the Service are -(a) to prevent the outbreak and spread of fire; (b) to fight and extinguish any fire that endangers any person or property; (c) to protect any person and property against any fire hazard or other danger contemplated in these By-laws; and (d) to rescue any person and property from any fire or other danger contemplated in these By-laws.

xvii **17. General responsibility for compliance with these by-laws, and other laws** (1) The owner of premises is ultimately responsible for ensuring compliance with these Bylaws in respect of all or any matters relating to any installation, and if he or she 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.

...

54. Connection pipes for fire extinguishing services... (3) Where, there is an existing connection pipe for the sole purpose of fire extinguishing services, such connection pipe may only be used for that purpose. (4) No take-off of any kind from any connection pipe referred to in subsection (3) may be made, nor may any water therefrom be used except in connection with an automatic sprinkler and drencher, a hydrant connection or a hose-reel connection, or for any pressure tank connection therewith, and such tank must be controlled by an approved fitting.

119. Offences

(1) It is an offence for any person to – ... (i) contravene or fail to comply with any provisions of these By-laws; ... (3) Any person convicted of an offence contemplated in subsection (1) is 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 requiring the discontinuance of such offence, and for a second or subsequent offence he shall be liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months.



xviii SECTION 14

DISCONNECTION OF SUPPLY

- (1) When any charges due to the council for or in connection with electricity supplied are in arrear, the council may at any time without notice disconnect the supply to the electrical installation concerned or any part thereof until such charges together with the reconnection charge determined by the council are fully paid.
- (2) When conditions are found to exist in an electrical installation which in the opinion of the engineer constitute a danger or potential danger to person or property or interface with the supply to any other consumer, the engineer may at any time without notice disconnect the supply to that installation or any part thereof until such conditions have been remedied or removed.
- (3) The engineer may without notice temporarily discontinue the supply to any electrical installation for the purpose of effecting repairs or making inspections or conducting tests or for any other purposes related to its supply main or other works.

- (4) The council shall, on application by a consumer in a form prescribed by the engineer, disconnect the supply and shall reconnect it on payment of the charge determined by the council.

SECTION 15

UNAUTHORISED CONNECTION

- (1) No person other than an employee of the council authorised thereto shall without written permission from the engineer connect or reconnect or attempt to connect or reconnect any electrical installation to the service connection or the supply main.

- (2) If the supply to any electrical installation is disconnected in terms of section 13(1) or (2) the consumer and owner of concerned shall take all reasonable steps within their power to ensure that such supply is not reconnected in contravention of subsection (1).



- (3) If such supply is nevertheless so reconnected after it has been disconnected by the council, the consumer and owner concerned shall forthwith take all reasonable steps within their power to ensure that no electricity is consumed on the premises concerned and shall, in addition, forthwith notify the engineer of such reconnection.

- (4) If the consumer and owner contemplated in subsections (2) or (3) are not in occupation of the premises concerned, then the occupier of those premises shall comply with the provisions of the above-mentioned subsections.

- (5) If any prosecution for a contravention of or failure to comply with subsections (2) or (3), or both, or of any or both of those subsections read with subsection (4), any contravention or failure to comply, whether intentional or negligently, shall be sufficient to constitute an offence and, unless the contrary is proved, it shall be deemed that-

- (a) reasonable steps as contemplated in subsections (2) and (3) were not taken; and
- (b) such contravention or failure was due to an intentional act or omission of the person charged.

^{xix} Section 1..."**public health hazard**" means any actual threat to public health, and without limitation, includes -(a) unsanitary conditions; (b) circumstances which make it easier for a communicable disease to spread; (c) circumstances which make food or drink, including water for domestic consumption, unhygienic or unsafe to eat or drink; and (d) circumstances which allow pests to infest any place where they may affect public health..."**public health nuisance**" means

the use of any premises or place in a manner which creates conditions that significantly increase the risk of a public health hazard occurring or which compromises any aspect of public health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a public health nuisance is considered to exist in terms of Schedule 1;

...

5. Prohibition on causing public health hazards (1) No person may create a public health hazard anywhere in the municipal area. (2) Every owner or occupier of premises must ensure that a public health hazard does not occur on those premises.

6. Duty to report public health hazards -The owner or occupier of premises who knows of a public health hazard on those premises, must within 24 hours of becoming aware of its existence –(a) eliminate the public health hazard; or (b) if the owner or occupier is unable to comply with paragraph (a), take reasonable steps to reduce the risk to public health and forthwith report the existence of the public health hazard to the Council in writing.



7. Prohibition on causing public health nuisances - (1) No person may cause a public health nuisance anywhere in the municipal area. (2) Every owner or occupier of premises must ensure that a public health nuisance does not arise on those premises.

16. Demolition orders (1) If the Council believes that a public health hazard would be eliminated or a public health nuisance would be significantly reduced by demolishing a building or other structure, it may, subject to the provisions of any other law, apply to any court having jurisdiction for an order directing any person to demolish the building or structure or authorising the Council to do so and to recover the costs of doing so from the owner or the occupier of the premises concerned, or from both. (2) The Council may not apply to court in terms of subsection (1) unless it has given the owner and the occupier of the premises not less than 14 days' notice in writing of its intention to make the application and has considered any representations made within that period.

19. Compulsory connection to municipal sewage system - Every owner of premises to which a municipal sewage service is available, must ensure that all waste water drainage pipes from any bath, wash-hand basin, toilet, shower or kitchen sink is connected to the municipal sewer in an approved manner.

...

38. Provision of adequate water supply - Every owner of premises must provide every resident on the premises with an adequate and readily available potable water supply at all times.

^{xx} SANS 10400 – T:2011 provides as follows:

GENERAL REQUIREMENT

- (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.

COURT ONLINE COVER PAGE

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

CASE NO: 2025-125365

In the matter between:

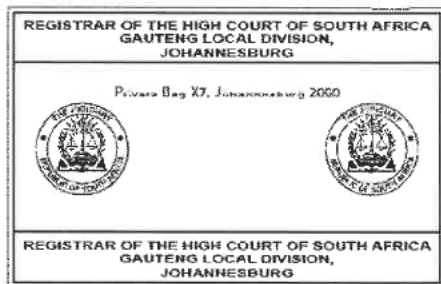
ORGANISATION UNDOING TAX ABUSE NPC Plaintiff / Applicant / Appellant

and

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

Annexure 07

NOTE: This document was filed electronically by the Registrar on 29/7/2025 at 12:30:24 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:

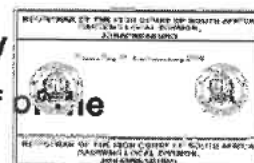
**Registrar of High Court , Gauteng
Local Division,Johannesburg**



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29/7/2025- 23:24 PM

FINAL REPORT

to the President in terms of section 4(1)(f) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 In Re:
Investigation into the procurement of, or contracting for goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the National State of Disaster, as declared by Government Notice No. 313 of 15 March 2020, by or on behalf of the



State Institutions

Proclamation No R23 of 2020

23 July 2020 to 30 September 2021

10 December 2021



The State's preferred and trusted anti-corruption forensic investigation and litigation agency

The matter was referred to the Special Tribunal and the freezing order was issued on 01 June 2021 for the freezing of funds and assets valued at R22 404 113. An additional freezing order was obtained on 23 June 2021 valued at R4 600 402.

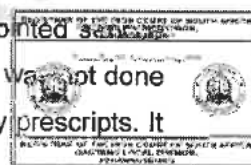
c. Remaining service providers

The SIU referred the remainder of the service providers, 221, to the Civil Litigation Unit for review. The matter was reviewed and approved referral to the Special Tribunal.

8.1.3. Johannesburg City Property (JPC)

a) Nature of Allegation

The SIU received allegations through the whistle-blower hotline that the JPC appointed service providers for deep cleaning and sanitisation services during Covid-19 lockdown that was not done on a fair and competitive process and in line with applicable legislative or regulatory prescripts. It is also alleged that the prices of the services were inflated.



Entity	Registration number	Value of contracts
KM Mashigo Trading CC	2007/182612/23	R3 502 000
Omphile Turnkey Solutions (Pty) Ltd	2014/173960/07	R4 663 000
Mizana Trading (Pty) Ltd	2012/177151/07	R4 663 000
Triple SL Tech CC	2007/022481/23	R5 777 610
TOTAL		R18 605 610

b) Summary of findings

The investigation revealed that the JPC prepared a deviation report which indicated that the CEO deviated from the normal SCM process in terms of Regulation 36 (1)(a)(v) of the MFMA. Despite the deviation, the appointment of service providers for deep cleaning and sanitisation services during Covid-19 lockdown ("the suppliers"), for the period April to July 2020, by JPC, was found to be irregular and invalid in terms of Chapter 2 of the *Constitution of the Republic of South Africa, 1996* ("Constitution"), for lack of full compliance with all the prescripts regulating public sector

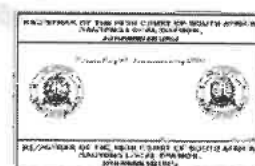
procurement, as *inter alia* set out in Section 217(1) of the Constitution, Section 112(1) MFMA, as read with the Treasury Regulations and the relevant Instructions issued by NT.

c) Steps Taken

Disciplinary Action

On the 30 March 2021, disciplinary referrals for financial misconduct, as envisaged in Section 172(2) of the MFMA were made against the following officials:

- [REDACTED]
- [REDACTED]
- Ms Helen Botes – CEO;
- [REDACTED]
- [REDACTED]



Criminal referrals

On 30 March 2021, criminal referrals for contravention of section 105(1) read with section 173(3) of the MFMA were made against the following officials:

- [REDACTED]
- [REDACTED]
- Ms Helen Botes – CEO;
- [REDACTED]
- [REDACTED]

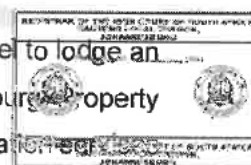
Administrative Action

On 1 April 2021 the SIU referred evidence to the Competition Commission regarding or which points to potentially excessive, unfair, unreasonable and/or unjust pricing. The regulations issued in terms of Section 27(2) of the Disaster Management Act authorized the Minister of Trade and Industry to issue directions to protect consumers from excessive, unfair, unreasonable or unjust pricing of goods and services during the national state of disaster, which regulations were then later promulgated.

Entity	Registration number	Value of contracts
KM Mashigo Trading CC	2007/182612/23	R3 502 000
Omphile Turnkey Solutions (Pty) Ltd	2014/173960/07	R4 663 000
Solutions (Pty) LtdSolutions (Pty) Ltd		
Mizana Trading (Pty) Ltd	2012/177151/07	R4 663 000
Triple SL Tech CC	2007/022481/23	R5 777 610
TOTAL		R18 605 610

Civil Litigation

The SIU has instructed the office of the State Attorney, Johannesburg to brief Counsel to lodge an application to review and set aside the four contracts concluded by Johannesburg Property Company, for the appointment of service providers to render deep cleaning and sanitation services during Covid-19 lockdown, in and around the Johannesburg Metropolitan areas to the value R18 605 610.



8.1.4. City of Tshwane Metropolitan Municipality (CoTMM)

8.1.4.1. Link-It

a) Nature of Allegation

The SIU received this allegation from a whistle blower who claimed that a PPE contract was awarded to company called Link-it or another company belonging to a Mr. Pillay and the price of the goods was inflated. The proceeds from the payment received were allegedly used by Mr. Pillay to purchase a house and vehicles for his family. The SIU also received further information from the whistle blower that Mr. Pillay recently transferred his assets and is intending to leave the country. The value of contract is estimated at R96 million.

b) Summary of findings

The SIU conducted interviews with the Municipal Manager of the CoTMM and had requested additional information from the CoTMM to verify the allegations. The SIU investigation found that no contracts were awarded to the service provider Link-it and there is no such person by the name of Mr. Pillay employed at the municipality or listed on their supplier database. The allegation is therefore unfounded.

The total estimated costs is therefore +/- R310 million, which is about R41 million down from the previous estimate of R351 million. This is mainly due to a reduced amount estimated for short term contractors for use on the R23 investigation. The costs however may further escalate due to ongoing civil litigation process and the SIU investigators testifying in disciplinary processes and criminal cases.

Budget cuts on the SIU during the last financial year as well as for the MTEF 3 year period:

Description	Current Year	2021 MTEF		
	2020/21	2021/22	2022/23	2023/24
Grant Income - 2020 ENE Allocation	452 885	478 922	503 310	480 736
Grant Income - 2021 ENE Allocation	421 662	437 878	452 060	450 000
Budget Cut- Per the Special Budget tabled by Min of Finance	(10 000)			
Budget Cut- Cost of Employee reduction- to be effected against 2020/21 Government Grant	(16 125)			
Budget Cut- Shifting of Funds - SAA Expenditure	(5 078)			
Budget Cuts as per the 2021 ENE Allocation Letter (circulated 04 December 2021)		(41 044)	(51 250)	(25 942)
Total Differences	(31 203)	(41 044)	(51 250)	(25 942)
				(149 439)

In the light of the total budget cuts of about R150 million to the government grant budget of the SIU for the last financial years as well as for the next 3 years, it is with respect that the SIU requests some intervention with regards to the nett R216 million outstanding costs on the R23 proclamation.



Adv. JL Mothibi

Head of the Special Investigating Unit

Date: 10 December 2021

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