

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

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

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INTRODUCTION

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

MANDATE OF THE COMMISSION

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

COMMISSIONERS, PARTICIPANTS AND TIMELINES

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

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

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

THE EVIDENCE

Living conditions at Usindiso building

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

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

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

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

15. The building was partitioned with highly flammable material to divide the living space and to create shacks. Suppliers of the combustible building material were stationed on the south side of the building.
16. The built-in emergency evacuation features like passageways and doors were blocked. Creating living spaces along the passageways reduced the width of some evacuation passageways. Emergency passageways were blocked with chained and locked steel burglar gates to secure residents and their property. The safety features of the building were compromised, with exit doors being welded and, therefore, not operable as escape routes.
17. Some stairwells and toilets were converted into rooms to house some families in the building. Residents converted bathrooms with no windows into living quarters and spaza shops. The lack of ventilation and the combustible material increased the fire load, and smoke and fire did not have an escape outlet.
18. On all the floors, firefighting and fire suppression equipment was either enclosed within newly constructed rooms, deinstalled, not working, vandalized, or tampered with to supply potable water, precluding their use for firefighting purposes.
19. The building became a crime-infested site, with witnesses testifying to the fact that there would be gunshot fire in the building, bodies of people killed in the building, and people who would run into the building to avoid any possible arrest after committing crimes. Children as young as 15 years old were abused and

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

20. The integrity of the structure of the building was compromised when the building was vandalized before the fire by the removal and recycling for cash of steel reinforcement material supporting the building structure, namely, columns, pillars, and slabs. The vandalization of the building extended to tampering with and removing firefighting, sanitation, and potable water connections and installation materials, further compromising the safety of the building, which was also not designed for residential purposes, and necessitated that the former residents obtain water from the firefighting installations for their domestic needs.
21. A fair number of tenants in the building were undocumented foreign nationals from countries like Tanzania, Malawi, Zimbabwe, Mozambique, Lesotho, and Kenya.
22. The COJ admitted to becoming aware of the distressing living conditions and that no steps were taken to address any of the above from at least 2019 until the fire on 31 August 2023.

Cause of the fire

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

Deceased

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

The integrity of the building

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

Department Of Home Affairs And Border Management Authority

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

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

29. The Commission also heard the evidence of the Border Management Authority ("BMA"). Its evidence was that it is responsible for detecting and preventing illegitimate movement of people within the border enforcement area.
30. It will deploy a force of approximately 400 in May 2024 with technology to enable the force to respond by interception and apprehension of transgressors. It has now initiated engagement with Mozambique, Lesotho, Zimbabwe and the Kingdom of Eswatini to collaborate on cross-border movement of people. It has plans to redevelop the Beitbridge, Lebombo, Maseru, Kopfontein, Ficksburg and Oshoek ports of entry on a private partnership basis. It will engage with conveyancers such as bus companies for cross-border movements to request valid passports when travellers procure bus tickets and during bus boarding, as well as local farms and game reserves to assist with managing illegal cross-border movements.
31. While its mandate has been priced at R2.9 billion, it only has an approved budget of R250 million.

EXPERT EVIDENCE ON IMMIGRANTS

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

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

FACTUAL FINDINGS

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

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

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

RECOMMENDATIONS

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

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

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

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

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

LIABILITY AND RESPONSIBILITY

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

LESSONS LEARNT

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

GLOSSARY

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

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

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REPORT ON PART (a) (i)

A. INTRODUCTION

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

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

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

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

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

10. The second was that on 28 October 2023, SERI brought an application for the recusal of Commissioner Makhubela. The application rested on undisputed evidence that there was a reasonable apprehension, held by a reasonable person armed with evidence, that Commissioner Makhubela will not bring an impartial mind to the conduct of the hearing. The evidence was that Commissioner Makhubela had posted sentiments on social media that were hostile to foreign nationals for five or more years. The evidence was that Commissioner Makhubela associated himself with social media messages that were inimical to foreigners in the country.
11. Norton Rose Attorneys have filed several letters of complaint. We have considered them and the responses from the Evidence Leader and the Commission. By way of illustration, we point to a few.
12. Norton Rose Attorneys, in their submissions, filed a complaint regarding the limited capacity of the building to house members of the public and various participants, which they concede was a complaint that was addressed. The other complaint in the Norton Rose Attorney's submissions was that the fire victims were only assisted with transport some ninety-three (93) days after the initial request for assistance was made. The other complaint related to not being allowed to make opening statements at the commencement of the hearings. Norton Rose Attorneys was afforded an opportunity, and the opportunity was taken before leading the evidence of the victims. We are satisfied that the Commission and the Evidence Leader made the best effort to address what Norton Rose Attorneys complained of in their letter dated 28 October 2023 and the response given by the Commission dated 26 January 2024. In its submissions, Norton Rose Attorneys states, "*With respect, it is unlikely that the*

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

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

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

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

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

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

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

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

B. LEGAL FRAMEWORK

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

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

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

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

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

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

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

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

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

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

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

“63. Asset and liability management.

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

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

94. Fiduciary duties of accounting officers.

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

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

...

96. Asset and liability management.

- (1) *The accounting officer of a municipal entity is responsible for the management of*
- (a) *the assets of the entity, including the safeguarding and maintenance of those assets; and*
- (b) *the liabilities of the entity.*

171. Financial misconduct by municipal officials.

- (1) *The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently—*
- (a) *contravenes a provision of this Act;*
- (b) *fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;”*

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

42. Section 1 of the Water Services Act defines basic sanitation and water supply as the prescribed minimum standards applicable to households, *“including informal households”*.
43. Section 3 of the Water Services Act establishes the following rights and obligations in respect of access to basic water supply and sanitation:
- “(1) Everyone has a right of access to basic water supply and basic sanitation.*
- (2) Every water services institution must take reasonable measures to realise these rights.”*

Fire Brigade Services Act ("FBA")

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

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

The National Building Regulations and Building Standards Act 103 of 1977

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

“12. Demolition or alteration of certain buildings.

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

(a) any building is dilapidated or in a state of disrepair or shows signs thereof;

(b) any building or the land on which a building was or is being or is to be erected or any earthwork is dangerous or is showing signs of becoming dangerous to life or property,

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

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

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

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

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

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

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

(c)...

(d)...

(4) If the local authority in question deems it necessary for the safety of any person, it may by notice in writing, served by post or delivered—

(a) order the owner of any building to remove, within the period specified in such notice, all persons occupying or working or being for any other purpose in such building therefrom, and to take care that any person not authorised by such local authority does not enter such building;

(b) order any person occupying or working or being for any other purpose in any building, to vacate such building immediately or within a period specified in such notice.

(5) No person shall occupy or use or permit the occupation or use of any building in respect of which a notice was served or delivered in terms of this section or steps were taken by the local authority in question in terms of [subsection \(1\)](#), unless such local authority has granted permission in writing that such building may again be occupied or used.

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

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

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

“T1

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

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

T2 OFFENCES

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

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

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

...

M1 provides in relation to stairways as follows:

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

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

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

(c) Have dimensions appropriate to its use.”

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

Land Use Scheme 2018

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

Emergency Services By-laws

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

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

59. Section 16 provides for the installation and maintenance of firefighting equipment. The section provides that every owner of a building must ensure that all firefighting equipment and service installations on the premises are installed in a manner and condition ready for use in an emergency; that all potable and mobile fire extinguishers and all hose reels on the premises are serviced and maintained in accordance with SABS 0105 and SABS 1475; that all firefighting equipment are (i) maintained in a good working condition by a competent person; (ii) are inspected and serviced in accordance with manufacturer specifications and (iii) are inspected by an appropriately registered and competent person at least once every 12 months; and a comprehensive service record of all firefighting equipment and service installations on the premises is maintained and furnished to the Chief Fire Officer every 12 months.
60. Section 16 (2) provides that every person who inspects, services or repairs any fire-fighting equipment or service installation must, on completion of such installation or service, certify in writing that the equipment or installation concerned is fully functional and furnish the certificate to the owner of the premises.
61. Section 18 of the by-laws stipulates the duties of the owner or occupier of the designated premises and provides that:

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

62. Furthermore, section 107 provides that:

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

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

Water services^{xvii}

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

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

Electricity

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

Waste Management By-laws

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

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

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

and

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

...

27. Removal and disposal

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

...

70. Accumulating waste

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

73. Prohibition of littering

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

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

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

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

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

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

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

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

74. Duty to prevent land or building used for dumping

- (1) *The owner or occupier of any land or building must take reasonable measures to prevent such land or building from being used for dumping and to clean up all waste dumped on or at the land or building.*
- (2) *The measures required in terms of subsection (1) may include: (a) fencing-off the land or building; (b) erecting "no dumping" signs; and (c) security measures to monitor and enforce anti-dumping measures on the land or building.*
- (3) *If any land or building is used for dumping and, in the reasonable opinion of the Council, the owner or occupier has failed to take reasonable measures to prevent dumping and to clean-up waste dumped on the property, the Council may direct the owner or occupier to fence-off the land or building and/or to erect notices to prevent further dumping.*
- (4) *Should the owner or occupier of any land or building, fail to comply, with a directive under subsection (3), the Council or authorised official may take reasonable measures to prevent dumping on the*

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

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

Public Health By-laws^{xix}

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

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

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

69.2.1. the accumulation of refuse;

69.2.2. the usage of a building in a manner dangerous to health;

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

69.2.4. any building, room, or structure to be used wholly or partly by a greater number of persons than will allow 11.3 m³ of free air space and 3.7 m² of floor space for each person aged ten (10)

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

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

Problem Properties By-law

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

“7. Powers of authorised official

(1) The authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof a Problem Property, provided that one or more of the following circumstances exist at the property:

- (a) the building appears to have been abandoned by the registered owner or responsible person with or without the consequence that rates or other municipal services charges have not been paid for a period of more than three (3) months during any period of twelve (12) months.*

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

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

8. *Notice to comply*

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

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

- (3) *If the authorised official deems it necessary for the safety of any person, he or she may, by notice in writing, and subject to any applicable legislation:*
- (a) Order the responsible person of any Problem Property to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in or on the Problem Property, and to take care that no person who is not authorised by the local authority enters the Problem Property; (b) Order any person occupying, operating or working from, or who for any other purpose is in or on any Problem Property, to vacate the Problem Property.*
- (4) *No person shall occupy, use or permit the occupation or use of any Problem Property or continue to occupy, use or permit, the occupation or use of any Problem Property in respect of which a notice was given of sub section (3) or steps were taken by the local authority in terms of this section, unless he or she has been granted permission by the local authority in writing that the Problem Property may be occupied or used, as the case may be.”*

C. ANALYSIS OF EVIDENCE

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

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

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

¹ See Title Deed F3047/1954.

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

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

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

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

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

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

76. On 6 and 11 December 2018, the Department of Social Development conducted an audit of the building. Only nineteen (19) occupants were assessed and interviewed. In their submissions, SERI sharply points to the fact that after the assessments in question, the Department of Social Development recommended that the JPC should shut down the facility at the Usindiso building and assist qualifying occupants with temporary emergency accommodation and made the observation in its report that the Usindiso building did not have “*legitimate management and administration*”. The JPC did not heed the recommendation to shut the facility down.⁷
77. On 24 December 2018, some 150 persons took occupation of the building. In response and during early 2019, the JPC, the COJ’s Citizen Relations and Urban Management, the DHA, the JMPD and Group Forensic Investigation Services (“GIFS”) planned a “*blitz*”. The raid revealed that there were two men, Messrs Mpilo Mhlongo and Seagul Mnkandla, who were collecting rent from the residents and got arrested.⁸
78. On 17 October 2019, the “*blitz*” was conducted, and a report by GFIS was produced on 31 August 2023, the date of the fire. This operation resulted in the arrest of 150 people and the opening of a criminal case with SAPS.⁹

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

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

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

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

79. Botes gave evidence and to questions by the Evidence Leader and in cross examination, made concessions indicating awareness of the following relevant facts spanning from at least 2015 until the fire occurred. Since at least 2015, Usindiso Ministries had vacated the building; the building was not zoned for residential purposes; the building had been hijacked, remained occupied illegally and was overcrowded; crime was rife in the building, and the building was not habitable; the building had illegal electricity connections and water consumption; the building lacked firefighting equipment and installations; and that the JPC had failed to maintain the property since 2003.¹⁰
80. All this underscores, in our view, that since 2019, JPC was aware of the appalling deterioration of living conditions in the building. So, for approximately four (4) years, the JPC and the COJ did nothing to address the ringing alarm bells.
81. In the submissions of the evidence leaders, they correctly point out that when the Usindiso building became overpopulated, the residents were not receiving any basic municipal services such as water services, electricity services, and waste management from the COJ. The building became a hazard because the tenants used fire equipment, such as fire extinguisher hoses, to draw water for domestic use.¹¹ The tenants also made illegal connections to the transformer to obtain electricity.¹²
82. The building was partitioned with flammable material to divide the living space and to erect shacks.¹³ The building became a crime-infested site, with witnesses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91. Residents used paraffin primer stoves for cooking. Some of the stoves discovered after the incident had rusted, showing a likelihood of collapsing and causing fire.²⁷
92. Residents converted bathrooms with no windows into living quarters and spaza shops.²⁸ The lack of ventilation and the combustible material increased the fire load, and smoke and fire did not have an escape outlet.²⁹
93. On all the floors, firefighting and fire suppression equipment was either enclosed within newly constructed rooms, deinstalled, not working, vandalized, or tampered with to supply potable water, precluding their use for firefighting purposes.³⁰
94. A firefighter of approximately 50 years' experience, Engelbrecht, described the building as *"one of general neglect with total disregard for fire safety and thus for preservation of life"*.³¹
95. Live uncovered electrical wires also added to the hazards in the building.³²

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

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

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

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

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

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

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

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

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

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

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

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

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

100. The generally tiny rooms and passageways on all floors, some leading to emergency evacuation routes, which, together with some of the windows, were blocked with steel mesh, had burglar doors, and some had steel gates installed, chained, and locked. While designed for security purposes, these impeded emergency evacuation routes.³⁹ On the second floor alone, eleven (11) bodies were found behind locked gates after the fire was brought under control.⁴⁰

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

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

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

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

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

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

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

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

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

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

D. CAUSE OF FIRE.

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

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

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

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

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

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

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

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

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

112. There was evidence of Lesiba Andrew Mokubela,⁵² who is a SAPS Captain attached to the Chemistry Section, Fire Investigation Subsection at the Forensic Laboratory, who filed a report, and another report filed by Matshidiso Jonas Phineas Mongane⁵³ from the same department. The affidavits prepared in terms

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

⁴⁹ Transcript, P21 lines 4 [Day 10].

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

⁵¹ Transcript, p8 – 15 [Day 9].

⁵² Transcript, p1780 – 1813 [Day 28 – L Mokebela, Exhibits SAPS REP 1, SAPSREP 1.1 – 1.6, SAPSREP 1.7 – 1.15 SAPSREP 1.16 – 1.71, SAPSREP 1.72 – 1.348, SAPSREP 1.349 – 1.452, SAPSREP 1.453 – 1.58, SAPSREP 1. 459 – 1.466].

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

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

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

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

E. THE DECEASED.

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

115.1. Exhibit PRI-1 accounts for the identified body of S T Zulu that was retrieved from the scene by Sergeant Tshabalala, who registered it as

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

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

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

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

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

body as being that of A J Magwaza. The deceased was a South African citizen.

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

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

115.6. Exhibit PRI-6 accounts for the identified body of B X Milambo that was retrieved from the scene by Sergeant Tshabalala, who registered it as DR 2792/2023 and handed it over to D Thobane of the Forensic Pathology

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

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

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

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

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

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

Mr and Mrs Mbwana, were the biological parents of the deceased. The deceased was also positively identified by S K Kola. The deceased was a Malawian national.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by a person from the Tanzanian High Commission, J A Mhando. The deceased was a Tanzanian national.

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

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

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

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

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

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

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

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

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

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

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

unnecessary to analyze because the brother, V M Ajida, positively identified the deceased. The deceased was a Malawian national.

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

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

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

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

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

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

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

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

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

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

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

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

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

115.51. Exhibit PRU-3⁵⁷ accounts for the identified body of S M Kusalazo retrieved from the scene by Sergeant Lekoloane, who registered it as DR 2759/2023 and handed it over to D Thobane of the forensic pathology office. The body was examined by Dr N Mondzanga, whose finding was that the cause of death of the deceased was consistent with the charring of the body. A DNA sample was taken from the deceased and was unnecessary to analyze because the deceased was positively identified by a person from the High Commission, J A Mhando. The deceased was a Tanzanian national.

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

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

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

analyze because the nephew, P J Ndembo, positively identified the deceased. The deceased was a South African citizen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. THE ROLE OF THE EMS

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

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

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

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

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

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

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

another similar offensive was mounted from the southern side using Fire Engine 7.⁶⁷

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

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

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

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

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

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

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

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

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

126. Parallel to the response by EMS was that of Fire Ops, a private firefighting company based in Rosebank. Fire Ops received the distress call at 01h45 and arrived at the scene at 01h57. Fire Ops's response was that of assisting the COJ on a social responsibility basis, in the same way the COJ helps Fire Ops on request.⁷²
127. Significantly, Fire Ops confirmed that upon its arrival, EMS already had 2 Fire Engines and one air truck at the scene, with an adequate water capacity of three thousand eight hundred and fifty (3 850) litres per minute pumping capacity.⁷³
128. Northview Fire Station dispatched a Heavy Rescue 13 at 03h00 with five crew members, and it arrived at the scene at 03h02. It conducted search and rescue operations alongside the fire attack operations.⁷⁴
129. Based on cooperation agreements between the respective service providers, EMS approached Ekurhuleni Emergency Services with a request, and it was obliged to provide a water tanker, which was not utilized because the fire had been extinguished when it arrived.⁷⁵
130. Two vehicles, Eagles 2 and 4, were set up as Incident Command Units, which, in the end, comprised C Masenge as Incident Commander, assisted by JMPD, SAPS, and EMS representatives.⁷⁶

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

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

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

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

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

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

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

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

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

⁷⁸ Photos 1 - 26

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

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

G. EVIDENCE OF THE VICTIMS

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

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

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

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

136. The evidence also describes the life in the building defined by the overcrowding, the crime, the lack of proper sanitation, illicit electricity supply, ⁸⁸ illicit water⁸⁹ supply, poor waste management and hazardous equipment such as gas cylinders, paraffin stoves, two plate electricity stoves and one photo a brazier that was used. ⁹⁰

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 139.1. The building and its vicinity were crime-ridden and unsafe. Gunshots with fatalities were common. Murder, theft and armed robbery were rife inside and outside the building.⁹⁵ Drug trafficking and abuse was the order of the day, with noticeable police complicity. The building was vandalised by removing water taps, steel material (including by chipping off concrete around the concrete columns supporting the building), and copper wire for resale as scrap.⁹⁶
- 139.2. It was overpopulated; in one instance, a single room is said to have been occupied by nine (9) adults and children. Residents built shacks in open, more expansive spaces inside the building, which were dirty, littered with waste inside and outside, and unhygienic.⁹⁷

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

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

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

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, lines10 – 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 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, comprising 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.¹⁴⁶
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 conducted 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 itself, 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 In her 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 Ngcobo¹⁹⁹ 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 vandalization 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, Hanya, 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, Hanya, 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, Mnqandi, 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 its 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 conduced to bring about the disaster that was Usindiso and that the accounting officers of the City's entities, namely, the JPC, Johannesburg Water, City Power, and PIKITUP must be subjected to disciplinary processes where there is evidence of the contraventions of their duties, which, if they had been performed, would have avoided the Usindiso 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 Mabena
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 Delves 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 Delters 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');

(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 Delters 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, vehicle, 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 Delters 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 Delters 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.’.

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;*

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- 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;*

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- 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. 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 – ...*(l) 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 or 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.*