JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

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INDEX: SEQ 29/2021

No.	Description	Pages
Advocate Gladstone Sello Maema application for condonation and leave to cross-examine: • Johan Booysen • Robert McBride • Helen Van Jaarsveld • Karen Van Rensburg • Cyril Mlotshwa • Matthews Sesoko • Mxolisi Nxasana • Innocent Khuba		
1.	Affidavit of **Gladstone Sello Maema** dated 17 May 2021	001 to 309
2.	Annexure "CM1" to Annexure "CM31"	310 to 2050
3.	Annexure "GSM1" to Annexures "GSM76"	2051 to 2718

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

***IN RE*:** **APPLICATION OF GLADSTONE SELLO MAEMA ("THE APPLICANT"), FOR CONDONING THE LATE FILING OF THE AFFIDAVIT AND THE APPLICATION FOR LEAVE TO CROSS-EXAMINE GENERAL JOHAN BOOYSEN ("BOOYSEN"), ROBERT McBRIDE ("McBRIDE"), HELEN ELIZABETH VAN JAARSVELD ("VAN JAARSVELD"), KAREN HELEN VAN RENSBURG ("VAN RENSBURG"), CYRIL SIMPHIWE MLOTSHWA ("MLOTSHWA"), MATTHEWS SESOKO ("SESOKO"), MXOLISI SANDILE OLIVER NXASANA ("NXASANA") AND INNOCENT HUMBULANI KHUBA ("KHUBA") IN TERMS OF RULE 11.2 READ WITH RULE 3.3.6 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE RULES OF THE COMMISSION")**

WITNESS STATEMENT IN TERMS OF RULE 3.4

I, the undersigned,

GLADSTONE SELLO MAEMA

do hereby declare under oath and state that: -

1. I am an adult male State Advocate employed at the National Prosecuting Authority (*"NPA"*) as a Deputy Director of Public Prosecutions ("DDPP") and attached to the office of the Director of Public Prosecutions, North West Division, Mmabatho, situated at Mega City Complex, East Gallery, 3139 Sekame Road, Mahikeng.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.

3. Where I rely on facts and/or statements made by third parties, I do so on the belief that same is true and correct and I annex to this affidavit the explanatory affidavit of Nolusindiso Gejengane (*"Gejengane"*), which marked as annexure **"GSM1"**, the explanatory affidavit of Marco Voller (*"Voller"*), marked as annexure **"GSM2.1"**, and the explanatory affidavit of Luyanda Kopman (*"Kopman"*), marked as annexure **"GSM2.2"** and the confirmatory affidavit of Adv Raymond Mathenwa ("Mathenjwa"), marked as annexure **"GSM2.3"**. The annexures that solely pertain to me, are marked as **"GSM"**. The annexures relating to the Cato Manor matter, as they pertain to Mathenjwa and I will be marked as **"CM"**.

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4. Where I make submissions of a legal nature, I do so on the advice of my legal representatives on record, which advice I accept to be in accordance with the prevailing legal position.

5. The Chairperson is requested to read the contents of all the annexures referred to herein as if specifically incorporated into this affidavit, to avoid prolixity.

A. SHORT RESUMé AND CAREER HIGHLIGHTS

6. I matriculated at Thulare High School in 1981 at Lebotlwane in the Moretele District in the North West Province. I obtained my B Proc, LLB degree at the University of Fort Hare in 1989 and 1991, respectively.

7. I served my articles of Clerkship at Botha Du Plessis & Kruger Attorneys in Johannesburg in November 1991 and joined the Department of Justice on 1 March1993 where I worked as a prosecutor stationed at Fort Beaufort in the Eastern Cape. I worked at the district court and regional court in Fort Beaufort, Port Elizabeth, Grahamstown and King Williams Town.

8. I was admitted as an Advocate of the High Court on the 3rd May 1995 in the Southern Gauteng Division of the High Court. I joined the Office of the Director of Public Prosecutions ("DPP") in Grahamstown as a State Advocate and Senior State Advocate, whereafter I worked in the Office of

GSm

the DPP in Johannesburg in 3 March 1995 until 1 November 1998 when I joined the National Director Public Prosecutions ("NDPP"), Mr Bulelane Ngcuka and established the Human Rights Investigative Unit, the predecessor to the Priority Crimes Litigation Unit ("PCLU") at the NPA Head office.

9. I joined the Office of the DPP, Mmabatho on 1 May 1999 as a Deputy Director of Public Prosecutions ("DDPP") where I am currently based. I acted as a DPP, North West in 2005 for almost seven (7) months when the former DPP, Adv Smit ("Smith") was sick.

10. I acted as DPP in South Gauteng from 1 December 2009 to 31 May 2010 when the incumbent, Charin de Beer was sick. I have also acted as Acting Head of the PCLU in 2016 when Adv Pretorius was out of the country.

11. I have done a number of well-known cases including the *Skierlik* case (S v Nel CCT 24/02 and CC 81/08) where the accused was sentenced to a four (4) life imprisonment for a number of racially motivated murders. I have represented the State in a number of cases at the Supreme Court of Appeals.

12. As DDPP, I have been entrusted with Special Prosecutions, Governance and presently Organised Crime. I have been in charge of Organised

Crime since 2008 and have handled five racketeering prosecutions in person. My unit has, to date, dealt with seven racketeering prosecutions.

13. One of the prosecutions in which I was the lead prosecutor, *S v Ndleleni and others* (CC 48/2010) ("the *Ndleleni* matter") commenced in 2010 and was finalised in 2012. In this matter, an individual person was convicted as an enterprise and sentenced for an effective 15 years. There were five accused in the matter and all accused were convicted.

14. I wish to draw the Commission's attention to the fact that the *Ndleleni* matter commenced and was finalised before my involvement in the Cato Manor matter. I attach hereto the charge sheet in the *Ndleleni* matter marked as annexure **"GSM3"**. It is because of the *Ndleleni* matter, in my view, that I was approached and appointed as the lead prosecutor in the Cato Manor matter by the Acting NDPP, Advocate Nomgcobo Jiba ("Jiba").

15. The other six prosecutions are still pending, and I am managing all of them. Five prosecutions are being prosecuted in the High Court, and one is being prosecuted in the Regional Court.

B. OVERVIEW

16. The evidence of Booysen and McBride which has already been presented at the Commission in the early part of 2019, implicates me, *inter alia*, of

GSM

being a core group of advocates at the NPA who are captured for either political or corrupt reasons, and who were instrumental in the collapse of the criminal justice system. It is alleged that the implicated colleagues and I allowed ourselves to be used and/or voluntarily pursued what has been termed "corruption busters" by persecuting them and others with unmerited prosecutions on trumped up charges. I am accused of violating my oath of office, the constitutional and legislative prescripts that govern the NPA and thus violating the principle of legality which is the cornerstone of the rule of law.

17. In addition to the evidence of Booysen and McBride, the Commission has also received the affidavits of Van Jaarsveld and Van Rensburg who are DDPPs in the office of the DPP: North Gauteng. Their evidence appears to have been obtained with a view to corroborate the evidence of McBride which has already been led to demonstrate that I pursued charges against Sesoko and Khuba and/or interfered with the investigations into the former Acting Commissioner of the South African Police Services ("SAPS"), General Phahlane ("Phahlane") in order to undermine the independence of the Independent Police Investigative Directorate ("IPID") and thus, preventing it from fulfilling its oversight mandate over the SAPS.

18. All the allegations levelled against me are without merit. In fact, with particular reference to the evidence of Booysen, I will demonstrate that when the prosecution was initiated against Booysen and his co-accused, there was, and still is *prima facie* evidence that compels the NPA to

proceed with not only the racketeering charges as envisaged in the Prevention of Organised Crime Act No 121 of 1998 ("POCA"), but also with regard to his co-accused in the matter to proceed with the predicate offences. In this affidavit, at the relevant section, I set out in full detail the evidence that was and is still in existence in this respect.

19. Instead of fulfilling its constitutional and statutory mandate of prosecuting without fear, favour, and prejudice, the NPA has withdrawn not only the POCA authorisations, but also the predicate offences against Booysen and all his co-accused, notwithstanding the continued existence of the *prima facie* evidence against them. The predicate offences are dealt with in this affidavit under the section that deals with the Cato Manor matter.

20. In this affidavit, I demonstrate that the conduct of the incumbent NDPP of withdrawing such charges and the manner in which the charges were withdrawn is unlawful and contrary to the judicial authorities, in that the decision to withdraw the authorisations and predicate offences was irrational and contrary to the principle of legality and thus, subverting the rule of law. I shall demonstrate that as required by the law, the Cato Manor prosecuting team was not consulted and their input was not sought prior to the withdrawal of the charges. It also appears that the affected families of the deceased, the DCPI and IPID investigators were not consulted.

21. In the judgment of *Zuma vs Democratic Alliance* (836/2013) [2014] ZASCA 101 (28 August 2014), the Supreme Court of Appeal ("SCA") endorsed the trite principle below:

> *"The NPA, as an organ of state, has a duty to prosecute without fear, favour or prejudice by upholding the rule of law and the principle of legality. It is also a constitutional body with a public interest duty. It behoves its officials to operate with transparency and accountability. It has a duty to explain to the citizenry why and how it arrives at the decision to quash the criminal charges against the accused persons, particularly where the matter involves very senior state officials. In pursuance of its constitutional obligations it is incumbent upon the NPA to pass the rationality test and inform the public why it quashed the charges. In my view, the converse would make the public lose confidence in the office of the NDPP."*

22. In the judgment of *Zuma vs Democratic Alliance and Others* 2018 (1) SA 200 (SCA), the SCA also stated:

> *"[89] The exclusion of the prosecution team from the process leading up to the decision to prosecute, especially the final deliberations that took place on 1 April 2019, was in itself irrational. The compelling conclusion is that this exclusion was deliberate... They were senior litigators steeped in the case, acquainted with the legal issues and had a critically important*

contribution to make regarding the ultimate decision to terminate the prosecution…"

23. The admonition of the SCA above was blindly ignored by the incumbent NDPP when she reconsidered the decision of Abrahams and Jiba whether to prosecute Booysen. The NDPP decided to withdraw the charges against Booysen and his co-accused. I will demonstrate under the relevant section how that decision is a subversion of the rule of law under the topic dealing with the Cato Manor matter where the State has strong evidence, *inter alia,* ballistic crime scene reconstruction evidence, as opposed to the mere allegations made by Booysen. It is also interesting to note that some of the persons whom Booysen makes reference to in his affidavit and oral evidence before the Commission and alleging that they were persecuted, have not corroborated Booysen's version. I will further demonstrate the facts and context within which a decision to charge Booysen and the members of the Cato Manor SVC Section was taken and the evidence supporting the charges despite the incumbent NDPP's decision to withdraw the prosecution. I will further demonstrate the facts and context within which such a decision was taken and its rationality despite the NDPP's decision to withdraw the prosecution at a later stage.

24. With regard to the decision to institute prosecution against Booysen, McBride, Sesoko, and Khuba, I took into account the responsibility of the NPA as set out in the above admonition, the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the National Prosecution

Authorities Act 32 of 1998 ("NPA Act"), and Prosecution Policy Directives ("the NPA Directives"). All the above prescripts point to the duty that where there is *prima facie* evidence of the commission of crime, irrespective of the identity and rank of the suspect, as a prosecutor I have a duty to act without fear, favour or prejudice in instituting prosecution.

25. In respect of the affidavits of my colleagues, Van Jaarsveld and Van Rensburg, I categorically deny the allegations levelled against me. Van Jaarsveld and Van Rensburg did not furnish any evidence implicating me. I deny that I had anything to do with the investigation of the *Kameelsdrift* matter involving Phahlane. I deny that I sent any police officer to Van Jaarsveld or Van Rensburg or that I was guiding the *Kameelsdrift* investigation behind the scene. The Phahlane matter is being dealt with in the Pretoria office and at that time I was seconded to the PCLU. In this regard, I refer to the confirmatory affidavit of Molatlhwa Michael Mashuga ("Mashuga"), attached hereto marked as annexure **"GSM4"**.

26. At the time of the Kameelsdrift investigation, I was burdened with the heavy load of dealing with the SARS Rogue Unit matter and had no time to devote to matters that were not assigned to me. In any event, the prosecutor who dealt with the prosecution of O'Sullivan and Trent is Mashuga, who has also filed an extensive affidavit with the Commission to demonstrate the evidence that was before him when the decision to prosecute was taken. If my colleagues, van Jaarsveld and van Rensburg had information which shows that I was unduly influencing them as

GSM

alleged, they should have brought such conduct to the attention of Adv Torie Pretorius, the Acting Head of PCLU who was known to them.

27. Not only does Van Jaarsveld and Van Rensburg impute unprofessional conduct on my part, but they also impute criminal conduct on my part, namely defeating the ends of justice. It is surprising that two high ranking prosecutors did not press any criminal charges in this regard. No disciplinary steps were initiated against me with regard to this alleged conduct.

28. The fact that my name has been mentioned by the said police officers, which I deny, is not proof that I sent them to Van Jaarsveld and/or Van Rensburg.

C. PURPOSE OF AFFIDAVIT

29. Bearing in mind what the courts have stated pertaining to prosecution decisions and the withdrawal thereof, the purpose of this affidavit is to demonstrate that:

29.1. the prosecution of Booysen and of members of the Cato Manor Serious Violent Crimes Section of the Durban Organised Crime Unit ("the Cato Manor SVC Section") was and is still justified;

29.2. it was justifiable to recommend to the office of the Acting National Director of Public Prosecutions ("the ANDPP") that the

racketeering certificates be issued in respect of Booysen and others in view of the overwhelming evidence in support thereof;

29.3. the withdrawal of the charges against Booysen and others by the NDPP is unlawful;

29.4. the prosecution of McBride, Sesoko and Khuba was justified when such decision was taken;

29.5. the utterances of Van Jaarsveld and Van Rensburg, insofar as they relate to me, are unfounded and untrue;

29.6. support my application for leave to give evidence before the Commission and the cross-examination of Booysen, McBride, Van Jaarsveld, Van Rensburg, Sesoko, Nxasana and Khuba;

29.7. there is no merit whatsoever in the allegations that I am captured for either political or corrupt reasons, with the result that I did not, or I currently do not carry out my legal obligations and duties; and

29.8. respond to the allegations made against me by Booysen, McBride, Sesoko, Khuba, Van Jaarsveld, Nxasana and Van Rensburg as provided for in Rule 3.4 of the Rules, the various affidavits, and the evidence before the Commission;

29.9. there is no evidence from Pravin Gordhan ("Gordhan"), Ivan Pillay ("Pillay"), Johan van Loggerenberg ("Van

Loggerenberg"), and Vlok Symington ("Symington"), supporting the allegations made against me by Booysen and McBride;

29.10. the process that was followed in arriving at the conclusion of the report that was compiled by Adv Rodney de Kock ("De Kock"), Adv Ivy Thenga ("Thenga"), Adv S Riley ("Riley") and Adv E Mamabolo ("Mamabolo") (hereinafter referred to as the "De Kock report") was irregular and consequently, unlawful. The Commission is urged to not place any weight on the De Kock report; and

29.11. all prosecutorial decisions and the prosecutions I were involved in which form the subject of investigation in this inquiry, were properly and lawfully done.

30. Prior to responding to the unfounded and malicious allegations expressly or by implication levelled against me, I have been advised that I should first set out the legal and regulatory prescripts applicable to the functions of the NPA prosecutorial functionaries to put my version before the Commission in a proper context.

D. MANDATE OF THE NATIONAL PROSECUTING AUTHORITY (*"NPA"*)

31. Before dealing with the various allegations that McBride, Sesoko, Nxasana and Booysen expressly or by implication made against me. It is important that I clarify the purpose, functioning, and mandate of the NPA

to demonstrate that the averments made against me are unsubstantiated and unfounded.

(a) **Legislation**

32. The NPA obtains its mandate in terms of Section 179 of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*"). Section 179(1) establishes the NPA as a single prosecuting authority in the Republic of South Africa and structured in terms of an Act of Parliament. The Act of Parliament referred to is the National Prosecuting Authority Act, 1998 (Act 32 of 1998) ("*NPA Act*").

33. In terms of Section 179(2) of the Constitution, the NPA has the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings.

34. The preamble to the NPA Act and Section 32(1)(a) of the NPA Act, in line with Section 179(4) of the Constitution, provides for the NPA to exercise its functions without fear, favour or prejudice.

35. The NDPP is the Head of the NPA and is appointed by the President. In such capacity, the NDPP shall have the authority over the exercising of all the powers and the performance of all the duties and functions conferred, imposed or assigned to any member of the NPA by the Constitution, the NPA Act, or any other law.

36. In terms of Section 32(1)(a) of the NPA Act, a member of the NPA shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith, without fear, favour or prejudice and subject only to the Constitution and the law. The NPA has, as its core values, independence, accountability, credibility, professionalism, and service excellence.

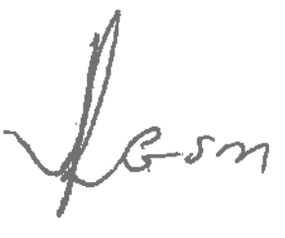
37. Section 32(1)(b) provides that:

> *"Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, her or his powers, duties and functions."*

38. Section 41 provides that:

> *"41. Offences and penalties*
>
> *(1) Any person who contravenes the provisions of Section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment."*

39. Section 42 provides that:



"42. No person shall be liable in respect of anything done in good faith under this Act."

(b) **<u>Other regulatory prescripts</u>**

40. In deciding whether or not to institute a prosecution, a prosecutor is guided, among others, by the Code of Conduct of Members of the National Prosecuting Authority ("the NPA Code of Conduct") published in the Government Gazette No 33907 dated 29 December 2010. The pertinent sections thereof are set out below:

40.1. Article C provides:

"Prosecutors should perform their duties without fear, favour or prejudice. In particular, they should –

(c) take into consideration the public interest as distinct from media or partisan interests or concerns, however vociferously these may be presented;

(f) act with objectivity and pay due attention to the constitutional right to equality;

(i) assist the court to arrive at a just verdict and, in the event of a conviction, an appropriate sentence based on the evidence presented."

40.2. Article D provides:

"*1. Prosecutors should perform their duties fairly, consistently and expeditiously and –*

(d) in the institution of criminal proceedings, proceed when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and not continue a prosecution in the absence of such evidence."

"2. *Prosecutors should, furthermore –*

(a) preserve professional confidentiality."

41. In terms of the NPA Directives, a prosecution can only be instituted where there are reasonable prospects of a successful prosecution.

42. It follows from the above that the NPA has the sole preserve in instituting criminal proceedings against any person suspected of having committed an offence. Therefore, any person, regardless of his or her profile or social standing, should be prosecuted if there is a reasonable prospect of successful prosecution.

43. As I have already indicated, McBride, Sesoko, Khuba and Booysen have presented before the Commission unsubstantiated averments which seek

to project me as an officer of the Court who abuses his position and authority regarding prosecutions, to advance purposes that are ulterior to the mandate, functioning and purpose of the NPA. What is quite disturbing is that the averments are not only unsubstantiated, but they also have been made without giving regard to the constitutional imperatives that define how the NPA is to be structured and operated. Also, these averments are made without having due regard to the legal and regulatory imperatives that govern the NPA prosecutorial functionaries.

44. It is important that one should guard against the NPA being hamstrung by popular sentiment canvassed, especially in the media, from executing on its constitutional mandate. Whilst McBride and Booysen complained, among others, that part of the strategy for state capture is that the targeted persons are paraded in the media as bad and corrupt persons, or that their institutions are inefficient, they are the ones who went to the media and came to this Commission, making serious allegations against me without any substantiation whatsoever. Nothing in their submissions tells this Commission exactly in which respect my prosecutorial recommendations and prosecutions under attack, deviated from the legal and constitutional mandate of the NPA.

45. It should be borne in mind that both Booysen and McBride are accused persons in the matters in which they were involved. It is critical to indicate that none of the implicated members of the Cato Manor SVC Section have

either deposed to affidavits or came before the Commission, in support of the unfounded and malicious allegations made by Booysen against me.

46. Having regard to the past and present working environment of the witnesses that implicated me, as well as their experience, they should have a clear understanding of the operation of the law and the circumstances in which a decision to prosecute is taken and the process that leads to the prosecutorial decision.

47. In both the Cato Manor prosecution as well as the prosecution of Booysen on the one hand and the prosecution of Jamnadas Pravin Gordhan ("Gordhan"), Ivan Pillay ("Pillay"), Oupa Magashule ("Magashule"), Johann van Loggerenberg ("Van Loggerenberg") and Andries Petrus Janse van Rensburg ("Skollie") on the other, the fact that there were reasonable prospects of successful prosecution justifying the institution of criminal proceedings against the accused cannot be gainsaid, as I shall demonstrate below.

48. I am a career prosecutor and have made it my duty in my career, as I am enjoined, not to institute or allow institution of any prosecution that is not in line with the Constitution, the NPA Act, the NPA Directives and the NPA Code of Conduct or based on irrelevant considerations.

E. CONDONATION

49. At the outset I must point out that contrary to the Rules of the Commission, I was never served with the Rule 3.3 notices of Booysen,

Sesoko, Nxasana and Khuba, even after their evidence was led. With regard to the evidence of McBride, I was only served with the Rule 3.3 notice after his evidence had long been led. I say this because on 22 January 2020, my legal representatives held a meeting with the evidence leaders and brought it to their attention that I have never received the aforesaid Rule 3.3 notices. The evidence leaders indicated that the notices were sent to me by email and the email address to which the statement was sent is pat.maema@gmail.com. The evidence leaders further pointed out that they received a response from the said email address where the addressee requested further documents. I do not know who the email belongs to or where the evidence leaders got the email address from. It is certainly not my email address.

50. It is apposite that I bring it to the attention of the Commission that my email addresses are gsmaema@gmail.com and gsmaema@npa.gov.za. It is therefore apparent that the email address to which the Rule 3.3 notice of Booysen was sent to the wrong recipient. I thus never received same.

51. After the meeting that was attended by my legal representatives and the evidence leaders, the State Attorney acting on behalf of the implicated NPA officials addressed a letter to the Commission recording the issues and matters that were discussed at the meeting. My legal representatives advise me that the evidence leaders indicated that the Secretary of the Commission will send the Rule 3.3 Notice to the correct email address. Based on this undertaking, I agreed to be named as part of the NPA officials who wished to cross examine Booysen, McBride, Van Jaarsveld

and Van Rensburg as set out in the letter, dated 23 January 2020, from the office of the State Attorney to the Secretary of the Commission. I annex hereto a copy of the letter sent by the State Attorney to the Commission, dated 23 January 2020, marked **"GSM5"**. However, the relevant rule 3.3 Notice was never served on me.

52. My legal representatives advised that on 09 September 2020 they held a meeting with Advocate Garth Hulley SC ("Hulley"), one of the evidence leaders, at which meeting Hulley indicated that due to the short lifespan of the Commission even where one has not received the Rule 3.3 notice, but is implicated, one must nevertheless respond to the allegations.

53. Based on the undertaking made at the meeting of 22 January 2020 which the evidence leader undertook to serve me with the Rule 3.3 Notice, and the discussions that took place on 09 September 2020 between my legal representatives and Hulley, I was prepared to respond to the allegations levelled against me by Booysen (April and May 2019) and McBride (April 2019).

54. On 12 January 2021, the Secretary of the Commission sent me an email at 4:32 attaching the Rule 3.3 notice of Van Jaarsveld. I annex a copy of the Rule 3.3 notice and the email to which the notice was attached and mark same "**GSM6.1**" and "**GSM6.2**", respectively.

55. The Rule 3.3 notice pertaining to the evidence of McBride, was sent to me by the Secretary of the Commission on 5 February 2021 when he sent me an email at 03:33. I annex a copy of the Rule 3.3 notice and the email to

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which the notice was attached and mark same "**GSM7.1**" and "**GSM7.2**", respectively.

56. It is apposite to mention that I received above the Rule 3.3 notice after the evidence of McBride had long been led on 11, 12, 15 and 16 April 2019 a period of approximately ten (10) months after the evidence was led. This is contrary to the Rules of the Commission which state that I have a right to attend the hearing when the evidence is led, as evident from paragraph from paragraph 5 of the Rule 3.3 notice. It boggles the mind how I am expected to attend the hearing when the evidence has already been long heard.

57. On the same day, 5 February 2021, at 03:37, the Secretary of the Commission sent me a second email attaching the Rule 3.3 notice of Van Rensburg. I annex a copy of the Rule 3.3 notice and the email to which the notice was attached and mark same "**GSM8.1**" and "**GSM8.2**", respectively.

58. I must reiterate that to date hereof, I have never been served with the Rule 3.3 notice pertaining to the evidence of Booysen, Nxasana, Sesoko and Khuba.

59. I was further informed, through the Rule 3.3 notices, in what respect the evidence of McBride, Van Jaarsveld and Van Rensburg will implicate me. The notices further informed me that I may attend the proceedings and that in so doing, I may be assisted by a legal representative when McBride Van Jaarsveld and Van Rensburg give evidence.

GSM

60. I was further notified, that in terms of Rules 3.3.6.1 to 3.3.6.3 should I wish, I may give evidence or call any witness to give evidence in support of my case, or even cross-examine McBride Van Jaarsveld and Van Rensburg.

61. Furthermore, in the event I choose to invoke the provisions of Rules 3.3.6.1 to 3.3.6.3 above, I should bring an application within 14 calendar days in writing to the Commission for leave to do so. In terms of Rule 3.4, an application in terms of Rule 3.3.6 must be accompanied by a statement from me in response to the allegations made by McBride Van Jaarsveld and Van Rensburg against me.

62. It is my submission that, in terms of the Rules of the Commission, the date for the submission of my statement should be determined from the dates on which the Rule 3.3. notices were received. I shall demonstrate that, taking into account that the notices were served on me in January and February 2021 respectively, the date on which my statement is submitted to the Commission was not done after the lapse of an unreasonable time period.

63. During November 2020, whilst the legal team was drafting and settling the statement of Mosing, an arrangement was made with the legal team to consult with myself and Mathenjwa on 12 December 2020. I, together with Mathenjwa, attended to the Chambers of Mathibedi where the consultation was to be held.

GSM

64. After waiting for two hours and having made numerous telephone calls to Mathibedi's cell phone which were not answered, Mathenjwa and I decided to leave. It later transpired that Mathibedi had been admitted to hospital due to complications related to Covid-19. I am advised that Gejengane and other members of the legal team were also not aware that, at that stage, Mathibedi had been admitted to hospital.

65. Gejengane and Adv Ramaimela also attended at Mathibedi's chambers on the same day, also unaware of the fact that Mathibedi had been admitted to hospital.

66. The arrangement was that my statement was going to be attended to after the finalisation of Chauke's affidavit. I only learnt of the fact that Mathibedi was admitted to hospital after his discharge on the 16th of December 2020, on which occasion Mathibedi indicated that once he has recovered and after the finalisation of Chauke's statement, the legal team will commence with the necessary consultation, drafting, settling and finalisation of my statement and that of Mathenjwa.

67. I am advised that Chauke's statement was finalised on the 12th of February 2021.

68. An initial consultation between Mathenjwa, myself, Gejengane, Ramaimela and Mathibedi occurred on 20 February 2021, during which consultation Mathenjwa and myself were advised of the approach that was to be adopted in our statements.

GSM

69. The next consultations with the legal team were held on numerous days during February, March, April and May 2021.

70. During the reading and analysis of the documents that had been provided to the legal team, certain further documents were required from myself and Mathenjwa, on an ongoing basis. Many of the documents had already been archived and some had to be obtained from some of our colleagues.

71. The legal team also had to peruse, analyse and familiarise themselves with:

71.1. Voluminous case dockets that related to the Cato Manor matter;

71.2. Various Prosecution Memoranda, Power Point presentations, a comprehensive and extensive indictment, a response to the request for further particulars which were in excess of 1000 pages in the Cato Manor matter;

71.3. Numerous Court applications that were instituted reviewing the POCA authorisations;

71.4. Documents relating to the Rogue Unit and the Pillay Early Retirement matter;

71.5. Documents relating to the matter of defeating the ends of justice for McBride, Khuba and Sesoko;

71.6. The statements of our colleagues already filed with the Commission, as there were overlaps;

71.7. Various judicial authorities pertaining to the issues that arise in this affidavit;

71.8. Transcribed records of the evidence of Booysen, McBride, Khuba, Vlok Symington, Mlotshwa, Nxasana, Sesoko, Nihleko, Gordhan, Mabula.

72. The following documents only pertained to Mathenjwa, but had to be read and analysed with the abovenamed documents:

72.1. Documents relating to the Breytenbach matter;

72.2. Memoranda relating to the Reference group;

72.3. Affidavits of McBride, Khuba, Nxasana and Booysen.

73. During the consultations and perusal of documents which had been provided to the legal team, a request was made for providing the legal team with the necessary documentation where applicable.

74. During the period that these consultations and perusal and analysis of the documents were taking place, members of the legal team had professional, personal and family commitments which they could not extract themselves from. Similarly, I had a part heard criminal matter involving a minor in the Klerksdorp Circuit Court (S v Kgotso Moeletsi and

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seven others (CC 27/2020)) which was set down for two to three weeks. This matter could not be postponed because the Child Justice Act, 2008 requires that this kind of matter be finalised within certain period of time. Besides this matter, I had other part heard matters and other matters that had long since been set down for hearing. All the accused in these matters are in custody and it would not be in the interest of justice for the matters to be postponed. I also had various administrative responsibilities which I could not extract myself from.

75. I have also been advised to deal with the time period from the holding of the consultation on 20 November 2019. I attended a consultation with the legal team where Counsel was appointed to represent the NPA officials implicated. At this meeting I informed the legal team that I was not served with a Rule 3.3 notice, although I was implicated by some witnesses. I requested the legal team to take up the matter of the non-service of the Rule 3.3 notices with the evidence leaders, despite the fact that I was implicated.

76. I am advised that the legal team attended a meeting with the evidence leaders on 22 January 2020. At that meeting, the evidence leaders were advised that I was not served with the necessary Rule 3.3 notices. The evidence leaders indicated that service was effected. As set out elsewhere in this statement, the notice was not served on me.

77. Despite the meeting referred to above, as at July 2020, I had not received the necessary and required Rule 3.3 notices from the evidence leaders.

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As at July 2020, when I was requested by the legal team to submit my summary of the response to the allegations levelled against me, I have not received the Rule 3.3. notices.

78. I am advised that a further meeting was held between my legal team and Adv Garth Hulley ("Hulley") on 9 September 2020, where the legal team again advised Hulley that I have not received the Rule 3.3. notices. Hulley advised my legal team that his view was that all the implicated persons should file their affidavits despite the fact that they have not been served with a Rule 3.3. notice.

79. It was after this meeting that I perused and analysed the evidence presented to the Commission and the documents related thereto in preparation for the summary of my response to the allegations levelled against me, as requested by the legal team.

80. It bears noticing that during this time, I was on Circuit Court at Klerksdorp and Mogwase, and I did not have access to my NPA records relating the matters I am implicated in.

81. I compiled a summary of my response to the allegations levelled against me and furnished same to our legal team during November 2020.

82. During November 2020, I was advised by Mathibedi that, at that stage, the legal team was busy with consultations, drafting, settling and finalisation of Mosing's statement, which would be followed by the consultations, drafting, settling and finalisation of Chauke's statement. A consultation

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was arranged for 12 December 2020, at which stage it was hoped that the legal team would have finalised Chauke's statement.

83. I once again must bring it to the attention of the Commission that as at the date of deposing to this affidavit, I have not received a Rule 3.3. notice in respect of Booysen, Nxasana, Sesoko and Khuba.

84. From the aforesaid, I respectfully submit that I have made out a good case for the relief prayed for in the Notice of Motion to which this affidavit is attached.

85. The voluminous papers together with annexures thereto were ultimately finalised on the 17th of May 2021. The filing of my papers at this stage is not as a result of any conduct on the part of myself or our legal team with the view to undermine the authority and process of the Commission.

F. **RULE 3.4 STATEMENT**

86. To demonstrate that the allegations levelled against me have no merit, it is necessary that I deal with the evidence as set out in the affidavits of Booysen, McBride, Van Jaarsveld and Van Rensburg and, to the extent necessary, their oral evidence before the Commission. To the extent I do not deal with each averment contained in the affidavits or oral testimony, such failure should not be construed as an admission thereof.

G. CATO MANOR INVESTIGATION AND PROSECUTION INCLUDING PROSECUTION OF BOOYSEN AND MEMBERS OF THE CATO MANOR SECTION

(a) Background

87. Sometime in February 2012, Adv J J Smit SC (***"Smit"***) the DPP of Gauteng Local Division asked me to be one of the prosecutors who were to form a team which was to guide IPID and DPCI investigators in the investigation relating to various murder dockets where members of the public were killed by police officers based at the Cato Manor SVC Section of the Durban Organised Crime Unit, as well as to conduct prosecutions, should it be necessary ***("the prosecution team")***.

88. As advised by Smit, the reason for forming a team of prosecutors from outside KZN was, as the then Acting DPP of KwaZulu-Natal, Adv Simphiwe Mlotshwa ("Mlotshwa") had indicated to Adv Jiba that the implicated police members had close working relationship with the prosecutors based in KwaZulu-Natal.

89. The prosecution team consisted of:

89.1. Myself, DDPP North West Division (team leader);

89.2. Adv K R Mathenjwa, DDPP South Gauteng Division (co-team leader);

89.3. Adv M Ntlakaza, Senior State Advocate based at South Gauteng Division ("Ntlakaza");

89.4. Adv J J Mlotshwa, Senior State Advocate based at South Gauteng Division ("Mlotshwa");

89.5. Adv P Futshane, Senior State Advocate based at South Gauteng Division ("Futshane") and

89.6. Adv P Moleko, Senior State Advocate, based at South Gauteng Division ("Moleko").

90. After its formation, a briefing session was held on 9 March 2012 where Chauke introduced the prosecution team to Adv N Jiba, the Acting National Director of Public Prosecutions ("ANDPP"/"Jiba"). In the briefing session we were informed that there were several murder dockets emanating from KwaZulu-Natal in which the suspects were police officers. The prosecution team was also informed that the cases were investigated by a team made up of members of both the Directorate for Priority Crime Investigation ("DPCI") and the Independent Police Investigative Directorate ("IPID") (collectively "the investigation team").

91. ANDPP and Chauke neither mentioned any corruption cases which were investigated by the suspects, nor did they exhibit any ulterior motive for assigning us to look at the murder dockets.

92. I attended the first meeting with the investigating team in Durban, the investigation team gave the prosecutors more than fifty (50) dockets for perusal, guidance and decision. From the dockets, the prosecution team identified twenty-three (23) murder dockets with twenty-eight (28) deceased, in which the police officers' killings were unjustified.

93. The prosecution team directed the investigation team to obtain further evidence, trace the witnesses and call for ballistic crime scene reconstruction reports.

94. It was established that the offences were committed by members of the Cato Manor SVC Section. According to the organogram of the KZN Provincial Organised Crime Unit, the Durban Organised Crime Unit was under the command of Senior Superintendent Aiyer ("*Aiyer*"). A copy of the organogram of the KZN Provincial Organised Crime Unit is attached as annexure **"CM1"**.

95. However, when approached by the investigation team to make a statement, Aiyer made a statement and explained that the Provincial Commander, Booysen side-lined him in the management of the Cato Manor SVC Section and liaised directly with the section commander. Aiyer contended that he was not involved in the operations of the Cato Manor SVC Section of the Durban Organised Crime Unit. A copy of Aiyer's statement dated 4 August 2012 is attached as annexure **"CM2"**.

96. The prosecution team also held a consultation with Aiyer and he gave us additional information, effectively confirming his exclusion in the activities

of the Cato Manor SVC Section of the Durban Organised Crime Unit, which additional information was later given in a form of a statement. A copy of this statement dated 31 August 2012 is also attached as annexure **"CM3"**.

97. The investigation revealed that there was a feud between the Stanger Taxi Association ("STA") and the KwaMaphumulo Taxi Association ("KTA"), which feud was investigated by Superintendent Chonco ("Chonco"), a member of the Taxi Violence Task Team. Chonco was killed in an ambush on 27 August 2008.

98. Thereafter, members of the Cato Manor SVC Section began to kill those who they suspected of Chonco's murder and killed six (6) people from 3 September to 18 October 2008. Five of the deceased were members of KTA and one was a bodyguard.

99. Although Chauke was the coordinator of the prosecution team, Mathenjwa met with Mlotshwa, the KwaZulu-Natal Acting Director of Public Prosecutions on the first visit and apprised him of the purpose and nature of our assignment in KwaZulu-Natal.

100. Throughout the period we were engaged in the assignment referred to above, we were regularly briefing Chauke on progress in our task, and he in turn would brief the ANDPP. At times, Chauke would arrange briefing sessions with the ANDPP where we would do the briefing to the ANDPP directly.

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101. Having considered all the evidence that was uncovered during the investigation, we formed a view that the suspects committed the offences, and had done so in a planned, ongoing and repeating similar pattern. We thus recommended to the KwaZulu-Natal ADPP that the suspects, being members of the Cato Manor SVC Section and Booysen, ought to be prosecuted for committing offences in terms section 2(1)(e) and 2(1)(f) of POCA. Accordingly, the KZN ADPP, who at the time was Adv M Noko ("*Noko*"), made an application to the ANDPP, for authorization of racketeering charges against the suspects.

(b) **Overview**

102. On 11 December 2011 there were media reports, *Inter alia* in the Sunday Times, about the killings that were alleged to have been perpetrated by members of the Cato Manor SVC Section. These media reports were severely criticised by those implicated and later on their supporters and various Non-Governmental Organisations ("NGO") to the extent that the media house that published the stories later on retracted same.

103. When all those media reports and criticism dominated the public discourse members of the prosecution team and I, in accordance with our ethics, code of conduct and the NPA Act could not make our inputs to set the record straight and inform the public what the correct position was at least in so far as the prosecution team was concerned.

104. In this affidavit I will demonstrate what the prosecution of Cato Manor SVC Section was all about. In a nutshell it is about the following:

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104.1. After the killing of Choncho, the Cato Manor SVC Section went on a killing spree of both suspects in Choncho's killing and suspects in other criminal activity such as ATM bombings. Most disturbingly, in this killing spree innocent persons, including a teenager, was killed;

104.2. When the killings were reported in the Sunday Times, members of IPID and the DPCI were tasked to investigate the allegations that members of the Cato Manor SVC Section were unlawfully killing suspects and or innocent persons;

104.3. Due to the complexity of the matter, such as the need to procure ballistic crime scene reconstruction, and the high-ranking officials implicated, the IPID sought the NPA's assistance to guide the investigation;

104.4. A prosecution team was appointed to peruse more than fifty (50) murder dockets to determine whether any of the killings were justifiable;

104.5. The prosecution team identified approximately twenty-three (23) dockets where approximately twenty-eight (28) deceased, in which the killings executed by members of the Cato Manor SVC Section were unjustified and contrary to the provisions of section 49(2) of the Criminal Procedure Act, 51 of 1977 (CPA) and the relevant portions of the Standing Order (General) 251 Part III Police Duties, Duties of the Relief and Use of Arms;

104.6. The killings were unjustified because the ballistic crime scene reconstruction found that in some cases the deceased were shot in supine positions or in instances where they did not pose danger to the police officers and or an instance where a fire-arm alleged to have been in possession of the deceased could not discharge;

104.7. In some dockets, witnesses gave statements to the effect that the deceased were unarmed and did not pose any danger to the police officers when they were killed.

105. Section 49(2)(a) and (b) of the CPA provides as follows:

> "(2) *If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing, but, in addition to the requirement that the force must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if-*
>
> *(a)* ***the suspect poses a threat of serious violence to the arrestor or any other person****; or*

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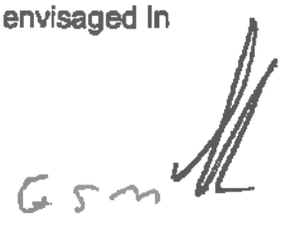
(b) ***the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.***" (my emphasis)

105.1. It was, and it still is, the view of the prosecution team that, based on the objective evidence, the conduct of members of Cato Manor SVC Section was not justified as such conduct did not fall within the parameters of Section 49(2)(a) and (b) of the CPA.

105.2. All the deceased were shot either on the chest or the head. Some of the deceased sustained bullet injuries on the hands which is an indication that they were trying to ward off the bullets;

105.3. Having identified the killings as unjustified, the evidence further pointed to a peculiar repeated pattern of killing, namely shooting the victims and thereafter placing a fire-arm next to the deceased, which the prosecution team considered to be the *modus operandi* of the Cato Manor SVC Section;

105.4. The prosecution team considered this *modus operandi* and was satisfied that the requirements of racketeering, as envisaged in the POCA, were met;



105.5. As a result of the evidence procured through the prosecution guided investigation conducted by IPID and the DPCI, the prosecution team was duty bound, after preparing the indictment, to seek a POCA authorisation from the then ANDPP in order to enable them to prosecute not only the "foot soldiers" but also those responsible for the management and control of the enterprise;

105.6. The indictment and POCA authorisations were vociferously opposed in a review applications and other legal stratagem, which culminated in the judgment of Gorven J;

105.7. These legal battles to resist the commencement of the criminal trial bore fruit when the incumbent NDPP irrationally withdrew the POCA authorisations issued by Abrahams and Jiba, her predecessors, without consulting and soliciting the views of the prosecution team, as well as the withdrawal of the predicate offences by the KwaZulu-Natal DPP. I am unaware whether Abrahams and Jiba were consulted before such withdrawal. I am aware of instances where previous NDPPs were invited to comment on their decisions whilst they were in office, by the NPA, after they left office.

106. To further demonstrate that all the killings were unjustified, the Commission is referred to the relevant section set out below, which clearly, and in detail, analyse the *modus operandi* of the suspects.

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107. Standing Order (General) 251 provides:

> *"251.4. As a member is often required to act on his own initiative, it is essential that all members have a thorough knowledge of the circumstances under which fire-arms may legally be used.*
>
> *251.5. Members may be justified in using their fire-arms under the following circumstances:*
>
> *251.5.3. to defend themselves or any other person or persons from death or serious injury if attacked,;*
>
> *251.5.4. when other means are ineffectual, to effect the arrest or to prevent the escape of a prisoner convicted of a serious crime or of a person who has committed or is suspected of having committed an offence included in Schedule 1 to Act No 51 of 1977. [In this connection attention is especially drawn to the provisions of Section 49(2) of Act No 51 of 1977.]*
>
> *251.6.1. It must constantly be borne in mind that, however justified a member may consider himself to be in shooting, whether or not the*

results are accompanied by the loss of life, this act with all its accompanying circumstances will have to be subjected to an investigation. A member who is placed in such circumstances, shall have to prove that he acted with all reasonable care and without recklessness or negligence, but that he was compelled by circumstances to make use of his fire-arm and that the degree of force and the nature of the weapon used, were not out of proportion to the circumstances necessitating the use of it.

251.15.5.2. *The member(s) who acted as marksman (-men)*

251.15.5.2.1. *Full particulars of the member(s), including the station to which attached, capacity in which appointed [permanent, reserve or reservist], sex, age and years of service.*

251.15.5.2.2. Whether the member was on duty or had placed himself on duty.

251.15.5.2.3. Whether he had acted on his own initiative or had reacted to an order.

251.15.5.2.4. Whether he had given a verbal warning before firing.

251.15.5.2.5. Whether he fired any warning shots, and if so, the number of shots fired.

251.15.5.2.6. ***Whether he attempted to hit the target with the minimum of violence, eg did he aim at the victim's legs, the vehicle's tires, or whatever the case may be.*** (my emphasis)

251.15.5.2.7. Number of rounds fired [excluding warning shots].

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251.15.5.2.8. Whether his actions were legal, or not. [If doubtful, this should be specifically mentioned.]

251.15.5.2.9. If the incident is being investigated, the CR or Inquest reference number must be furnished.

251.15.5.2.10. Whether or not a member has been suspended.

251.15.5.3. *<u>The fire-arm(s) concerned</u>*

251.15.5.3.1. The type of fire-arm, stating the calibre and whether it was an official or a fire-arm belong to the member.

251.15.5.3.2. Mechanical condition of the fire-arm.

251.15.5.3.3. The number of rounds issued when reporting for duty. [If less than the capacity of the relative

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weapon, the reason therefor must be recorded.]

251.15.5.3.4. The number of shells found at the scene.

251.15.5.4. *Target/victim*

251.15.5.4.1. Nature and number of the target(s)/victim(s), eg, brick building, motor vehicle, person, or whatever the case may be.

251.15.5.4.2. Whether or not it was the original arget(s)/victim(s) fired at. [If not, the relationship between the target(s)/victim(s) and the incident, eg an innocent pedestrian, part of the mob, or whatever the case may be.]

251.15.5.4.3. Whether or not the target(s)/victim(s) was hit, and if so, a full description of

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the position, eg left thigh, from the front/back/side, etc.

251.15.5.4.4. *Surname and initials of each victim, stating the race, sex and age.*

251.15.5.4.5. *Condition of the victim/target after the incident.*

251.15.5.4.6. *Whether the victim/target was implicated in, or was sought for, any crime, other than that from which the incident arose, reporting full particulars.*

251.15.5.5. *Arrest(s) resulting from the incident Number of arrests, stating race and age.*

251.15.5.6. *The date and time at which an officer [or other member] arrived at the scene, as well as his name. [Should an officer not have visited the scene, the reasons for this must be stated.]*

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251.15.6. *Should the member who fired the shot prefer to remain silent, the information as required in paragraph 15.5 must be obtained by means of witnesses and from own observations. The Commander [or other senior member] shall specify in his report the manner by which he obtained the information and, if a witness is not available, the fact that his report is based on presumptions.*

251.15.7. *If a member who was involved in a shooting incident, shows signs of shock, he must be given the necessary support, but without detracting from the applicable legal aspects.*

251.15.8. *The District Commissioner in whose District the shooting occurred, may order any officer under his command further to investigate the incident. If the shooting gives rise to the investigation of a case docket for an alleged crime against the member(s) concerned, the directions in SO 107(6)(c) must not be lost sight of.*

251.15.9. *As other provisions apply in the case where fire-arms were used in the combating or suppression of riots, such an occurrence must not be treated in accordance with these provisions. If, however, a criminal investigation or an inquest follows as a result of a shooting incident during riots, the provisions in SO 107 and 110 must not be lost sight of.*

251.16. *If a member has handled a fire-arm recklessly or negligently, or if he was not justified in discharging it or to order it to be discharged, the designated officer shall, after the conclusion of any criminal and/or disciplinary action, give serious consideration to the question as to whether a board of inquiry should not be convened in terms of Regulation 64.*

251.17. *Since all members have been adequately trained in the handling of fire-arms, it is the bounden duty of every member, irrespective of rank, who has the good name of the Force at heart, to be safety conscious and*

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to use fire-arms with the greatest care, prudence and competence."

108. I attach hereto a copy of the Standing Order 251, marked as annexure **"CM4.1"**.

109. The prosecution team's view was that a reasonable commander in the position of Booysen would have investigated the circumstances under which the killings occurred, if regard is to be had to:

109.1. the number of killings that took place from 2008 to 2011;

109.2. the manner in which the killings were committed, namely some of the victims were shot at close range in the upper body, the victims were either seated or in a supine position when shot, and many of the victims had gunshot wounds to the hands, indicating that they were trying to ward off the bullets; and

109.3. the circumstances in which the killings were committed, namely that all victims were alleged to have been in possession of firearms and/or attempted to shoot at police and/or posed danger to the police, whereas there was not a single incident where a member of the Cato Manor SVC Section was killed and/or injured nor was there an incident where police property such as motor vehicles, were shot at or damaged.

110. Booysen ought to have suspected that something was amiss and ought to have directed that an investigation be conducted into the killings. It is on this basis, as well as Booysen's active command of the Cato Manor SVC Section, that the prosecution team was and still is of the view that Booysen managed, participated, knew or ought to have known of the commissions of the crimes as envisaged in Section 2(1)(e) and (f) of POCA.

(c) Relevant legislation

111. The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) (POCA) provides as follows:

111.1. In Section 1 under the definitions, "enterprise" is defined as follows:-

> *"Includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity"*

111.2. Section 2 provides:

> ***"2 Offences***
>
> *(1) Any person who-*

(a) *(i)* *receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and*

(ii) *knows or ought reasonably to have known that such property is so derived; and*

(iii) *uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;*

(b) *(i)* *receives or retains any property, directly or indirectly, on behalf of any enterprise; and*

(ii) *knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;*

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(c) *(i)* *uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise;*

And

(ii) *knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;*

(d) *acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;*

(e) *whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;*

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(f) *manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;*

Or

(g) *conspires or attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f), within the Republic or elsewhere, shall be guilty of an offence.*

(2) *The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.*

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(3) For purposes of proving a previous conviction during a trial in respect of an offence contemplated in subsection (1), it shall be sufficient to prove the original record of judicial proceedings if a copy of such record, certified or purporting to be certified by the registrar or clerk of the court or other official having the custody of the record of such judicial proceedings or by the deputy of such registrar, clerk or other official or, in the case where judicial proceedings are taken down in shorthand or by mechanical means, by the person who transcribed such proceedings, as a true copy of such record, is produced in evidence at such trial, and such copy shall be prima facie proof that any matter purporting to be recorded thereon was correctly recorded.

(4) A person shall only be charged with committing an offence contemplated in subsection (1) if a prosecution is authorised in writing by the National Director."

112. Section 78 provides:

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"78. Liability

Any person generally or specifically authorised to perform any function in terms of this Act, shall not, in his or her personal capacity, be liable for anything done in good faith under this Act."

(d) Bases for recommending prosecution against Booysen and members of the Cato Manor Section of Durban Organised Crime Unit

113. I wish to indicate that I am neither appealing nor criticising the Gorven judgment. However, it is critical to state that from a careful reading and analysis of the judgment, some important annexures are not addressed in the judgment, namely, Annexures "NJ1" and "NJ6" to the Answering Affidavit deposed to by Jiba in the review application that was launched by Booysen. Annexure "NJ1" dated 14 October 2008, is attached hereto, marked as annexure **"CM4.2"**. Annexure NJ6 is attached hereto, marked as annexure **"CM5"**.

114. Annexure **"CM4.2"** is the motivation for the awards, including the monetary and non-monetary awards. In the summary of events, the following is set out:

"Summary of events

On Monday 2008/09/15, Dir Booysen, the Provincial Commander, contacted Insp Mostert and informed Insp Mostert that he had

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information pertaining to the suspect that had organised the hit on Supt Chonco. He was hiding in Virginia in the Orange Free State and was on route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time the informer remained in contact with Dir Booysen who continued to relay the information over to the investigation team.

On Tuesday 2008/09/16 at 06H20, Dir Booysen contacted Insp Mostert again re the movement of the suspect who was near the Pietermaritzburg area in a Hyundai Tuscon 4X4 with registration NRB3904 and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.

The same day at 08H30, the investigation team still consisting of the above same members who were in the Pietermaritzburg area, continued to receive further information from Dir Booysen and at 10H10 Information was received that the above vehicle was en route on the N3 towards the Orange Free State. The vehicle was spotted near the Cedara turn off by the investigation team, the occupants being two person, a driver and a passenger seated on the back seat of the vehicle. The investigation team, which at this stage consisted of Insp Mostert, Nel and Makhanya in one vehicle while Capt Van Tonder, Lockem and Eva who followed in a separate vehicle. Insp Mostert managed to catch up to the vehicle and in an attempt to get the suspects to pull over, the official blue light and siren was used. A shootout then took place between the passenger of the suspects'

vehicle and the investigation team resulting in the driver of the vehicle being injured in the process which resulted in the vehicle stopping. The passenger in the suspects' vehicle, during the shootout, made an attempt to flee from the moving vehicle which resulted in him being flung out of the moving vehicle. Both the suspects were fatally injured in the shootout. The driver was positively identified as Timson Magojela Ndimande and was the main brain behind the assassination of Supt Chonco, the other suspect was his bodyguard. The following firearm were found in the vehicle; one AK47 Rifle with loaded magazine, one Ruger Mini 14 Automatic Rifle and two magazines as well as two 9mm Norinco Pistols, both with loaded magazines.

The following cases were opened:

Howick CAS 106/08/08: Attempted Murder and possession of unlicensed firearms

Howick CAS 107/08/08: Inquest

The above members returned to the office and continued to gather further information."

115. In relation to Howick CAS 106/08/2008, which was investigated by Mr Mosiapoa, a member of IPID, Booysen and Olivier arrived at the scene in a helicopter and congratulated the members for work well done. Booysen played a key role in tracking and tracing Magojela which tracing led to his murder by the members of the Cato Manor SVC Section along N3

towards Howick. Booysen managed to track Magojela through an informer. This evidence is also confirmed in the motivation for awards, amongst others, in favour of Booysen and members of Cato Manor SVC Section.

116. Annexure **"CM5"** is an affidavit deposed to by Booysen in the matter of **Bongani Elphas Mkhize v Minister of Safety and Security: South Africa and Others**[1]. From a careful perusal, consideration and analysis of the content of the annexure, the only plausible inference is that Booysen was, or should have been aware of the unlawful conduct of members of the police, also taking into account that he was the Provincial Commander of Organised Crime for the Province of KwaZulu-Natal.

117. It is clear that, in the opposing affidavit, it is not Booysen's case that the entire content of the information as set out in the affidavit was gained from other members of the Cato Manor Police unit. It is also clear that the facts which Booysen relies on in the affidavit, are within his personal knowledge and belief, alternatively have been obtained by him from files and documents under or in the control of the South African Police Service.

118. In the Mkhize matter, despite opposition, the police were interdicted from unlawfully killing Mkhize. However, Mkhize was murdered by the very same Cato Manor SVC Section under the command of Booysen. It is my submission that the two annexures referred to above, clearly demonstrate that Booysen was aware or ought to reasonably have been aware, of the

[1] Case Number 13759/2008, High Court of South Africa, Durban & Coast Local Division, Durban

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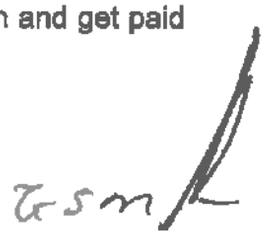
unlawful and criminal conduct that was perpetrated by members of the Cato Manor SVC Section.

119. In addition to the above, the following evidence, which was in the dockets, was relied on when the decision to prosecute Booysen and the members of the Cato Manor SVC Section was taken:

119.1. Statements of Mr Bhekinkosi Mthiyane "Dlondlo" ("*Mthiyane*") and Aiyer respectively dated 31 July 2012 and 4 August 2012. Copies of the above statements are attached as annexures **"CM6"** and **"CM2"** respectively. Mthiyane's evidence is that there was an arrangement between members of the Cato Manor SVC Section and the STA in terms of which the members of the Cato Manor SVC Section would kill members of the KTA and get paid for it by STA. On the other hand, Aiyer in his statement confirms that the members of the Cato Manor SVC Section acted under the command of Booysen all the time at the relevant time.

119.2. Statement of Mr Bongani Mandla Mkhize dated 1 August 2012 whose evidence corroborates that of Mthiyane. The gist of his evidence is that there was an arrangement between members of the Cato Manor SVC Section and the STA in terms of which the members of the Cato Manor SVC Section would kill members of the KwaMaphumulo Taxi Association and get paid



for it by STA. A copy of the statement of Mr Bongani Mandla Mkhize is attached as annexure **"CM7"**.

119.3. Statement of Mr Nkosinathi Shozi ("*Shozi*"). He is an attorney who represented KTA since 2003. In 2007 to 2008 he was approached by Bongani Mkhize (Chairman) and Bhengu (Treasurer) to assist KTA to communicate with the South African Police Service (SAPS) with a view to prevent the ongoing killings after the death of Lindelani Buthelezi ("Buthelezi") on 3 September 2008. His instructions were to tell the police that if there was any member of the association being sought for any criminal matter, including the investigation of Chonco they were prepared to hand the member over so that the law could take its course. He was never told by the police or Booysen when his clients, being members of KTA were sought. A copy of the statement of Shozi is attached as annexure **"CM8"**.

119.4. When analysing modus operandi of the suspects the following was established:

119.4.1. <u>Counts 3 to 7: KwaDukuza CAS 39/09/2008 Lindelani Buthelezi</u>

119.4.1.1. On 3 September 2008, the deceased was found with gunshot wounds in the

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bedroom at the house that he was renting.

119.4.1.2. The deceased was a member of KTA and suspected of being involved in the killing of Choncho.

119.4.1.3. The police came to the house during the early hours of the morning and broke open the door. They found the deceased in the bedroom with his girlfriend, Thandeka Sokhulu.

119.4.1.4. According to Thandeka, as the police entered the bedroom, the deceased raised his hands in the air as a sign of surrender, and he was not armed.

119.4.1.5. The police took the deceased into another room.

119.4.1.6. Thandeka alleged that she was assaulted with open hands and kicked, and they covered her head with a blanket. She then heard gunshots from the room the deceased was taken into.

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119.4.1.7. The police had the deceased under their control from the moment the police entered the bedroom and the deceased raised his hands in surrender. The allegation that the deceased posed a threat to the police is improbable.

119.4.1.8. The deceased was shot in the head and in the chest. A firearm was placed next to the body on the floor.

119.4.1.9. The ballistic crime scene reconstruction report dispel the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.1.10. I attach hereto photos of the scene, marked as annexures **"CM9.1"** to **"CM9.7"**.

119.4.2. Counts 8 to 12: Howick CAS 106/09/2008 Magojela Timson Ndimande and Sibusiso Thokozani Tembe

119.4.2.1. On 16 September 2008, the deceased were found in a Hyundai Tucson

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vehicle on the N3 Highway in the direction of Howick from Pietermaritzburg. Ndimande was found seated in the driver's seat, slumped over onto the passenger seat with a gunshot wound to the head and several gunshot wounds to the chest. Tembe was found on the road surface on the left side of the vehicle with a gunshot wound to the head and severe scrape marks on his arm and hands.

119.4.2.2. Ndimande was the Vice-Chairperson of the KTA and Tembe was his bodyguard, in the employment of a security company, Taxi Violence VIP Protection Unit. Tembe was issued with a 9mm Parabellum Pistol and a Ruger 14 rifle by his employer.

119.4.2.3. Several weeks before the shooting, Mostert approached the owner of Taxi Violence VIP Protection Unit, Warren Julie, and told him to remove his employees that were rendering protection services to the executive of

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KTA or risk that his employees will be killed by the police. He refused and continued to render protection services to the executive of KTA.

119.4.2.4. Two weeks before the day of the shooting incident, the deceased were arrested by SAPS, Mthunzini and taken to Cato Manor SVC Section's premises, as they were suspects in the killing of Chonco. The Cato Manor SVC Section indicated to SAPS, Mthunzini that the deceased were not suspects and that they should be released, which they were.

119.4.2.5. On that day, the deceased pleaded with SAPS, Mthunzini to take them back to where they were arrested as they feared that Cato Manor SVC Section will murder them.

119.4.2.6. On 16 September 2008, the deceased were on their way to the Free State where they were hiding out from the Cato Manor SVC Section after

collecting the monthly taxi takings in KwaZulu Natal. They have just left Pietermaritzburg and were travelling on the N3 Highway.

119.4.2.7. Mostert (Accused 4), Eva (Accused 6), Makhaya (Accused 8), Lockem (Accused 15) and Van Tonder (Accused 16) followed the deceased after receiving information from Booysen that the deceased were travelling in the Hyundai Tucson. They were travelling in two vehicles. It is clear from the motivation for the monetary award (**"CM4"** hereto) that Booysen actively managed and directed the operation that led to the murder of the deceased, even though he was not present at the time of the shooting.

119.4.2.8. The two vehicles pulled up next to the Hyundai Tucson. The police opened fire on the deceased's vehicle and shot the deceased. The deceased's vehicle veered off the highway and came to a

standstill at the side of the road. Whilst the deceased's vehicle was moving, Tembe fell out of the vehicle, his foot got stuck in the vehicle and he was dragged for approximately 20 meters. From the scrape marks on Tembe's body, it is clear that Tembe was already shot before he was dragged by the vehicle.

119.4.2.9. The police alleged that Tembe leaned out of the left rear passenger door of the vehicle and shot at them with an AK47.

119.4.2.10. When the vehicles came to a standstill, Mostert approached the Tucson, opened the driver's door and fired further shots at Ndimande, who slumped over onto the front passenger seat.

119.4.2.11. Apart from the 9mm Parabellum Pistol and the Ruger 14 rifle that was issued to Tembe by his employer, a Norinco

pistol and an AK47 assault rifle were placed on the scene.

119.4.2.12. The Norinco pistol was found on the front passenger seat behind Ndimande's head. The AK47 rifle was found on the back seat. The Ruger 14 rifle was found in the boot of the vehicle and the 9mm Parabellum pistol was found next to Tembe's body.

119.4.2.13. Herman Thiart, an employee of Taxi Violence VIP Protection Unit, Tembe's employer, attended at the scene and viewed Tembe's body. He also inspected the deceased's vehicle and noticed that all the bullet holes were from shots fired from outside the vehicle and there were no shots fired from inside the vehicle. He further noticed that there were no bullet holes on any of the police vehicles.

119.4.2.14. The ballistic crime scene reconstruction report dispel the notion or version that the prosecution team was wrong to

conclude that the aforestated Norinco pistal and AK47 rifle were planted.

119.4.2.15. Booysen (Accused 1) and Olivier (Accused 9) arrived at the scene by helicopter and congratulated Mostert and the other members.

119.4.2.16. I attach hereto photos of the scene, marked as annexures **"CM10.1"** to **"CM10.5"**.

119.4.2.17. I attach hereto a statement from Warren Julie, marked as annexure **"CM11.1"** and a statement from Herman Thiart marked as annexure **"CM11.2"**.

119.4.2.18. Counts 13 to 18: Mandini CAS 76/09/2009 Nzameni Ntuli (Kopolota) and Nkosinathi Mthembu

119.4.2.19. On 18 September 2008, the deceased were found lying in a house at Mandini after being shot at by the accused;

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119.4.2.20. It is alleged that Stoltz (Accused 3) and Mostert (Accused 4) discharged their firearms in self-defence against the purported attack with firearms, launched by the deceased;

119.4.2.21. The ballistic reconstruction indicates that they were shot whilst lying down, the firearms that were found placed close to their bodies could not match the cartridges on the scene;

119.4.2.22. The ballistic crime scene reconstruction report dispel the notion or version that the prosecution team was wrong to conclude that the aforestated firearms were planted.

119.4.2.23. The two deceased were members of KTA.

119.4.2.24. I attach the forensic statement of Jacobus Steyl ("Steyl"), marked as annexure **"CM12"**.

119.4.3. <u>Count 19: Umkomaas CAS 235/10/2008 Mduduzi Mkhize</u>

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119.4.3.1. On 18 October 2008, the deceased was found slumped with his body halfway out of the vehicle in the backseat of a Mazda Etude vehicle on the N2 freeway in the direction of KwaMakhutha and the deceased was handcuffed.

119.4.3.2. The deceased was arrested in Pietermaritzburg on the day of the shooting on suspicion of involvement in the killing of Choncho. The deceased was being transported by Nkabane (Accused 17) and Crouse (Accused 18) to Scottburgh where the deceased indicated his willingness to point out another suspect, Nathi Khumalo.

119.4.3.3. Before the vehicle left Pietermaritzburg, the deceased, who had his hands cuffed behind his back, requested that his hands be cuffed in the front as it would be uncomfortable to sit in the vehicle with his hands cuffed behind his back. Crouse acquiesced to his request.

119.4.3.4. When the vehicle left, Crouse was driving, Nkabane was seated in the front passenger seat and the deceased was seated in the back seat.

119.4.3.5. The police alleged that, whilst on route, the deceased attempted to strangle Crouse with the handcuffs by putting the handcuffs over Crouse's head from the back and pulling him against the seat with the cuffs on his throat and that the deceased tried to disarm Crouse. Nkabane then shot the deceased in the face from the side. The photos depict that he was shot whilst handcuffed.

119.4.3.6. The deceased was a member of KTA.

119.4.3.7. I attach hereto photos of the scene, marked as annexures **"CM13.1"** to **"CM13.3"**.

119.4.4. <u>Counts 20 to 24: Durban Central CAS 185/02/2009 Bongani Mkhize</u>

119.4.4.1. On 3 February 2009, the deceased was found lying in the driver's seat of his black Lexus car. The Commission is referred to 5 photos from the photo album of the scene of the shooting, which prove the following:

119.4.4.2. Photo 1 shows:

- The position of the deceased with his hands folded;
- Glass shards which indicated that the windows of the car were closed at the time he was shot at and that the shot came from the right hand side of the car from outside;

119.4.4.3. Photo 2 shows:

- Amongst others, a firearm on the front left hand side;
- Spent cartridges;
- Glass shards on the seat and on the floor;
- According to ballistic crime scene reconstruction report, the

spent cartridges were not fired from the firearm found in the vehicle as stated above;

- The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated fiream was planted;

119.4.4.4. Photos 3 and 5 shows that some shots were fired from the back of the vehicle through the back window into the neck of the deceased.

119.4.4.5. Photos 4 and 5 shows that both right hand side windows of the vehicle were closed at the time it was struck.

119.4.4.6. He was a member and the Chairperson of KTA.

119.4.4.7. According to Sergeant Tilakharee, the ballistic expert, all shots were fired from outside to the inside of the vehicle. The accused Dlamuka, Mfene, Padayachee, Rakesh Maharaj and

Stoltz state that the deceased fired shots in their direction and they returned fire wounding the deceased. Sergeant Tilakharee's ballistic finding that all cartridge cases collected from the scene, including the two found inside the vehicle of the deceased, were not linked to the firearm found in the vehicle of the deceased. It is thus clear that this firearm depicted on photos 14 and 15 of Captain Mangena's statement was placed in the vehicle after the shooting to create the impression that Mkhize used it and tried to place the police's life in danger. Copies of statements of Sergeant Tilakharee and that of Captain Mangena are attached as annexures **"CM14"** and **"CM15"** respectively.

119.4.4.8. This deceased obtained an interdict against the Police from murdering him, as more fully dealt with elsewhere in this statement. Furthermore, the deceased was the target on whose

head STA was to pay R1 million as per Ndlondlo's statement.

119.4.4.9. I attach hereto the photos, marked as annexures **"CM16.1"** to **"CM16.5"**.

119.4.5. Counts 25 – 30: Pinetown CAS 1000/05/2009 Sibongiseni Badumile Ndimande

119.4.5.1. On 23 May 2009, the deceased was found in his house in the bedroom slumped against the bed, on the right-hand side of the bed, with gunshot wounds to his face and body.

119.4.5.2. The police were searching for suspects who were allegedly involved in the killing of Nkosi Zondi. The police came to the deceased's house at New Germany. The deceased, whilst sleeping in the bedroom with his wife, was woken up by noises caused by the police's attempts to open the main door of the house.

119.4.5.3. According to the deceased's wife, Nokuphiwa Zanele Madaba, she

handed their baby that was in the bed with her and the deceased, to the deceased and proceeded towards the main door of the house. As she opened the door, the police burst into the house. At that time, the deceased approached the door from the direction of the bedroom, holding the baby against his bare chest.

119.4.5.4. The police instructed the deceased to hand the baby to Nokuphiwa and Olivier (Accused 9) shoved Nokuphiwa and the baby through the main door outside, whilst the other police officers took the deceased into the bedroom. As Nokuphiwa was in the doorway, she heard gunshots from the bedroom.

119.4.5.5. The police alleged that the deceased was reaching for a firearm and they opened fire on the deceased. Padiyachee (Accused 2) fired two shots with an R5 rifle, Stoltz (Accused 3) fired shots with a Z88 pistol and Van

Tonder (Accused 16) fired shots with a 9 mm Baretta pistol.

119.4.5.6. The gunshot wounds on the deceased's arms indicate that the deceased raised his arms in a defensive manner in an attempt to block the bullets.

119.4.5.7. A firearm was placed on the foot of the bed. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.5.8. The deceased was a family member of Magojela Ndimande, the deceased in counts 8 to 12.

119.4.5.9. I attach hereto photos of the scene, marked as annexures **"CM17.1"** to **"CM17.3"**.

119.4.5.10. I attach the statement of Nokuphiwa, marked as annexures **"CM18."**.

119.4.6. Counts 31 to 34: Rustenburg CAS 1098/09/2009 Sifiso Ndimande

119.4.6.1. On 20 September 2009, the deceased was found in his house in the lounge with a gunshot wound next to his right eye.

119.4.6.2. The police suspected the deceased to be involved in the killing of Nkosi Zondi. The deceased was sleeping in the house where he was hiding from the Cato Manor SVC Section for fear of them murdering him.

119.4.6.3. The police took up various positions around the house. Padayachee (Accused 2) and Mostert (Accused 4) broke open the kitchen door, entered the premises and proceeded to the bedroom. On entering the bedroom, the police opened fire on the deceased, and alleged that the deceased pointed a firearm at them.

119.4.6.4. A firearm was found on the scene. The ballistic crime scene reconstruction

report dispel the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.6.5. The deceased was a family member of Magojela Ndimande, the deceased in counts 8 to 12.

119.4.6.6. I attach hereto photos of the scene, marked as annexures **"CM19.1"** to **"CM19.7"**.

119.4.7. Counts 35 to 38: Berea CAS 288/05/2008 Thabo Sunshine Msimango

119.4.7.1. On 24 May 2008, the deceased was found on the ground in the parking area of the block of flats where he resided. The deceased was shot several times.

119.4.7.2. The police came to the deceased's flat as he was the subject of an investigation. The police broke down the flat's door and entered the deceased's flat. The police alleges that the deceased turned and ran towards

the window and shots were fired at him. The deceased then jumped out of the window of his flat on the fourth floor to the parking area below.

119.4.7.3. The police fired several shots at the deceased from the flat whilst the deceased was lying on the ground in the parking area. Further shots were fired at the deceased at closer range.

119.4.7.4. A firearm was placed next to the deceased's body on the ground. It is a physical impossibility for the firearm to be that close to the deceased's body if the firearm was in the deceased's hand when he impacted the ground, as he jumped from the fourth floor of the block of flats.

119.4.7.5. The ballistic crime scene reconstruction report dispel the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.7.6. I attach hereto photos of the scene, marked as annexures **"CM20.1"** to **"CM20.4"**.

119.4.8. Counts 39 to 52: Melmoth CAS 142/11/2008 Bongani Velaphi Biyela ("Bongani") and Khayisani Biyela ("Khayisani")

119.4.8.1. On 23 November 2008, the deceased were found shot at their homestead in Melmoth. Bongani's naked body was found outside laying on top of a stone retaining wall with gunshot wounds. Khayisani's body was found lying on the floor of one of the rondavels with gunshot wounds.

119.4.8.2. Bongani was an accused in a matter in the Durban Magistrate's Court where he failed to appear in Court and a warrant of arrest was authorised but stayed against him. Before the return date of the warrant, a group of police proceeded to his homestead in Melmoth and attacked the homestead during the night.

119.4.8.3. Bongani, who was sleeping with his wife, Bongokuhle Biyela, woke up and attempted to run away. He was naked. He was shot outside the rondavel and a firearm was placed next to his body. Bongokuhle stated that Bongani was naked, as depicted from the photo album and had no firearm in his possession.

119.4.8.4. Khayisani was shot inside the rondavel where he was sleeping. The police alleges that Khayisani shot at them through the rondavel window and one police officer returned fire whilst another kicked the door open and fired shots at Khayisani. A firearm was placed next to Khayisani's body.

119.4.8.5. The police also assaulted Bongokuhle and Richard Biyela, an older brother of Bongani.

119.4.8.6. Photo 1 depicts Bongani lying naked on top of the stone retaining wall with a

firearm close to his left hand on the ground next to his body.

119.4.8.7. Photo 2 depicts Bongani's body covered in a white sheet on top of the stone retaining wall.

119.4.8.8. Photo 3 is similar to photo 1.

119.4.8.9. Photo 4 depicts Bongani's gunshot wound to the head.

119.4.8.10. Photo 5 depicts Khayisani's body on the floor of the rondavel with a firearm next to his body. The photo clearly shows that this firearm was placed on top of the dried blood.

119.4.8.11. Photo 6 depicts the gunshot wounds to Khayisani's body and the firearm which was placed on top of the dried blood. On the supposition that Khayisani was in possession of the firearm, the blood would have been on the firearm and/or the blood would have settled and/or circled around the firearm, being a heavy object.

119.4.8.12. Photo 7 depicts the gunshot wound to Khayisani's body.

119.4.8.13. Photos 8, 9 and 10 depicts how insensitive the police were after having killed Bongani and Khayisani. They are shown to be celebrating their heinous conduct the morning after the killing in the presence of Bongokuhle, who was grieving for Bongani and Khayisani, and who was forced to sit with the police.

119.4.8.14. Photo 9 depicts Mostert drinking a beer.

119.4.8.15. Photo 10 depicts Bongokuhle grieving whilst Accused 4 and 6 throws their hands up in the air in celebration, with Accused 7 looking on with a smile.

119.4.8.16. I attach hereto photos of the scene, marked as annexures **"CM21.1"** to **"CM21.10"**.

119.4.8.17. These photos are the photos which were published in the Sunday Times on

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the 11th of December 2011, copies of which articles are attached hereto and marked as annexure **"CM22.1"**, **"CM22.2"** and **"CM22.3"** respectively.

119.4.8.18. It is the publication of these photos that triggered the investigation against the members of the Cato Manor SVC Section.

119.4.8.19. I attach hereto the statement of Bongokuhle, marked as annexure **"CM23"**.

119.4.8.20. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.9. Counts 53 to 57: Kwa-Mashu CAS 629/4/2009 Gladwell Thokazani Njapha

119.4.9.1. On 27 April 2009 the deceased was found on the bed in his house. The deceased was shot in his bedroom.

119.4.9.2. The police violently knocked at the door and, after breaking down the door, stormed into the deceased's house. By then, all the family members in the house were up to see what was going on.

119.4.9.3. The deceased went to picked up his three year old son from the child's bedroom and held his son against his chest. The police then instructed the deceased to hand the child to the deceased's elder son, Njabulo Njapha, who was 15 years old at the time. On the deceased handing over the child to his elder son, the police shoved the children out of the bedroom. Mostert (Accused 4) pulled the deceased's wife, Portia Njapha ("Portia"), from the bedroom.

119.4.9.4. If the intention of the police was to arrest the deceased, they should have done so as they had ample opportunity arrest him, as they had restrained him. This clearly demonstrates that there

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was premeditated intention to murder the deceased.

119.4.9.5. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.9.6. Thereafter the deceased was shot. Explosives were found in the room and a firearm was found next to the right hand of the deceased. According to Portia, the deceased was left handed and had no firearm in his possession.

119.4.9.7. I attach hereto photos of the scene, marked as annexures **"CM24.1"** to **"CM24.3"**.

119.4.9.8. I attach hereto the statements of Portia and Njabulo, marked as annexures **"CM25"** and **"CM26"** respectively.

119.4.10. Counts 58 to 61: Phoenix CAS 377/08/2009 Phillip Lindokuhle Nzuza

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SEQ 29/2021-086

119.4.10.1. On 10 August 2009, the deceased was found shot dead in a Honda Ballade vehicle on Malandela Road in Phoenix.

119.4.10.2. The police were looking for the deceased in connection with armed robberies of which he was a suspect. The deceased was allegedly followed by the police and allegedly failed to heed several orders to stop the vehicle. The police fired shots at the deceased and killed him.

119.4.10.3. A silver BMW vehicle which was driven by the police, where Mostert (Accused 4) was present, is depicted on the photos. It must be noted that in the taxi violence money collections, a silver BMW vehicle driven by Mostert, was mentioned.

119.4.10.4. A firearm was placed next to the deceased's body.

119.4.10.5. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to

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conclude that the aforestated firearm was planted.

119.4.10.6. I attach hereto photos of the scene, marked as annexures **"CM27.1"** to **"CM27.5"**.

119.4.11. Counts 62 to 65: Kwa-Mashu CAS 698/11/2009 Prince Sakhile Thabede (Mtako)

119.4.11.1. On 26 November 2009 the deceased was found lying on the bed in his house in the company of his girlfriend.

119.4.11.2. The police first secured two suspects who directed them to the deceased's house. The police were driving a Combi. On the identification of the house, the police alighted and went into the house, and these suspects heard gunshots.

119.4.11.3. One police officer, Mostert (Accused 4), came back to the Combi to fetch his "Mbombay" (firearm). He reached under the driver's seat and took out

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one firearm from a bag of firearms and ran back into the house.

119.4.11.4. Adriaan Stoltz (Accused 3) said in his warning statement that the suspect drew a firearm and fired shots. Padayachee (Accused 2) says the suspect produced a firearm and pointed at them, that is when he decided to fire at the suspect. Sergeant Behari of the ballistic unit of the Forensic Science Laboratory found that the revolver was defective. Jacobus Steyl, a ballistic reconstructionist, states that the deceased was in a lying position with his head on the pillow when he was shot at. Copies of the statements of Sergeant Behari and that of Jacobus Steyl are attached as annexures **"CM28"** and **"CM29"** respectively.

119.4.11.5. I attach hereto a statement by Nqaba Mdluli, a witness to the incident, marked as annexure **"CM30"**.

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SEQ 29/2021-089

119.4.11.6. The deceased's girlfriend, Denise Hurley ("Hurley"), who is a nurse, attempt to assist the deceased, but was prevented from doing so by the Accused. As she was pulled out of the room by the Accused, she saw a firearm being thrown onto the bed on the right side of the deceased's body. I attach hereto copies of Hurley's statement dated 3 December 2009, marked as annexure **"CM31.1"** and statement dated 22 March 2012, marked as **"CM31.2"**.

119.4.11.7. The ballistic crime scene reconstruction report on the firearm found on the scene, established that the said firearm was defective and could not discharge ammunition.

119.4.11.8. There are two materially contradictory versions from police members who were on the scene. Padayachee (Accused 2), in his statement, attached hereto marked as annexure **"CM32"**, *Inter alia*, states that the deceased

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pointed a fire arm at them, whilst Stoltz (Accused 3), in his statement, attached hereto marked as annexure **"CM33"** alleged that there was an exchange of firearm with the deceased, and consequently the deceased was fatally wounded. Both these versions cannot be true. It is not for the presiding officer to accept one of the versions above the other. These materially contradictory versions supports Hurley's version that the deceased did not have a firearm.

119.4.11.9. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.11.10. I attach hereto photos of the scene hereto, marked as annexures **"CM34.1"** to **"CM34.9"**.

119.4.12. Counts 66 – 69: Esikhawini CAS 3/4/2010 Kwazi Ndlovu 16 year old boy

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119.4.12.1. On 1 April 2010 at about 02:00 the deceased, a 16-year-old student, who had likely fallen asleep whilst watching television, was shot at whilst in a lying position on a couch with an R5 rifle, a 9mm Norinco Star pistol was placed under his left arm.

119.4.12.2. After the shooting incident, Mostert instructed the deceased's father, Sibusisu Wiseman Ndlovu ("Wiseman") to go and point out other suspects. On the way to where the pointing was supposed to be made, Mostert enquired from Wiseman as to who the person is that was sleeping in the tv room, referring to the deceased. Wiseman responded and said "that is my son" to which Mostert exclaimed and responded "Was it your son?". I attach hereto a copy of Wiseman's statement, marked as annexure **"CM35"**.

119.4.12.3. All cartridges on the scene are 5.56mm compatible with an R5 assault rifle that

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was used by Padayachee (Accused 2). The 9mm Norinco Star pistol cannot be linked with any cartridges found on the scene.

119.4.12.4. The ballistic crime reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.12.5. Captain Mangena reconstructed the scene and confirmed after studying the post-mortem report, damages on the wall, the couch on which the deceased was lying and the wounds sustained, that the deceased was lying when shot at and posed no danger to the police. This firearm was clearly placed on the scene after the shooting.

119.4.12.6. This house belonged to Tilili's family, but at the time of this killing, it was rented by the deceased's family.

119.4.12.7. They murdered a wrong person as the police were looking for a prison

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escapee called **Tilili**, and were taken to this house by the informer. A copy of Captain Mangena's statement is attached as annexure **"CM36"**.

119.4.12.8. I attach hereto photos of the deceased, marked as annexures **"CM37.1"** to **"CM37.3"**.

119.4.13. Counts 70 to 79: Bhekithemba CAS 44/05/2010 Musawenkosi Aubrey Ngcobo, Xolisani Allen Ngcobo and Simphiwe Sydney Shozi

119.4.13.1. On 10 May 2010, the deceased were found dead at their homestead in their room on their beds with gunshots wounds. Firearms were found next to each body.

119.4.13.2. The police came to the deceased's homestead, looking for suspects likely involved in the killing of Capt Reddy during a hi-jacking incident. On enquiry by the police as to the whereabouts of the deceased, one of the family members pointed out the deceased's room.

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119.4.13.3. According to the witness, Sibongiseni Ngcobo, the police broke down the door of the deceased's room, and immediately started firing on the deceased who were asleep on their beds.

119.4.13.4. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearms were planted.

119.4.13.5. I attach hereto photos of the scene, marked as annexures **"CM38.1"** to **"CM38.4"**.

119.4.13.6. I attach hereto a statement of Sibongiseni, marked as annexure **"CM39"**.

119.4.14. <u>Count 80: Durban North CAS 67/07/2011 Jabulani Camson Bhengu</u>

119.4.14.1. On 4 July 2011, the deceased was found with gunshots to the head next to

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a Golf GTi motor vehicle on the corner of Yspsilantr and AnnArbor Streets.

119.4.14.2. The police were following the deceased's vehicle as they allege that it fitted the description of the get away vehicle involved in a robbery of a doctor in Mount Edgecombe.

119.4.14.3. When the deceased saw the police, he stopped the vehicle and alighted from the vehicle. The police allege that the deceased brandished a firearm, which prompted Mostert (Accused 4) to fire shots at the deceased. After the deceased fell to the ground, Mostert fired further shots at the deceased. Mostert remained on the scene until the paramedics arrived.

119.4.14.4. A firearm was placed on the ground near the body. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

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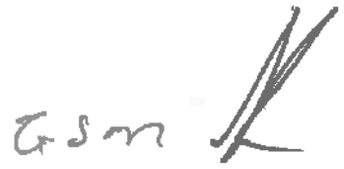
119.4.14.5. According to the police, the crime scene in Counts 80, 81 and 82 was one moving crime scene, as they were pursuing the deceased under all three counts for the alleged robbery committed in Mount Edgecombe. The State evidence is that Mbonambi was in his house the whole day with his sons. Therefore, he could not have been on the said crime scene as alleged by the police.

119.4.14.6. Mgobhozi was called to Mbonambi's house where they had a discussion and, on Mgobhozi's departure, the police murdered Mgobhozi.

119.4.14.7. In this regard, Mbonambi, Mgobhozi and the deceased could not have been at the same crime scene at Mount Edgecombe, as alleged by the police.

119.4.14.8. I attach hereto the photos, marked as annexures **"CM40.1"** to **"CM40.2"**.

119.4.15. Count 81: Durban North CAS 69/07/2011 Dumisani Blessing Mgobhozi



119.4.15.1. On 4 July 2011, the deceased was found in the garage of Mbonambi, the deceased in Count 82.

119.4.15.2. The deceased visited Mbonambi and as he exited Mbonambi's house through the garage, the police stormed through the garage door that was opening and shot the deceased.

119.4.15.3. The ballistic reconstruction indicates that the deceased was shot whilst standing and again shot whilst lying on the ground.

119.4.15.4. One of Mbonambi's sons, Tshepiso Mbonambi, witnessed the shooting of the deceased and he alleges that, at the time the deceased was shot, he was speaking on his cell phone and he had no firearm in his possession. Tshepiso was narrowly missed by the gun shots aimed at the deceased.

119.4.15.5. A firearm was placed next to the deceased's body.

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119.4.15.6. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearms were planted.

119.4.15.7. I attach hereto the photos, marked as annexures **"CM41.1"** to **"CM41.2"**.

119.4.15.8. I attach hereto the statement of Tshepiso, marked as annexure **"CM42"**.

119.4.16. Count 82: Durban North CAS 71/07/2011 Boysie Sibusiso Mbonambi

119.4.16.1. On 4 July 2011 the deceased was found seated and shot dead in a closed dustbin.

119.4.16.2. Mgobhozi, the deceased in Count 81, visited the deceased. On Mgobhozi's departure, the police stormed into the deceased's garage and shot Mgobhozi. On hearing the gunshots, the deceased ran out of the house away from the police and hid in a dustbin. The

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deceased opened and closed the dustbin's lid, which was seen by a witness, Goodness Sosibo ("Sosibo"), who drew the attention of the police to the deceased's hiding place.

119.4.16.3. The police shot at the deceased whilst the deceased was hiding in the dustbin. The police alleged that the deceased opened the lid of the dustbin and pointed a firearm at them, at which stage the police spontaneously reacted with an R5 rifle.

119.4.16.4. The photo album shows a firearm under the deceased's body in the dustbin. Having regard to the seated position the deceased was found in the dustbin, compared to the police's version that the deceased pointed the firearm at them, the firearm would not have been under the deceased's body.

119.4.16.5. The photo album indicated that at the time of the shooting, the dustbin lid was closed, demonstrating that the shooting

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must have occurred through the closed lid of the dustbin.

119.4.16.6. The witness who pointed out the deceased's hiding place, saw the deceased climbing over the wall, dressed in shorts and a t-shirt and he had nothing in his possession.

119.4.16.7. The deceased's sons, Wandile and Tshepiso Mbonambi, aged 12 and 17 respectively, saw the deceased running from the house and he had nothing in his possession.

119.4.16.8. A firearm was placed underneath the deceased in the dustbin.

119.4.16.9. The above evidence of Wandile and Tshepiso dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.16.10. I attach hereto the photos, marked as annexures **"CM43.1"** to **"CM43.2"**.

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119.4.16.11. I attach hereto a statement of Sosibo, marked as annexure **"CM44"**, a statement of Wandile dated 28 October 2011, marked as annexure **"CM45.1"** and a statement dated 7 January 2012, marked as annexure **"CM45.2"** and a statement of Tshepiso, marked as annexure **"CM42"**.

119.4.17. Counts 94 to 97: Esikhawini CAS 50/09/2011 Qinisani Philangenkosi Gwala

119.4.17.1. On 4 September 2011, the deceased was found in his house with gunshot wounds to his hand and his head.

119.4.17.2. The police went to the Mabuyeni Community Hall at Esikhaweni where they took the deceased away to his home, under the impression that he was Philani Ndlovu (Bha), despite the deceased and members of the community telling the police that the deceased was not Bha. The police refused to accept his identity.

119.4.17.3. The police took the deceased to his homestead and the deceased younger brother, Sandile Qaphalani Gwala ("Sandile"), followed him.

119.4.17.4. According to Sandile, when the deceased and the police arrived at the homestead, the deceased's hands were tied with cable ties. The deceased was taken into his house and Sandile was shoved into another house, where he was forced to lie down and his head was cover with a washing basin. Sandile heard gunshots from the deceased's house.

119.4.17.5. From the photo album no cable ties are seen, and the police allege that the deceased asked to be untied. The police further allege that the deceased reached for a firearm in the cupboard, as they were searching his room.

119.4.17.6. The allegation that the police was under attack from the deceased is improbable. According to the ballistic

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crime scene reconstruction report, the deceased was most probably in a seated position when these wounds were inflicted. The shooter could have stood in front of the deceased. The deceased, from a seated position, just fell back, as found.

119.4.17.7. The position of the deceased's body and the entry wound on his head indicates that that the deceased was facing the gunman and not facing the cupboard. According to the ballistic expert, the bullet first hit the deceased's palm of his hand and went through his hand into his head.

119.4.17.8. A firearm was placed on the ground next to the cupboard, near the deceased's body.

119.4.17.9. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

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119.4.17.10. The police had control over the deceased since they took control of him at the Mabuyeni Community Hall.

119.4.17.11. I attach hereto the ballistic crime scene reconstruction report by Mangena, which includes photos, marked as annexure **"CM46"**.

119.4.17.12. I attach hereto the statement of Sandile, marked as annexure **"CM47"**.

119.4.17.13. It is clear that the deceased was in the custody of the police after being arrested at the Community Hall. There were more than four police officers present who could easily have subdued the deceased, if necessary. In fact, the deceased was already tied up with cable tie restraints when they entered the house.

119.4.17.14. Taking into account the findings of Mangena that, at the time that the deceased was shot, he was seated, facing the shooter, the version put by the police that the deceased was

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reaching for a firearm and resisting, is improbable.

119.4.17.15. The cable tie restraints were removed before the deceased were shot.

119.4.18. Counts 98 to 101: Kwa-Mashu 116/8/2008 Mfanafuthi Armstrong Zwane

119.4.18.1. On 31 July 2008, the deceased was found inside the yard of his home between his car and the boundary wall of his property, with his head resting against the rear tyre of his car. He was shot in the chest and below the ear.

119.4.18.2. The police found the deceased sitting in his car with his girlfriend, Thandeka Pearl Mazibuko ("Mazibuko"), at his house in the yard and ordered them to get out of the car. The police separated the deceased from Mazibuko and pushed him towards the boundary wall of the property and shot and murdered him.

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119.4.18.3. The deceased was not armed and had his arms raised when the police pushed him towards the wall. At the time that the deceased was shot, he was under the control of the police.

119.4.18.4. A firearm was placed next to the deceased's body.

119.4.18.5. I attach hereto the photos of the scene, marked as annexures **"CM48.1"** to **"CM48.18"**.

119.4.18.6. I attach hereto the statement of Mazibuko, marked as annexure **"CM49"**.

119.4.18.7. Mazibuko's version dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted and that the deceased was posing a danger to the police.

119.4.18.8. The police's version that the deceased was in possession of a firearm is also dispelled by the version of Mazibuko.

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119.4.19. Counts 102 to 103: Estcourt CAS 34/08/2008 Muzi Sanele Majola

119.4.19.1. On 6 August 2008, the deceased was found shot twice in the chest in the public restroom at Midway Caltex Garage in Estcourt.

119.4.19.2. The police were looking for the deceased and Mpendulo Mngomezulu as suspected escapees from Westville Prison.

119.4.19.3. The police arrested the deceased and Mngomezulu at Glencoe and transported them towards Durban. There were two separate cars with two policemen and a suspect in each car travelling in the convoy. They stopped at Midway Caltex Garage in Estcourt for refuelling. The deceased asked to use the toilet and Naidoo (Accused 13) and Nel (Accused 5) took him to the toilet, where Naidoo uncuffed the handcuffs on one hand to enable him

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to use the facilities. The deceased was shot in the toilet.

119.4.19.4. Naidoo alleges that the deceased tried to grab his gun and he was forced to shoot the deceased.

119.4.19.5. After the deceased was murdered, Mostert (Accused 4) and Panday (Accused 30) brought Mngomezulu into the toilet to show him the deceased's body. After having sight of the body, Mngomezulu made a confession.

119.4.19.6. Naidoo's firearm was placed next to the deceased's body.

119.4.19.7. I attach hereto the statement of Mngomezulu, marked as annexure **"CM50"**.

119.4.19.8. I attach hereto the photos of the scene, marked as annexures **"CM51.1"** to **"CM51.8"**.

119.4.19.9. There is no independent evidence, such as fingerprints, to corroborate

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Naidoo's version. No reasons were advanced as to why fingerprints were not lifted from the firearm, which would either have supported or disproved the police's version.

119.4.19.10. Magistrate Geldenhuys, who presided in the inquest of Majola, found that Nel (Accused 5) was criminally responsible for the death of the deceased. It is clear that the De Kock panellists did not take into consideration such finding in their recommendation in the De Kock report and neither did the NDPP when the charges were withdrawn. I attach hereto the J56 form, marked as annexure **"CM52"**.

119.4.20. Counts 104 to 108: Kwa-Mashu CAS 314/11/2008 Nhlanhla Nkuthu Masondo

119.4.20.1. On 12 November 2008, the deceased was found shot in the back, lying on his side with his legs off the bed, in his bedroom.

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119.4.20.2. The police entered the deceased's house, and took control of the deceased. The police took the deceased to his bedroom and closed the bedroom door.

119.4.20.3. The deceased's mother, Jabulisiwe Gladys Masondo, pleaded with the police to enter into the bedroom with her son, but she was refused entry by the police. Jabulisiwe then heard gunshots and the deceased was shot.

119.4.20.4. A firearm was placed next to the deceased's body on the bed. The deceased was shot in the back.

119.4.20.5. Jabulisiwe's version dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

119.4.20.6. I attach hereto the photos, marked as annexures **"CM53.1"** to **"CM53.2"**.

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119.4.20.7. I attach hereto the statement of Jabulisiwe, marked as annexure **"CM54"**.

119.4.21. Counts 109 to 112: Tongaat CAS 356/03/2009 Dan Chester Phiri

119.4.21.1. On 6 March 2010, the deceased was found shot at close range, seated in his car on Noordberg Road in Tongaat.

119.4.21.2. The deceased was driving on Noordberg Road in Tongaat on route to buy groceries at his friend's shop. He was accompanied by Skhumbuzo Zakhele and Mandla Mavundla.

119.4.21.3. He was stopped by the police. The deceased and his passengers were ordered to get out of the car and to lie down next to the car. Zakhele and Mavundla immediately got out of the car and laid down next to the car. The deceased was a paraplegic and could not instantly comply with the police's instruction. Accused 5 approached the deceased at the driver's side of the car

and shot the deceased, despite the fact that the deceased was crying and begging for his life.

119.4.21.4. The deceased was shot with a contact shot by Accused 5. A firearm was placed in the vehicle. This firearm matched the cartridges that were found at the scene.

119.4.21.5. It is established in the post mortem report that the deceased died as a result of a contact shot to the head whilst seated in the car. The burn marks around the entry wound and bullet shrapnel in the wound is evidence of the close contact. I attach hereto the post mortem report by Dr G Perumal, marked as annexure **"CM55"**.

119.4.21.6. The ballistic crime scene reconstruction report dispels the notion or version that the prosecution team was wrong to conclude that the aforestated firearm was planted.

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119.4.21.7. I attach hereto the photos, marked as annexures **"CM56.1"** to **"CM56.12"** respectively.

119.4.21.8. I attach hereto the statements of Mavundla dated 10 January 2021 marked as annexure **"CM57"** and 21 March 2021, marked as annexure **"CM58"** respectively.

119.4.22. Counts 113 to 116: KwaDukuza CAS 115/3/2010 Nhlanhla Lucky Mhlongo

119.4.22.1. On 6 March 2010 the deceased was found shot in his home.

119.4.22.2. The police went to the deceased's house in Groutville, Stanger as he was a suspect in the ATM bombings. As the deceased was opening the door for the police, the police shot and murdered him. Naidoo alleges that the deceased was reaching to his side.

119.4.22.3. A post mortem report by Dr M A Deysel is attached hereto, marked as annexure **"CM59"**.

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120. Our recommendations supporting the issuing of the section 2(4) authorisations, in respect of Booysen and members of the Cato Manor SVC Section, as already demonstrated, were based on sufficient and reasonable evidence, justifying such recommendations.

121. I submit that, if regard is had to all the above, the criticism to the effect that the recommendation for and subsequent issuing of the racketeering certificates against Booysen and others, were not based on objective evidence and/or were politically motivated, is unfounded. Further, prosecution of Booysen and the members of the Cato Manor SVC Section was far from being malicious.

(e) **The evidence Before the Prosecution Team**

122. In addition to the statements of the eye-witnesses, victims, ballistic crime scene reconstruction evidence, ballistic crime scene evidence, and post-mortem reports, the prosecution team had the following evidence:

122.1. The Provincial structure;

122.2. Statements and information to prove the management of the Cato Manor SVC Section of the Durban Organised Crime Unit;

122.3. The motive which drove the murdering of the members of KTA;

122.4. The similar pattern through which the murders were perpetrated; and

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122.5. The *modus operandi*;

I. Statements and information to prove the management of the Cato Manor SVC section of the Durban Organised Crime Unit

123. The prosecution team obtained two sets of racketeering authorisations. The first one was issued by Jiba on 17 August 2012 and the second one was issued by Abrahams on 13 February 2016.

124. The authorisations were based on the contents of the docket and the following statements to show that there was a police management structure and under whose command responsibility the murder offences were committed:

124.1. The KZN provincial structure;

124.2. Statements from Durban Organised Crime Unit Commander, Alyer;

124.3. Statements from the KZN Provincial Head of Detectives, Assistant Commissioner Brown ("Brown");

124.4. The urgent application papers under case number 13759/2008 instituted by Bongani Mkhize ("Mkhize") wherein he successfully interdicted the Cato Manor SVC unit from unlawfully killing him.

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124.5. Draft statements of Danikas, a former police reservist at the Cato Manor SVC;

124.6. Motivation for monetary and non-monetary awards which demonstrate that Booysen and members under his command, excluding Alyer, received monetary and non-monetary awards for the alleged successful arrest of people who were suspected in the killing of Superintendent Choncho;

124.7. Statement of Mathonsi which explains how the plan to eliminate members of the KTA was hatched and orchestrated;

124.8. Statement of Ndlondlo (Mthiyane) which explained the role of STA in the killing of KTA members by the members of the Cato Manor SVC Section; and

124.9. Statement of Mkhize which singles out the incident of the killing of Kopolota Ntuli and Nathi Mthembu who were members of the KTA.

125. The aforesaid is individually discussed below.

ii The KZN provincial structure

126. The provincial structure indicates Booysen as the Provincial Commander of the Organised Crime Unit. The Unit had four (4) branches, namely 1) the Durban Organised Crime Unit; 2) Pietermaritzburg Organised Crime

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Unit; 3) Port Shepstone Organised Crime Unit; and 4) the Richards Bay Organised Crime Unit.

127. Each Unit had a Commander with subsections, for example, Serious Violent Crimes; Fraud and Commercial Crimes; Narcotics; Vehicle Theft section, et cetera.

128. The case at hand related Serious and Violent Crimes section of the Durban Organised Crime Unit based at Cato Manor Offices under the command of Aiyer. It was noticeable that Booysen was predominately involved in the operations of the Cato Manor SVC Section of the Durban Organised Crime Unit.

iii. Statements of Aiyer

129. The criminal offences which were investigated by both the IPID and DPCI were committed by the Cato Manor SVC Section, which according to the provincial structure was under the command of Aiyer. The investigation led to Aiyer deposing to three (3) statements, dated the 4th of August 2012 (**"CM2"**), 31st of August 2012 (**"CM3"**), and 31st of March 2013. I attach hereto the statement of Aiyer dated 31 March 2013, marked as annexure **"CM61"**.

130. The essence of Aiyer's statements is that he was a token Commander of the Cato Manor SVC Section. Booysen, as the provincial head excluded him in the operations and management of the Cato Manor SVC Section. Booysen was the *de facto* Commander of the Cato Manor SVC Section.

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131. Aiyer stated that he wanted the Cato Manor SVC Section to relocate from Cato Manor offices to the offices in town where he was based as their commander.

132. The members resisted this command and sourced support from Booysen who supported and thwarted his directives. As a result, the members did not move as directed.

133. The statements of Brown corroborate within reasons that Aiyer was excluded in the management and operations of the Cato Manor SVC Section.

iv Statements from the KZN Provincial Head of Detectives, Assistant Commissioner Brown

134. The prosecution team had a statement from Brown, who was the Head of Detectives in the province and a member of the KZN SAPS Provincial Management. The prosecution team consulted with the witness over and above the statement. During the consultation, Brown confirmed that Booysen was more operationally involved in the activities of the Cato Manor SVC Section.

135. As evident from the statement of Brown, it appeared to the prosecution team that Booysen had to manage and coordinate the operations of the Cato Manor SVC Section because Aiyer and the members therein were not getting along. This was premised on Brown's statement on paragraph 8 which, amongst others, states that:

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"...A poor relationship developed between [Aiyer] and members of SVC based on [Aiyer's] management style and perceived lack of knowledge in respect of investigation of violent crimes. This led to strained relationship between [Aiyer] and Major Genl Booysen as the Provincial Commander of Organised Crime...".

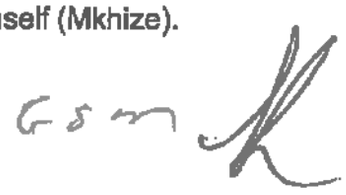
136. Brown also states that the conflict between the Aiyer and the members culminated to a conflict between Aiyer and Booysen. He tried to mediate and the parties would agree to work together, but the conflict would persist. This conflict led to Booysen active involvement in the operations of the Cato Manor SVC Section.

137. It is the prosecution team's view that Booysen was directed to depose to an opposing affidavit in the Mkhize Interdict due to his intimate knowledge of the incident.

138. I attach hereto a statement of Brown dated 8 May 2013, marked as annexure **"CM62.1"** and a supplementary statement of Brown dated 9 May 2013, marked as annexure **"CM62.2"**.

v. Urgent Application of Case Number 13759/2008

139. Bongani Mkhize ("Mkhize") was the Chairperson of KTA. He had information from Moses Dlamini ("Dlamini"), a member of KTA, that the Cato Manor SVC Section has a list of people who were suspected of murdering Superintendent Choncho. On this list were, amongst others, Mthembu, Kopolota, Magojela, Buthelezi and himself (Mkhize).



140. According to the affidavit of Mkhize, Diamini told Mkhize that the Cato Manor SVC Section members were bragging that they were going to kill Diamini and the people on the list. Subsequently, Mthembu, Kopolota, Magojela and Buthelezi were killed by the members of the SVC Section, and Mkhize feared that he was next to be killed, as those that were on the list with him, were already killed. Hence the application before Court. The contents of the relevant paragraphs are set out below:

"28. *THE KILLINGS*

MAGOJELA NDIMANDE AND TEMBE

On Friday the 29th August 2008 Magojela Ndimande, who was a member of my Association and whose name appeared on the list mentioned by Moses Diamini, was arrested in Mtunzini area together with his body guard, Tembe, and taken to the Mtunzini police station where they were severely assaulted. They were subsequently released on the same day and Magojela returned to his homestead in or around the KwaMthethwa area in Empangeni. Several days after his release Magojela, who goes by the surname of Ndimande, was waylaid by police in the Merrivale area. He was shot and killed. Tembe, who had also been arrested with him on the 29th August 2008 was also killed. Tembe was a security guard employed by Taxi Violence Protection Unit and was the personal body guard of Magojela. I

annex hereto marked "C" a copy of the communique issued by police after the death of Magojela and Tembe.

I also wish to annex hereto marked "M" an article front page of the Daily Sun relating to the death of Magojela Ndimande.

29. *It is widely believed that the deaths of Magojela and Tembe had been in keeping with the information I had received about the elimination of prominent members of my Association under the guise of them being sought for the murder of Superintendent Chonco. We have engaged the services of various entities in order to investigate these shootings. It is also questionable to say the least that these two individuals who were sought by the Police (See Annexure "C") had been arrested by them and released shortly thereafter and within a few days of their release they are shot and killed on a quite back-road and allegedly to be "dangerous criminals" in possession of dangerous weapons.*

30. *<u>LINDELANI BUTHELEZI</u>*

I must hasten to add that before the death of Magojela and Tembe, Lindelani Buthelezi whose name had also been on the list in question had already been killed by police under spurious circumstances. Lindelani Buthelezi was known as a prominent member of my Association.

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31, *On the 3rd of September 2008 Lindelani Buthelezi was confronted in his rented house at Stanger by a large group of policemen. He was killed by them during such "arrest". I annex hereto marked "D" a copy of an affidavit by Lindelani Buthelezi's common law wife who was present when he was killed in which she relates the disturbing circumstances under which he was killed. It is my belief that his death is consistent with the information I had received about the existence of a list of names and the elimination of the people mentioned herein.*

32. *KOPOLOTA NTULI AND NKOSINATHI MTHEMBU'S*

Kopolota Ntuli and Nkosinathi Mthembu, whose names were also on that list, were killed by members of the SAPS at Mandeni whilst at Kopolota's fiance's homestead, also under questionable circumstances. Prior to the killing of Kopolota and Mthembu, the attorney representing the Association had offered to surrender any member of the Association suspected of the murder of Superintendent Chonco should they be sought. I annex hereto marked "E" a letter dated 5th September 2008 and refer this Honourable Court specifically to paragraphs 18 and 19. Despite this offer, the SAPS proceeded to shoot and kill the two individuals once again in circumstances that lead me to believe the correctness of the information referred to above. Once again the police version is that they acted in self-defence.

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33. *MDU MKHIZE*

On Saturday the 18th October 2008 Mdu Mkhize who was a member of my Association was arrested at a funeral service at KwaMaphumulo by members of the South African Police Services. He was handcuffed and led away and we later heard that he was killed. I annex hereto marked "F" a copy of the Daily Sun newspaper article wherein is death is being mentioned. Whilst Mdu Mkhize's name was not on the list mentioned by Moses Dlamini, I have been privy to information that he was also being sought for elimination by police."

141. In response to what Mkhize alleged about the killing of his members and the threat to his life, Booysen responded as follows:

"31. *AD PARAGRAPH 28*

NDIMANDE and TEMBE were arrested and questioned. They were released. On 16 September 2008 information was received which necessitated NDIMANDE and TEMBE to be questioned again. Information was also received that the two individuals were in the process of fleeing the Province of KwaZulu-Natal, making their way to the Free State. On the busy N3 freeway between Pietermaritzburg and Merrivale an attempt was made to apprehend them. Police vehicles employing their sirens and appropriate flashing lights attempted to stop them. They resisted and shot at the Police. The Police returned fire

and they were killed. Two hand guns, a Lugar assault rifle and an AK47 assault rifle were recovered by the Police. To the extent that the information contained in paragraph 28 is at odds with what I say here, I deny same. I also deny the contents of the press report from the Daily Sun to the extent that it is at odds with what I say. TEMBE was an employee of the security company referred to by the applicant in paragraphs 18 and 19 of the founding affidavit. As a consequence of this incident, and when he was discovered in possession of assault weapons, and because he was involved in an incident where he was party to the Police being fired upon, the forensic investigation into the firearms referred to in paragraph 19 of the founding affidavit was commenced.

32. *AD PARAGRAPH 29*

There is simply no basis for what the Applicant contends is "widely believed". I have no knowledge of what services the Applicant has engaged and who or what the "various entities" are. I have already explained that NDIMANDE and TEMBE were again sought as a result of new information received. There is nothing untoward about that. In any event, why the Applicant refers to the N3 highway as a "quite (sic) back-road" excapes me unless it is nothing more than a thinly veiled attempt to colour the information (whether true or not) placed before this Court.

33. *AD PARAGRAPHS 30 AND 31*

I have already said that there was no list in existence. On 3 September 2008 an attempt was made to arrest BUTHELEZI. He resisted arrest and attempted to shoot at the members of the South African Police Services who returned fire in self-defence. BUTHELEZI was killed in that exchange of fire. His firearm, a CZ 7.65 automatic was recovered at the scene. Whether or not BUTHELEZI was a prominent member of the Applicant's association is unknown to me. I accordingly deny the allegations contained in paragraph 30 and 31 to the extent that theirs are at odds with what I say here. The Affidavit put up from SOKHULU is hearsay and must be struck out. It was not obtained or put up for the purposes of this application and she has not confirmed those facts for the purposes of this application. In any event I deny the allegations contained in that Affidavit to the extent that they are at odds with what I say herein. BUTHELEZI was killed while he resisted arrest and shot at the Police.

34. *AD PARAGRAPH 32*

Information was received that implicated NTULI and MTHEMBU in taxi violence related incidents. On 18 September 2008, as a result of that information, members of the South African Police Service attempted to arrest NTULI and MTHEMBU. The Police

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were fired upon and had to return fire. As a result both NTULI and MTEMBU were killed. Their firearms, a Z88 and a CZ75 were recovered from the scene. I accordingly deny the allegations contained in paragraph 32 to the extent that it differs from what I say herein.

35. AD PARAGRAPH 33

MKHIZE was arrested on 18 October 2008 in Pietermaritzburg. He was attending a funeral at the time. He was transported to Scottburgh for questioning. After questioning, during which he had agreed to effect a pointing-out, he was again transported for that purpose. This was in self-defence. I accordingly deny the allegations contained in paragraph 33 where they are at odds with what I say herein."

142. The contents of the paragraphs quoted above from Booysen's affidavit, detail the minute details which Booysen was aware of, relating to the activities of the Cato Manor SVC Section.

143. I attach hereto Mkhize's affidavit, marked as annexure **"CM63"** and Booysen's affidavit, marked as annexure **"CM64"**.

144. The Court granted an Order on 14 November 2008, which reads as follows:

"IT IS ORDERED [BY CONSENT]

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1. *That the respondents are interdicted from unlawfully killing, injuring, threatening, harassing or in any way unlawfully intimidating the applicant.*

2. *That the rule nisi is in all other respects discharged.*

3. *That each party to pay its costs."*

145. I attach hereto the Court Order, marked as annexure **"CM65"**.

146. The Court Order was granted on 14 November 2008 and, despite the Order, Mkhize was killed on 3 February 2009 by the very same Cato Manor SVC Section who had previously killed his colleagues in KTA.

147. In the papers received by the prosecution team, there is nowhere where it is indicated that Booysen made an attempt to restrain the members of the Cato Manor SVC Section against the killing of Mkhize, and if he did, Booysen is invited to produce proof thereof.

148. What the prosecution had, was that there was a plan to kill members of KTA and that plan came to its full realisation by the killing of Mkhize, who was the Chairperson of KTA.

149. It is a reasonable view of the prosecution team that the only reason why Booysen deposed to the opposing affidavit is that he had intimate knowledge of the facts and circumstances that led to launching of the urgent application. Booysen neither annexed a confirmatory affidavit to the opposing affidavit, nor does he allege that other members of the Cato

GSM

Manor SVC Section are the source of the information as set out in the opposing affidavit.

vi Draft statements of Danikas

150. The prosecution team had a draft statement of Danikas who was a police reservist. The essence of this draft statement was that Booysen was aware that the members of the SVC Section were, in fact, killing suspects instead of arresting them.

151. This method of operation did not only start in 2008, but it has been a standard operation as far back as in 2001.

152. I attach hereto the draft statement of Danikas, marked as annexure **"CM66"**.

153. The draft statement of Danikas was intended to show similar facts as it is admissible in POCA prosecution in terms of Section 2.2 and, as much as there were no charges preferred on those crimes, but evidence relating to those murders would have become relevant in the main trial to support Danikas' version.

vii Monetary and non-monetary award

154. The awards related to the alleged cracking on the murder of Superintendent Chonco. Chonco was murdered on 27 August 2008.

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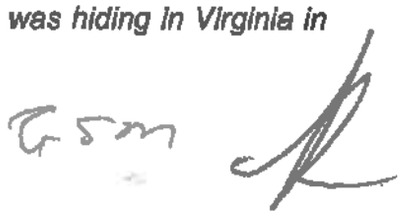
From 3 September 2008 to 18 September 2008, the Booysen and the members under his command, were able to trace six suspects, and those suspects were all killed on the crime scenes. None of the suspects was ever arrested and brought to Court. They were all murdered under the pretext of self-defence.

155. The monetary awards must be read together with Mkhize's urgent application where he was fearing for his life that his fellow members of KTA are being killed by members of the Cato Manor SVC Section and he was next in line. Mkhize himself was consequently killed despite a Court Order.

156. In these awards, Booysen was a beneficiary for his own role in the operations that lead to those who were suspected of killing Chonco. I attach hereto a copy of the monetary awards dated 14 October 2014, marked as annexure **"CM67"**.

157. The monetary awards, *inter alia*, reads as follows:

> *"3. **Apprehension of two more suspects***
>
> ***Summary of events***
>
> *On Monday 2008/09/15, Dir Booysen, the Provincial Commander, contacted Insp Mostert and informed Insp Mostert that he hade information pertaining to the suspect that had organized the hit on Supt Chonco. He was hiding in Virginia in*



the Orange Free State and was on route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time the informer remained in contact with Dir Booysen who continued to relay the information over to the investigation team.

On Tuesday 2008/09/16 at 06H20, Dir Booysen contacted Insp Mostert again re the movement of the suspect who was near the Pietermaritzburg area in a Hyundai Tuscon 4X4 with registration NRB3904 and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.

The same day at 08H30, the investigation team still consisting the above same members who were in the Pietermaritzburg area, continued to receive further information from Dir Booysen and at 10H10 information was received that the above vehicle was en route by the N3 towards the Orange Free State. The vehicle was spotted near the Cedara turn off by the investigation team, the occupants being two persons, a driver and a passenger seated on the back seat of the vehicle. The investigation team, which at this stage consisted in Insp Mostert, Nel and Makhanya in one vehicle while Capt Van Tonder, Lockem and Eva whom followed in a separate vehicle. Insp Mostert managed to catch up to the vehicle and in an attempt to get the suspects to pull over, the official blue light and siren was used. A shootout then took place between the passenger of the

suspects' vehicle and the investigation team resulting in the driver of the vehicle being injured in the process which resulted in the vehicle stopping. The passenger in the suspects' vehicle, during the shootout, made an attempt to flee from the moving vehicle which resulted in him being flung out of the moving vehicle. Both the suspects were fatally injured in the shootout. The driver was positively identified as Timson Magojela Ndimande and was the main brain behind the assassination of Supt Chonco, the other suspect was his body guard. This following firearms found in the vehicle; one AK47 Rifle with loaded magazine, one ruger Mini 14 Automatic Rifle and two magazines as well as two 9m Norinco Pistols, both with loaded magazines."

158. The monetary awards are not the only information which the prosecution team had on this incident. There was also a statement of a pilot crew which confirmed that Booysen procured the services of a helicopter to pursue the deceased, and Booysen was on board of the helicopter. However, the deceased were killed before his arrival. I attach hereto a statement of Andrew Carsen Patrick Cochrane, marked as annexure **"CM68"**. Cochrane is employed as an Airborne Law Enforcement Officer at Flyme Hanger No 8, Virginia Airport, Durban.

viii Statement of Mothonsi

GSM

159. The prosecution team also had the statement of Mathonsi, dated 9 May 2013, wherein Mathonsi, as the then body guard in STA, stated under oath.

160. I attach hereto a copy of a manuscript signed statement under oath of Mathonsi, marked as annexure **"CM69.1"** and a copy of the typed version of the statement, marked as annexure **"CM69.2"**.

161. The essence of Mathonsi's statement is that the murdering of the members of KTA as detailed by Mkhize and Mkhize himself, was planned between STA, Booysen and Mostert, as members of the Cato Manor SVC Section.

162. According to Mathonsi, Mkhize was the last to be killed and there were payments made to the Cato Manor SVC Section for the killing of Mkhize. This allegation, under oath by Mkhize, is also corroborated by the statement of Bhekhinkosi Mthiyani Dlondlo (Dlondlo).

ix Statement of Dlondlo

163. Dlondlo stated under oath that he was a chairperson of the disciplinary department within the STA and he had close working relations with Exco Members of STA. According to Dlondlo, the STA paid members of the Cato Manor SVC Section for the killing of members of the KTA and mentions those who were killed as Lindelani Buthelezi, Kopolota Ntuli, Nathi Mthembu, Mdu Mkhize, Ndimande and Bongani Mkhize.

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164. The most expensive hits were for Ndimande, valued at R750 000.00 and Mkhize, valued at R1 000 000.00. According to Diondlo, Mostert and Booysen, as members of the Organised Crime Unit, were involved in the money exchange through Bongiswe Mhlongo and Sanele Zondi. I attach hereto a statement of Diondlo, marked as annexure **"CM70"**.

165. Mathonsi, and Diondlo's allegations, about the exchange of money and the planning to kill members of the STA, were further corroborated by Bongani Mandla Mkhize. It must be noted that Diondlo alleges that he was an informer of Mostert and Sanele Zondi was an informer of Booysen.

x Statement by Bongani Mandla Mkhize

166. Bongani Mkhize, the body guard of STA Executive, stated under oath that when Kopolota, Ntuli and Bongani Mthembu were killed, Bongiswe Mhlongo was sent pictures, allegedly by Mostert, of the deceased. As the body guard, he accompanied Mhlongo to meet with Mostert and another white man at Tongaat Toll Plaza, where Mhlongo handed plastic with money to Mostert and the other white man in the car.

167. I attach hereto a statement of Bongani Mandla Mkhize, marked as annexure **"CM71"**.

xi Evidential analysis

GSM

168. The prosecution team took cognisance that Chonco was killed in the line of duty. However, those who were alleged to be involved in his murder, were killed instead of being arrested and brought to Court. The prosecution team had evidence that Buthelezi was arrested by the police. At the time of his arrest, he was unarmed.

169. The arrest took place in the presence of his girlfriend who survived him and who gave a statement on what transpired at the time of Buthelezi's murder by members of the Cato Manor SVC Section. She also stated that he was unarmed.

170. Mostert was present at this crime scene and the evidence was that the deceased was unarmed and not a threat to the police. When he was shot, the police had already secured him.

171. The prosecution team had a photo album which indicated Mdu Mkhize having been shot and killed while in handcuffs and in custody of the police in their vehicle.

172. The prosecution team had evidence that Ndimande and Tembe were arrested on 29 August 2008 by the members of the Cato Manor SVC Section for the questioning of the alleged murder of Chonco but they were released on the same day. On 16 September 2008, a hot pursuit by the very same members of the Cato Manor SVC Section of Ndimande and Tembe ensued and they were murdered.

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173. On 18 September 2008, the Cato Manor SVC Section also murdered Ntuli and Mthembu.

174. On 3 February 2009, the Cato Manor SVC Section murdered Mkhize.

175. It is noticeable on the photo albums and the post mortem reports that the police aimed at the upper body of each victim, whereas if the intention was to incapacitate the suspect with a view of arresting them, it is expected of them to aim at the lower part of the body.

176. Bongani Mkhize, the Chairperson of the KTA, was shot whilst inside his vehicle and being chased by members of the Cato Manor SVC Section. The photo albums indicate that the bullets were all from outside of the vehicle and he was shot whilst the windows of the vehicle were closed.

177. Taking into account:

177.1. the objective evidence in the dockets which comprised, amongst others, the ballistic crime scene reconstruction reports and eyewitness statement:

177.2. the statements of persons linked to the STA who stated that there was a plan to murder members of the KTA and that rewards were paid after each murder,

177.3. the prosecution team considered the totality of the aforementioned evidence, as an indication that the killings were

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deliberate which occurred under the control and management of Booysen.

178. The prosecution team elected not to charge Alyer as a manager of the Cato Manor SVC Section because he features nowhere in any of the evidence, being the monetary awards, statements from the STA linked persons and crime scenes, which corroborated his version that he was excluded in the operations of the Cato Manor SVC Section. There was no evidence to suggest that Alyer knew or that he ought to have known how the criminal activities of Cato Manor SVC Section were committed. Booysen was directly involved in the operations of the Cato Manor SVC Section. Therefore he knew, or ought to have known that the members were killing people/persons other than arresting them.

179. It was noted that Cato Manor SVC Section acted in cahoots with the STA. However, it was the prosecution team's long term strategy to secure more members of the STA to become witnesses, more so because the funds to pay for the killings was from the STA.

180. The prosecution team had identified further persons within the STA which the investigation team was to approach with the view of calling them as State witnesses. At this juncture it is not in the interest of justice to divulge the whole plan and the names of the identified persons.

181. The *modus operandi* that was adopted by the Cato Manor SVC Section in the taxi violence incidents was carried over to the ATM bombings were

the suspects were also killed instead of being arrested and brought before Court.

182. It is critical to bring it to the attention of the Commission that, to the best of my knowledge, since the arrest and prosecution of the members of the Cato Manor SVC Section, the trend of murdering suspects instead of arresting them, has subsided considerably.

183. The trend of component driven and centralised killing of suspects has subsided. To the extent that extracts from the dockets have been attached to my affidavit to support my averments, electronic copies of the dockets are made available for the Commission's benefit on the ScanDisk Cruzer Blade 16GB memory stick affixed to the front page of this affidavit.

(f) **Discussion of the Racketeering Principles**

i The enterprise

184. Cato Manor SVC Section is the enterprise as defined in the Act. The Organised Crime structures became part of the Directorate for Priority Crimes Investigations (DPCI) which was under the commandership of General Booysen as the Provincial Head: DPCI since 2010. Accused 9 was the section commander of the Cato Manor SVC Section and was at all times in charge of all the activities of the Cato Manor SVC Section. The South SAPS is a legal entity established by legislation in terms of the South African Police Act 68 of 1995. It is comprised of a national office and provincial structures for each province. The Cato Manor SVC Section

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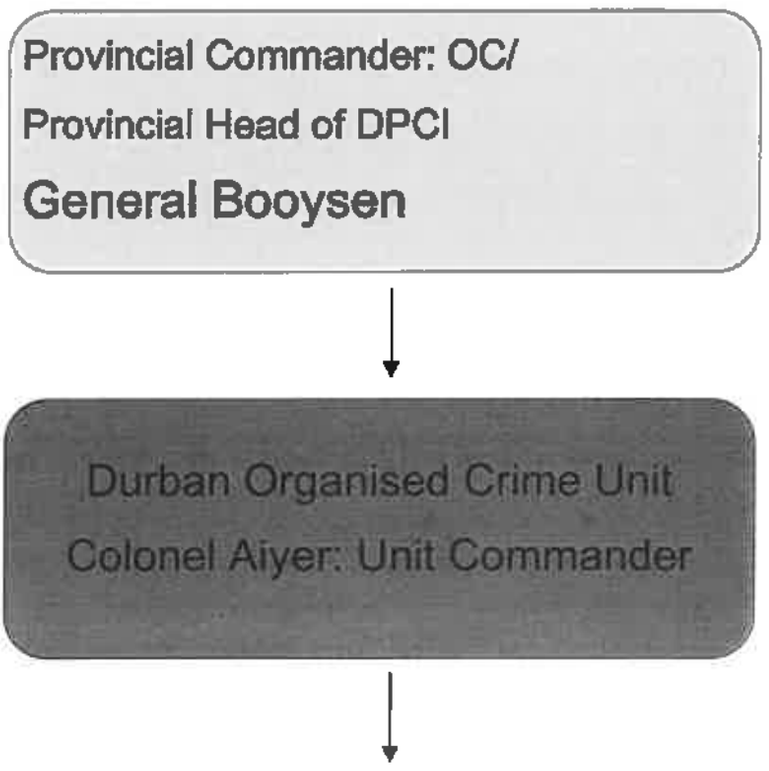
as part of the Durban Organised Crime was supposed to report to Colonel Aiyer as the Commander of Durban Organised Crime Unit but did not do so as a result of differences they had with Colonel Aiyer, they instead bypassed him and worked under the direct control and direction of General Booysen.

185. In *Jwara and Others v the State* 2015 (2) SACR 525 (SCA), the full bench in the SCA upheld the principle of having a section of the SAPS regarded as an enterprise in terms of POCA. In this matter, members of the Organised Crime Unit in the West Rand participated in a number of offences relating to drugs that were confiscated as exhibits at the OR Tambo Airport, Johannesburg.

186. Below, we set out a table that demonstrates the hierarchy in the Cato Manor SVC Section in terms of which Booysen was depicted as the *de facto* commander.



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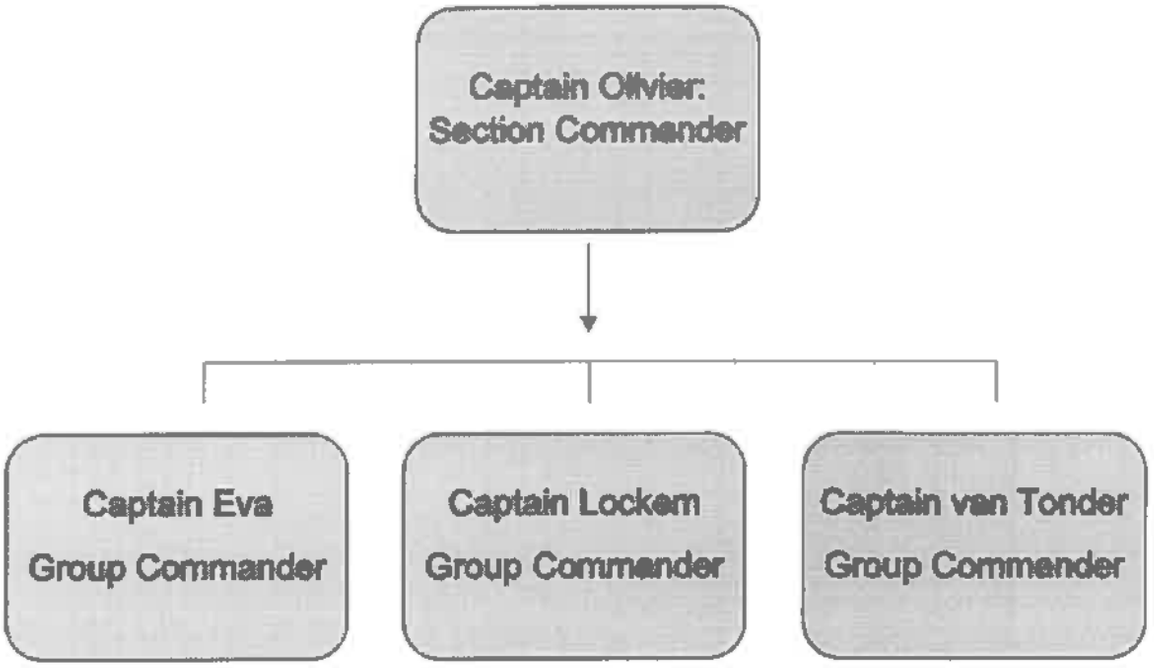

187. Mathenjwa and I compiled the reply to the request for further particulars and duly filed same. I attended to the answers relating to the racketeering charges. I attach hereto a copy of the relevant part of the reply to the request for further particulars marked as annexure **"CM75"**. Mathenjwa attended to the larger part of the response on the predicated offences. However, since he did not type the response to the further particulars, he is unable to obtain same in order to attach it to his affidavit. I refer to Mathenjwa's affidavit with regard hereto.

188. The response to the request for further particulars, demonstrates:

188.1. The role of each member in the enterprise on more than one occasion;

188.2. The *modus operandi*;

GSM

188.3. The association of each member in a pattern of racketeering activities; and

188.4. How the conduct of each member accelerated or advanced the objectives of the enterprise.

189. It is not necessary for the manager of the enterprise to be present and participate in the commission of the crime. The preamble of POCA states as follows:

> "*...It is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of, and related conduct in connect with the enterprises which are involved in a pattern of racketeering activities*".

190. The fact that the objective facts demonstrate that Booysen participated in commission of the crime by giving members information on the whereabouts of Magojela and Tembe, counts 8 to 12 in the indictment and attended to the scene immediately after the murder of Magojela and Tembe, is an added factor to prove the requirements as set out in section 2(1)(e) of POCA.

(g) **<u>Pattern of Racketeering Activities</u>**

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191. The objective evidence, as set out above in the portion dealing with the counts constitutes the pattern of racketeering that took place from 03 September 2008 to 04 September 2011.

192. In order not to burden this lengthy affidavit, I refer the Chairperson to the relevant paragraphs as set out in my response to the request for further particulars in the criminal matter CCD11/2013D in the KwaZulu-Natal High Court, Durban which demonstrates the following:

192.1. The pattern is set out from paragraph 3.2 to 3.4 at pages 6 to 24;

192.2. The participation of each Manager in the activities of the enterprise is illustrated in paragraph 4 to 5 at page 24 to 33;

192.3. The knowledge and/or presumed knowledge of each Manager of the activities of the enterprise is illustrated in paragraph 7 to 8 at page 34 to 35;

192.4. Pertaining to the offence set out in section 2(1)(f) of POCA:

192.5. Paragraph 1 on page 36 sets out the management of the operations or activities of the enterprise by each manager;

192.6. Paragraph 6 sets out how each manager is associated with the activities of the enterprise;

GSM

192.7. Paragraph 8 sets out how each manager knew or ought to have known of the activities of the enterprise.

192.8. Pertaining to the offence set out in section 2(1)(a) of POCA:

192.8.1. Paragraph 1 outlines the enterprise.

192.8.2. The organisational structure or hierarchal structure detailing all persons in actual positions of management and authority which has been outlined on pages 3 to 5 of this submission and continues to be the same in both Count 1 and Count 2. The activities of the managers, the various incidents in which the members of the enterprise took part, the various dates and places of the activities and the specific members who took part in various activities, have been outlined in detail in the various incidents above.

(h) **The judgment of General Council of the Bar of South Africa vs Jiba and Others 2017 (2) SA 122 (GP) as well as the judgment of Jiba and Another vs GCB and Another 2019 (1) SA 130 (SCA) and the findings thereto pertaining to the issuing of POCA authorisations on against Booysen on 17 August 2012**

193. I am advised that the Chairperson has repeatedly stated that where the issues canvassed at the Commission have been previously ventilated

GSM

before a court of law, such judgments should be brought to his attention by the evidence leaders. I am advised that the chairperson specifically expressed this sentiment in the evidence of Booysen. The Chairperson's remarks are as follows:

> *"The second thing I want to say is this. Major General Booysen from the evidence that he has given has indicated that there are a number of court applications that he had to do. He had to bring to court to deal with various matters. In some of them there are judgments. I would like the legal team to secure not only the judgments in regard to those matters but I would like the full set of papers in each application so that we can have a full picture of exactly what happened in regard to each matter and how people against whom certain allegations were made how they responded in affidavits that were placed before the courts. I would also like to see the findings that were made by those courts in regard to each matter and in this regard I would like the legal team to prepare for me for later use a list of all findings that have been made by the courts in the various applications where there is no appeal pending. Maybe they can make them even if there is an appeal pending but a note can be made that in regard to that one specific ones there is an appeal pending."*[2]

194. Before this Commission, Booysen is complaining about me as a prosecutor who was part of the prosecution team that made

[2] Transcribed record: Day 88, 3 May 2019, p4, line 13 to p5, line 3

GSM

recommendations, and he stated that we acted corruptly and the recommendations we made were unjustified. I wish to bring to attention of Commission that the complaint pertaining to the prosecutors acting *mala fide* and/or with ulterior motive was a subject of complaint against Jiba in the judgment of the *General Council of the Bar of South Africa vs Jiba and Others* 2017 (2) SA 122 (GP) ("the Legodi J judgment"). I attach hereto a copy of the Legodi J judgment marked as "**CM72**". In this matter, the GCB sought to rely on the findings of Gorven J that Jiba was mendacious and could not have considered the statements referred to in her affidavit and sought to rely on those findings in order to justify a case that she was not a fit and proper person to serve as an Advocate of the High Court of South Africa, and thus ought to be struck off the roll of Advocates. The court *a quo* dismissed the GCB's reliance on the adverse findings of Gorven J against Jiba as the basis upon which she should be struck off the roll of Advocates.

195. When Jiba appealed the finding of the court *a quo* to strike her off the roll on another basis other than the Booysen matter, the SCA, in its judgment of *Jiba and Another vs GCB and Another* 2019 (1) SA 130 (SCA) ("the Jiba SCA judgment") also considered the finding of her having acted with ulterior motive and/or *mala fide* in the Booysen matter and shared the sentiments expressed by the court *a quo*. I attach hereto a copy of Jiba SCA judgement which is marked as "**CM73**".

196. I can do no better than quote the pertinent paragraphs where the court *a quo* extensively considered the Gorven J judgment, the explanation of

GSM

Jiba pertaining to the findings of Gorven J and its analysis thereof, as well as its finding in respect of same.

197. Legodi J considered the findings by Gorven J that Jiba was, "*mendacious when she asserts in paragraph 21 of the answering affidavit that she considered the statements* ***together with*** *the other information in the docket before making the impugned decisions. She could not have considered the statements referred to in her answering affidavit. She is invited to explain how she could have taken into account information on oath that objectively did not exist at the time of taking the decision*".

198. In paragraph [49] of Legodi J's judgment, he states that:

> "*Before dealing with information placed before Jiba for written authorisation in terms of s 2(1) of POCA, it is important to reflect whether the invitation by Booysen and the adverse remarks by Gorven J were based on a correct evaluation and understanding of Jiba's answering affidavit*".

199. After reflecting as aforesaid, Legodi J states that:

> "*[51] Having regard to what is quoted above, it does not seem the statement: 'Jiba says that they are all statements made under oath', is correct. Nowhere in Jiba's answering affidavit did she make such a statement, neither did she say any of annexures NJ2, NJ3, NJ4, and NJ5 were under oath. 'Under oath' statements or information was made only in paras 16 and 16.6*

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of the answering affidavit, without suggesting that all of the annexures referred to in para 17 of the answering affidavit in the Booysen matter were made under oath. Therefore the statement —

'(t)he document referred to as a statement by Mr Danikas, annexure NJ3, is not a sworn statement' —

as stated in para 31 of Gorven J's judgment, has to be seen in context insofar as it was understood that Jiba averred that NJ3 was a sworn statement. The truth is, she never said NJ3 was a sworn statement and it could not reasonably have been so inferred, particularly reading in the context of para 16.7 of her answering affidavit in the Booysen case quoted in [50] above".

200. In considering the fact that Jiba did not file a supplementary affidavit responding to the allegations of mendacity, Legodi J states as follows:

"[52] The fact that Jiba did not avail herself of the invitation to deal with the allegation of being 'mendacious', meaning 'not telling the truth', should also be seen in context. <u>The allegation was made in the replying affidavit</u>. This, too, Gorven J was mindful of. For the purpose of these proceedings, <u>the criticism by Gorven J should be seen in the context of what Jiba now has to say in these proceedings</u>.

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[53] When it was discovered that Booysen had raised certain issues in his replying affidavit, the prosecution team felt that it needed to respond thereto. On 14 August 2013 a meeting of the prosecution team was held. Subsequent to the meeting, a memorandum was prepared and forwarded to the defence team led by Hodes SC, in terms of which it was expected that a supplementary affidavit would be filed to explain the criticism against Jiba with regard to the annexures. On 19 August 2013 an email by Adv Mosing of the NPA was sent to Adv Chauke, Director of Public Prosecutions, Johannesburg, enquiring what progress had been made with regard to the filing of a further affidavit to deal with Booysen's allegations. Subsequently, Jiba was advised by Adv Mosing that counsel had indicated that no further actions were necessary.

[54] Based on the explanation above, it is clear that Jiba did not ignore the serious allegations of 'mendacious' made by Booysen. By seeking to file a further affidavit to explain the annexures after the replying affidavit was filed is a clear indication that she was mindful of the need 'to explain and correct any inaccuracies' created by Booysen in his replying affidavit. Therefore the statement —

> *'(d)espite this, the invitation by Mr Booysen was not taken up by the NDPP by way of a request, or application, to deliver a further affidavit. In response to Mr Booysen's assertion of mendacity on her part, there is a deafening silence' —*

GSM

made by Gorven J in para 34 of his judgment, ought to be seen in the context of what is explained in [53] above.

201. Having considered Jiba's attempts to place her version before the court in the review application that served before Gorven J, Legodi J goes on to consider the information that was before Jiba when she took the decision to issue the POCA authorisation on 17 August 2012, and states, amongst others, that:

> *"[56] On 17 August 2012 Jiba approved the application for authorisation in terms of s 2(4) of POCA for contraventions by Booysen of s 2(1)(e) and (f) of POCA... The information and advice that were placed before Jiba for the purpose of granting or refusing authorisation were prepared and compiled by Adv Raymond K Mathenjwa and Adv Gladstone Sello Maema, both Deputy Directors of Public Prosecutions, and Adv Anthony Mosing, a Senior Deputy Director of Public Prosecutions and the head of the Special Projects Division, who acted as the liaison between Jiba and the prosecuting team.*
>
> [57] *At the time Jiba deposed to the answering affidavit in Booysen's matter, the facts and the evidence against Booysen had been presented to her on many occasions and she was acquainted with the case against Booysen. In her affidavit during proceedings before Govern J she referred to annexure NJ5, being the statement of Mr Ndlodlo, and annexure NJ6, being the statement of Booysen. These annexures apparently did not form part of the papers before Govern J*

GSM

and Jiba was not aware why that was not done. I revert to the essence of annexures NJ5 and NJ6 later when dealing with whether Jiba had information implicating Booysen when she issued the authorisation on 17 August 2012. NJ3 was the statement of Ari Danikas, which was obtained round about 18 April 2012 by General Mabula who led the Hawks investigation team against Booysen. The drafted statement of Danikas was handed over to the prosecution team during June 2012 and formed part of the information she considered in authorising the prosecution of Booysen. Danikas was a police reservist in the Durban Organised Crime Unit based in Cato Manor, and was at that time in Greece. He had security concerns and was unwilling to come on his own to South Africa. On or before 11 July 2012 Adv Maema asked General Mabula to leave the statement unsigned so that the information process outlined in the mutual-legal-assistance legislation, that is, s 2 and 3 of the International Co-operation in Criminal Matters Act 75 of 1996, be followed to formalise the statement, although the witness was willing to have it signed at the South African embassy. The prosecution was confident that the statement would ultimately be signed through the process outlined as contemplated in Act 75 of 1996, but it formed the basis of the briefings to be considered by her in issuing the authorisation. However, the process of signing the statement could not be finalised since the incumbent (Mr Mxolise Ntasana(sic)*), at the time of deposing to the answering affidavit in the present proceedings, had instructed to halt the process.*

[58] Whilst the statement in question did not relate to the specific incident covered in the indictment, it was, however, intended to corroborate the evidence in possession of the prosecution team, that Booysen was involved in the various activities giving rise to the charges against him, of similar-fact evidence which is admissible in racketeering prosecutions.

[59] An explanation stated above is offered in these proceedings to set the record straight. Therefore the statement that —

> *'(t)he document referred to as a statement by Mr Danikas, annexure NJ3 . . . is not a sworn statement. It is not dated. Even if it could be attributed to the named person and even if it were a sworn statement as claimed by the NDPP, the contents do not cover the period clearly [within] the indictment, except for one event which does not relate to Mr Booysen' —*

by Gorven J, ought to be seen in the context of the explanation given by Jiba in these proceedings, and the fact that Jiba never said annexure NJ3 was a sworn statement, as stated earlier in this judgment. I need to caution. I should not be understood as seeking to review or upset Gorven J's judgment. At the time, he did not have Jiba's responses, as this court now has.

[60] Regarding the question how Jiba could have taken into account information on oath that objectively did not exist at the time the

GSM

authorisation was made, the explanation by Jiba in these proceedings is as follows:

"217. There were also two statements by Colonel Aiger (reference to as annexure NJ2 and NJ4). One was taken on 3 August 2012 setting out Booysen's managerial responsibilities, participation and interferences in the activities of a section of Durban & Organised Crime Unit. The statement was obtained before 17 August 2012, being the date on which the authorities were granted by me. A second statement of Colonel Aiger was taken on 31 August 2012 following a consultation with the prosecution team during early July 2012. However the content of the statement was information already relayed to the prosecution team by Colonel Aiger at the consultation.'

[61] Therefore the statement that —

(t)he second of these in addition to not implicating him in any of the offences in question, was deposed to on 31 April (August) 2012, some two weeks after the first impugned decision was taken' —

in para 31 of Govern J's judgment, inasmuch as the GCB seeks to rely on it for the complaint levelled against Jiba, should be considered in the light of the explanation quoted in [60] above. I am unable to find any conduct on the part of Jiba that justifies an application contemplated in s 7 of the Admission of Advocates Act.

GSM

202. Based on the aforementioned analysis of the information that served before Jiba when she issued the POCA authorisations together with the explanation that was not placed before Gorven J, as the NPA's counsel had decided not to file a supplementary affidavit despite the prosecution team's request to do so after considering the issues raised in Booysen's replying affidavit in the review application, Legodi J goes on to find that:

> "*[62] As far as the allegation of lack of information implicating Booysen is concerned, an understanding of the applicable legislative framework, what was placed before Jiba and the core function of the prosecuting authority, is necessary. The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions relating to offences contemplated in ss (2) of s 2 of the NPA Act, notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair. This should be seen in the context of the preamble under POCA which inter alia reads:*
>
> > *'AND WHEREAS the South African common law and statutory law fail to deal effectively with organised crime . . . criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime . . . and criminal gang activities.*

'AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of, and related conduct in connection with enterprises which are involved in the pattern of racketeering activity;

. . .

'AND WHEREAS the pervasive presence of criminal gangs in many communities is harmful to the well-being of those communities, it is necessary to criminalise participation in or promotion of criminal gang activities; . . . .' [Emphasis added.]

[63] In my view the provisions of s 2(1)(e) and (f) referred to in [44] of this judgment are meant for the criminalisation of such activities. The point I am making is this: courts, for the purpose of an exercise of its discretion in terms of s 2(2) referred to in [62] of this judgment, may rely on hearsay evidence, and information and/or documentation collected by the police and presented to it by the prosecution. ***If that is so, and courts are entitled to have regard to hearsay evidence during trial, so too should the National Director of Public Prosecutions (Jiba in Booysen's case) be entitled to rely on hearsay and similar-fact evidence for the***

GSM

***purpose of authorisation as contemplated in ss (4) of s 2 of POCA**. Otherwise, pervasive presence of criminal gangs will continue to rule with impunity and fear in many of our communities, and resultantly pose harm to the wellbeing of many communities.*

*[64] As I said, one needs to be careful not to be understood as upsetting Govern J's judgment for having reviewed Jiba's decision to prosecute Booysen. That is not an issue before this court. **The issue, however, is whether in granting authorisation in terms of s 2(4), Jiba was mala fide or had ulterior motive, in which event the requirement of 'fit and proper person' to remain on the roll of advocates becomes relevent**. For this purpose, further provisions of POCA are necessary to be considered, also taking into account offences under s 2(1)(e) and (f).*

[65] 'Pattern of racketeering activity' means —

> *'the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1 . . .'*

On the other hand, 'enterprise' —

> *'includes any individual partnership, corporation, association or other juristic person or legal entity, and any union or group of individuals associated in fact'.*

GSM

[66] The essence of the information before Jiba can be summed up as follows: in addition to what is stated in [56] – [57] and [60] of this judgment, Booysen was the head of the Cato Manor Organised Crime Unit in the South African Police Services. Members of the police in his unit and under his command had allegedly committed crimes of a serious nature, including murders against suspects who were sometimes framed in the commission of offences. Booysen knew, approved and/or ought to have known of the commission of these offences. As reward for the members' unlawful activities, Booysen motivated for an incentive of R10 000 for each of the 26 members of the Cato Manor Crime Unit, including Booysen himself. Booysen was also commended for outstanding services rendered, in that he —

> *'was part of a team, who through their commitment and dedication, arrested several crime and dangerous suspects for the murder of a police officer'.*

[67] I cannot find any mala fides and/or ulterior motive in the authorisation by Jiba as contemplated in POCA. POCA is like a cry out loud for a declaration of war against serious, continuous and organised crimes. That needs specialised investigation and prosecution. Most importantly, POCA requires the freedom and space to be given to the members of the prosecuting authority, in the exercise of their legislative power, to investigate, through members of their investigating directorate and under the watchful eye of a Special Director so appointed, and to prosecute without fear, favour and prejudice those

GSM

implicated in the commission of serious crimes. Anything short of this, or anything which tends to impede this constitutional and legislative imperative, for example, hauling Jiba to the proceedings in terms of s 7 of the Admission of Advocates Act, ought to be based on very cogent, serious and exceptional circumstances.

[68] One does not want members of the prosecution authority to unduly watch their backs for fear of being dismissed or removed from the roll of advocates every time when they make mistakes in prosecuting and presenting cases in court, or every time when an application for authorisation is made in terms of s 2(4) of POCA. An overriding factor for them to consider should be adherence to the rule of law and the Constitution. It suffices for now to conclude on the Booysen matter by stating that no case has been made for removal or suspension from the roll of advocates. I now turn to deal with the other matter and basis of complaints thereto against Jiba."

203. The finding made by Legodi J, with Hughes J concurring, to the effect that he cannot find "*any mala fides and/or ulterior motive in the authorisation by Jiba as contemplated in POCA*" was supported by the majority of the court when the matter was taken on appeal to the Supreme Court of Appeal, where the court states as follows:

"[10] The first complaint dealt with by the court a quo was in connection with Booysen's case. In that case Jiba, in her capacity as Acting NDPP, issued two authorisation letters charging Major-General Johan

GSM

Wessel Booysen with the contravention of s 2(1)(e) and (f) of the Prevention of Organised Crime Act 121 of 1998 (POCA). In a nutshell Booysen alleged that Jiba was 'mendacious' when she asserted that she considered statements together with other information in the docket before she took the decision to charge him. This allegation was further exacerbated by the negative remarks of Gorven J who presided in the Booysen matter when he drew an inference that none of the information upon which Jiba relied linked Booysen to the offence in question. The court a quo found that '(i)t suffices for now to conclude on [the] Booysen matter by stating that no case has been made for removal or suspension from the roll of advocates'. I do not find it necessary to deal with the detail of the complaint in view of the finding of the court a quo. I share the sentiment expressed. Before us counsel for the GCB dealt with some of the complaints but, in my considered view did not take the matter any further. The court a quo could not find 'any mala fides and/or ulterior motive in the authorisation by Jiba as contemplated in POCA'.

204. **As a prosecutor who was part of the team that made recommendations to Jiba, who has been found by courts of law not to have acted with *mala fide* and/or ulterior motive in issuing the POCA authorisations against Booysen, I am also of the respectful view that this Commission should disregard Booysen's contention that in making the recommendation for the issuing of the racketeering authorisations to Jiba, I acted with *mala fide* and/or ulterior motive.**

GSM

205. The Legodi judgment was delivered on the 15th of September 2016 and the SCA judgment on this matter was delivered on the 10th of July 2018. Booysen's affidavit to the Commission is dated 2nd of April 2019. In this regard, Booysen, McBride and Sesoko ought to have known that the court found that there was no *mala fides* and/or ulterior motive in issuing the POCA authorisation and consequently the prosecution against Booysen.

(I) <u>Closing remarks</u>

206. *The Supreme Court of Appeal*, in its judgment of Zuma v DA (836/2013) [2014] ZASCA 101 (28 August 2014), endorsed the finding of the High Court, Gauteng Division which held that:

> *"The first respondent* (the NPA), *as an organ of state, has a duty to prosecute without fear, favour or prejudice by upholding the rule of law and the principle of legality. It is also a constitutional body with a public interest duty. It behoves its officials to operate with transparency and accountability. It has a duty to explain to the citizenry why and how it arrives at the decision to quash the criminal charges against the accused persons, particularly where the matter involves very senior state officials. In pursuance of its constitutional obligations it is incumbent upon the NPA to pass the rationality test and inform the public why it quashed the charges. In my view, the converse would make the public lose confidence in the office of the NDPP."*

207. I request the Commission to keep in mind this sound warning when it considers my submission pertaining to my role as part of the prosecution

GSM

team in the Cato Manor case. I categorically state that our guidance of the investigation and the decision to draw the indictment and therefore charge, the accused therein, as well as the respective applications to the ANDPP and NDPP to request the issuing of a POCA authorisations were driven by our duty to prosecute without fear, favour or prejudice taking into account only the Constitution, the NPA Act and policies as well as the relevant criminal law.

(j) Booysen's stratagem

208. The charges against Booysen have been withdrawn, which the prosecution team view as irrational. Withdrawn charges has the potential of being reinstated, more particularly since murder charges do not prescribe. Booysen has adopted the strategy of attacking the prosecution before the Commission instead of clearing his name before a criminal court, a process which he has resisted through applications.

209. The charges were withdrawn after the accused were served with the indictment, the content of the docket disclosed, further particulars furnished and application to have the criminal case struck of the roll refused by the criminal court and the prosecution was ready to put the charges and lead evidence to prove the criminal case against Booysen. The accused were saved by the withdrawal of the charges by the current NDPP without the NDPP consulting the prosecution team, who was seized with the matter for years.

GSM

210. I want to bring to the attention of the Commission that it is not uncommon for those who are facing serious criminal charges to attack the prosecution instead of confronting the charges as set out in the indictment.

211. In the matter of **National Director of Public Prosecutions v King**[3] Harms DP held as follows:

> *"[5] ... Courts should further be aware that persons facing serious charges – and especially minimum sentences – have little inclination to co-operate in a process that may lead to their conviction and 'any new procedure can offer opportunities capable of exploitation to obstruct and delay.'[4] One can add the tendency of such accused, instead of confronting the charge, of attacking the prosecution."*

212. I was not briefed on any case which Booysen was investigating and which could be disturbed by his prosecution. In any event, provincial commanders by practice do not carry dockets but their subordinates within respective ranks and units carry dockets and conduct investigations. To the extent that Booysen says that there was an ulterior motive for his prosecution, I, as a prosecutor, acting in good faith, decided on the dockets that were placed before me together with the other members of the prosecution team and came to the conclusion that

[3] (86/09) [2010] ZASCA 8; 2010 (2) SACR 146 (SCA) ; 2010 (7) BCLR 656 (SCA) ; [2010] 3 All SA 304 (SCA) (8 March 2010)
[4] *Regina v H and others* [2004] UKHL 3 para 22 per Lord Bingham of Cornhill.

GSM

Booysen has a criminal case to answer. Motive, if it at all existed, is irrelevant in criminal prosecutions and only a judicial officer can pronounce on whether or not an improper motive existed after having heard evidence and accumulatively assessing same.

213. In the matter of **National Director of Public Prosecutions v Zuma**[5] Harms DP held:

> *"[37] ... A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent ...*[6]

214. It is very concerning that only Mathenjwa and myself are being crucified in the Cato Manor SVC Section matter by Booysen, McBride and Sesoko, for the recommendation and subsequent prosecution of Booysen, when the decision was a collective team effort in the execution of our constitutional and statutory mandate.

215. To the best of my knowledge, Mlotshwa, Futshane, Ntlakaza and Moleko have not been served with Notices indicating that they will be implicated by Booysen, McBride and Sesoko, and were requested to file their affidavits.

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[5] (573/08) [2009] ZASCA 1; 2009 (2) SA 277 (SCA) ; 2009 (1) SACR 361 (SCA) ; 2009 (4) BCLR 393 (SCA) ; [2009] 2 All SA 243 (SCA) (12 January 2009

[6] *Beckenstrater v Rottcher & Theunissen* 1955 (1) SA 129 (A); *Relyant Trading (Pty) Ltd v Shongwe* [2007] 1 All SA 375 (SCA). For Canada: *Prouxl v Quebec (Attorney General)* 2001 SCC 66, [2001] 3 SCR 9.

GSM

H DE KOCK REPORT

Overview

216. The De Kock report dated the 27th of June 2019, has, as subject heading **"RECONSIDERATION OF AUTHORISATIONS IN TERMS OF SECTION 2(1)(e) and (f) OF THE PREVENTION OF ORGANISED ACT, 121 OF 1998"**. This report does not state what prompted the constitution of the panel. However, ordinarily there will be representations made by the Accused or Complainant or any other person or party whom the National Director considers to be relevant, in terms of Section 179(5)(d) of the Constitution. In this report there is no reference to any representations which were made nor is there any reference to a consultation between the National Director and the Director of Public Prosecutions, as required by the said section of the Constitution.

217. The reconsideration **will** most probably be based on Section 179(2) of the Constitution where the NPA has the power to institute criminal proceedings on behalf of the State and to carry out necessary functions incidental to instituting criminal proceedings. If the reconsideration is based on this subsection of the Constitution, the panel should have:

217.1. invited the prosecution team to make presentations and clarify the processes which were followed leading to the issuing of the racketeering certificate;

217.2. invited further input from the prosecution team;

G.S.M

217.3. canvassed any identified shortcomings in the prosecution memo, the indictment and the docket, if any;

217.4. familiarise themselves with the stratagem of the prosecution team;

217.5. appraised themselves with all the processes that have thus far unfolded before the criminal court, including:

217.5.1. disclosure of the content of the docket;

217.5.2. request for further particulars;

217.5.3. State's response to the request for further particulars;

217.5.4. The unsuccessful application by the Accused to have the matter struck off the roll in terms of section 342A of the Criminal Procedure Act, Act 51 of 1977 ("CPA");

217.5.5. The stages at which the motion applications instituted by the Accused were at.

218. The De Kock report was compiled without the panel appraising itself with any of the issues as raised directly above and consequently opted to advise the NDPP on an incomplete set of facts. In the light of the above

GSM

shortcomings to the compiling of this report, the NDPP's decision is irrational and unlawful.

219. The De Kock report does not make reference to any representations made to the NDPP in terms of Section 179(5)(d) nor does it make any reference to any objective facts in terms of Section 179(2) which were before the NDPP which prompted her to constitute a panel. The De Kock report also does not make reference at whose instance and on what basis the NDPP had to reconsider the decision to issue the authorisations. In the absence of the above references, it can only be assumed that she acted in vacuum which would render her decision to constitute a panel and to make a decision based on the recommendation of a panel, irrational.

220. In this regard, the De Kock report and the decision by the NDPP does not spell out on which Section of Section 179 of the Constitution the decision and the panel's recommendation are premised on. Consequently, this borders on offending the principle of legality.

221. Although the NDPP said the De Kock report was intended for the reconsideration of the racketeering authorisations, we are informed that even the predicate offences have been withdrawn. I am of the view that the withdrawal of the predicate offences is also as a result of the De Kock Report. The prosecution team, which was long seized with the matter, was further not consulted by the DPP KZN on the withdrawal of the predicate offences. I am aware that neither the investigating officers nor

GSM

the families of the deceased were invited in the decision making process for the withdrawal of the predicate offences. I informed Mathenjwa that I have been inundated with calls from family members of the deceased, enquiring about the progress of the prosecution, after the withdrawal of the matters. I further informed Mathenjwa that investigators from IPID and DCPI, Mosiapoa and Kolomote, contacted me and enquired from me about the progress on the matter. Mosiapoa later advised me that they had been instructed to advise the families of the deceased that the matters were withdrawn. Mosiapoa indicated to me that they were uncomfortable with these instructions as they were not aware of the reasons for the withdrawal of the matters.

Failure to consult prosecution team

222. I have been part of the prosecution team allocated to guide the investigation and decide whether to institute prosecution on the Cato Manor SVC matter since March 2012 and my delegation to that effect has not been withdrawn. What I know is that the NDPP has withdrawn the racketeering authorisation issued by Adv Jiba on the 17th of August 2012 and a subsequent authorisation issued by Adv Abrahams on the 13th of February 2016.

223. On the 12th of April 2019 I, as the team leader, was instructed by McAdam, the Acting Special Director at the PCLU, to hand over to him all the Cato Manor dockets. During this time there was a pending High Court application where the accused had sought to challenge the aforesaid

GSM

racketeering authorisation. This process had halted the commencement of the trial.

224. On the 8th of July 2019, the NDPP, Batohi, convened a meeting where she invited the prosecution team and advised us that she had constituted a panel to look into the Cato Manor prosecutions. A report has been received from the panel which was led by Adv De Kock and the recommendation to which she is in agreement with, was that all the racketeering authorisations should be withdrawn.

225. The prosecution team took an issue as to how could the panel make such a recommendation without consulting with us as prosecutors who have been long seized with the matter. The response from the NDPP was that the recommendation is not about the work of the prosecution team, nor the decision of the prosecution team, but it was about the decision of both Jiba and Abrahams.

226. The said report was not given to the prosecution team, as the NDPP specifically mentioned that the report was meant for her as the NDPP. She, however, made summaries of some of the issues which the panel had said in the report, eg. That the case was based on hearsay evidence, credibility of witnesses, specifically Alyer and that the decisions were blurred by public perceptions and proper procedures were not followed. Ultimately there were insufficient evidence to justify the authorisations, and therefore she was convinced that both the authorisations of Jiba and Abrahams were wrong.

GSM

227. In the meeting, Chauke who was the initial coordinator of the prosecution team, commented that since when is the issue of credibility decided outside Court. Noko refused to comment on the matter and said that she had no comment as the NDPP already took a decision.

228. The prosecution team specifically informed the NDPP that it was not in agreement with the panel's recommendation and consequently the NDPP's decision. The NDPP's response was that she was not reviewing the decision of the prosecution team but that of Jiba and Abrahams.

229. I must state that the De Kock report has to date not been furnished to the prosecution team by the NPA. I received a call from a media house, Daily Maverick, who wanted my comment on the De Kock report. I responded that I cannot comment on a report which I have not seen. The reporter then furnished me with a copy which I distributed to the rest of the prosecution team and Chauke.

230. I did not comment on the De Kock report in the media and advised the reporter that I will comment on the report at the appropriate time when the NPA requires his comment thereon. My approach was in accordance with the provisions of Section 41(6) of the NPA Act.

Analysis of the De Kock report

GSM

231. The De Kock report was compiled by De Kock, Thenga, Riley and Mamabolo. However, it was only signed by De Kock and Mamabolo. It is not spelled out in the De Kock report as to why Thenga and Riley did not sign the report.

232. I am of the view that Thenga should have recused herself from the panel, for the reasons as set out below. Equally so, I am advised that Mamabolo should have recused himself from the panel for the reasons set out below.

233. Thenga should have recused herself from the panel, because, on the 13th of August 2015, she compiled a legal opinion in the matter of State v Jiba, Silverton CAS 622/10/2014 to Abrahams where she had to comment on the prosecution of Booysen and processes followed therein. I attach hereto the said legal opinion marked as annexure **"CM76"**.

234. In paragraph A.3 of her opinion, Thenga correctly make reference to Section 2.2 of POCA which provides as follows:

> *"The court may hear evidence including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair."*

235. This section provides that hearsay evidence is admissable in racketeering prosecutions. Yet, the De Kock report which she took part in compiling, criticises the State's case on the fact that the case is based on hearsay.

GSM

236. In paragraph E of her opinion, Thenga states that there were various consultations and briefings made by the prosecution team and investigating team to the NDPP. She further states that all the necessary consultations with the NDPP led to the written authorisation of the racketeering certificate by the NDPP, Jiba. Yet, the De Kock report states that proper processes leading to the authorisation of the issuing of the racketeering certificate by Jiba were not followed.

237. In paragraph G of her opinion, Thenga correctly stated that the Court in the Gorven J judgment had incomplete information. The information was unfortunately sitting with the legal representative and was not properly filed as it was supposed to be and therefore was not before Court. She further stated that the NPA prevented Jiba from appealing the Gorven judgment. She, in fact, had to remove papers already filed for the purpose of an appeal because the then NDPP instructed her that the matter must never be appealed. Yet, the De Kock report put more emphasis on the Gorven judgment and does not mention that this was an appealable matter.

238. To compound matters, there is no indication in the De Kock report that Thenga disclosed the existence of her legal opinion to the other panellists.

239. It is my considered view that it would have been professional from Thenga to disclose the above and recuse herself from the panel. Her serving on the panel as a panellist, makes the report irregular, unfair and prejudicial against the prosecution team.

GSM

240. I have been advised by my legal team that, based on what is set out in Mosing's affidavit, Mamabolo should also not have been part of the panel because of the close working relationship he had with Booysen in the past. This working relationship had previously caused Mosing to exclude Mamabolo from the decision-making process in the Cato Manor matter.

241. In the De Kock report there is no indication that Mamabolo disclosed the fact that he was previously excluded by Mosing or that he had a previous working relationship with Booysen. To the best of my knowledge, there is no indication that Mamabolo deposed to an affidavit dealing with his involvement as a panellist.

242. At the time of consulting with my legal team and settling these papers, I had not been provided with affidavits, if any, deposed to by De Kock, Mamabolo, Riley and Thenga, setting out the process that unfolded, which lead to the compilation of the report.

243. The failure of the panellists to consult with the prosecution team deprived itself of the opportunity or advantage to know the extent of the consultative processes and briefings between the prosecution team, the NDPP and the ANDPP, prior to the issuing of the authorisations. The prosecution team had briefings with the ANDPP on the Cato Manor matter on 15 May 2012, 23 May 2012, 12 June 2012, 9 July 2012 and 6 August 2012.

244. The briefings on 15 May, 23 May, 12 June and 9 July 2012 resulted in the prosecution team finalising a prosecution memorandum dated 10 July

GSM

2012. I attach hereto a copy of the prosecution memorandum, marked as annexure **"CM77"**, which application was in the name of Chauke.

245. This memorandum was queried and the prosecution team was directed that the application must not be in the name of Chauke but it must be in the name of Noko, the DPP of KwaZulu-Natal. The prosecution team had to draft the application now in the name of Noko, which was then delivered by me to Mosing on the 16th of August 2012 and was signed on the 17th of August 2012.

246. It was not for the first time for the prosecution memorandum to be before Mosing and Jiba when it was delivered on the 16th of August 2012. The panel would have been made aware of this sequence of events had they consulted with the prosecution team. Instead, the De Kock report reflects that there was no consultation prior to the authorisation dated the 17th of August 2012.

247. In compiling the report, the panellists:

247.1. did not take into account the Judgment delivered by Legodi J in the matter involving the striking of Jiba from the roll of Advocates, which was launched by the GCB, where Jiba's conduct in deciding the Booysen matter was also one of the reasons for which the applicant sought her striking off the roll. In that matter, the Court found that, on the information that was placed before Jiba, which the Court considered, she properly exercised her prosecutorial discretion, and consequently found

GSM

no fault against Jiba. The panellists' conduct as described above, clearly demonstrate lack of objectivity in that they put emphasis on the Govern judgment which was not favouring the issuing of the authorisation of the racketeering certificates, and ignored the Legodi judgment which was favouring the issuing of the certificates;

247.2. did not indicate in the De Kock report whether they considered evidence as contained in the docket such as the ballistic crime reconstruction reports, photo albums, post-mortem reports, expert reports and statements of all witnesses who were present at various crime scenes. In this regard, the panellists did not objectively assess the evidential material as to whether or not there was a pattern and similar *modus operandi* by the Cato Manor SVC Section as a group of SAPS members associated in fact in killing their alleged suspects;

247.3. did not only conclude incorrectly that there are contradictions in the statements of Hurley, but also did not set out the alleged contradictions in the De Kock report. A careful perusal and analysis of the statements of Hurley demonstrates that:

247.3.1. Hurley saw Stoltz throw a firearm on the pillow at the side of the bed.

247.3.2. Stoltz further, after taking Hurley out of the room, asked Hurley where the deceased got the firearm from.

247.3.3. Hurley responded that the deceased had no gun and she saw Stoltz throw the gun on the pillow. Hurley stated in her statement (**"CM31.1"**) *"I swear he didn't have a gun."*;

247.3.4. In Hurley's second statement (**"CM31.2"**), she stated: *"Sakhile did not have any dangerous weapon or a firearm in his possession ... He was not having anything on him."*. She further in the second statement stated: *"I saw the firearm being placed next to the deceased by the white guy."*

247.4. further pointed out to a contradiction between Hurley, on the one hand, and Nqaba Mdluli and Nkanyiso Ntenza, on the other hand, in respect of the presence of the firearm. The panellists are incorrect in that conclusion as Mdluli and Ntenza were outside the car when Hurley saw the police man throwing the firearm on the pillow next to the deceased;

247.5. did not indicate whether the panellists did consult with IPID and DPCI investigators in the process of analysing the evidential material and consequently finalising the said report;

247.6. did not indicate that they conducted inspections *in loco* and consulted with witnesses *vis a vis* what the prosecution team did;

247.7. did not indicate that they consulted with various ballistic experts, in particular, Mangena and pathologists;

248. The panel criticised the State's case that it is based on hearsay evidence which is, according to them, not admissible. In this regard, the panel overlooked the fact that there is a difference insofar as hearsay is concerned in respect of the racketeering charges and in respect of the predicate offences. There is nowhere in the report where the panel has indicated that Section 2.2 of POCA has been considered. This section provides as follows:

> *"(2) The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair."*

249. Furthermore, the panel overlooked the Constitutional Court decision on this aspect as pronounced in the matter of **Savoi and others v National Director of Public Prosecutions and others**[7] where the Court found that, regarding the potential unfairness of the admissibility of hearsay evidence to an accused person, the Court drew attention to the filter in the

[7] 2014 (5) SA 317 (CC)

GSM

form of the proviso appended in Section 2(2) of POCA, namely that the admissibility of such hearsay evidence should not render the trial unfair. The Court further held that the section serves a twin purpose. Firstly, it effectively does away with the hearsay rule on the charges under Section 2(2) of POCA and, indeed, other exclusionary rules. In this respect, this section differs from Section 3(1) of the Law of Evidence Amendment Act, 45 of 1988 ("LEA Act") which retains the exclusionary rule but permits the admission of hearsay evidence only under circumstances as set out in Section 3(1)(a) to (c) of the LEA Act, which provides as follows:

"(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless –

(a) Each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;

(b) The person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or

(c) The court, having regard to –

(i) the nature of the proceedings;

(ii) the nature of the evidence;

(iii) the purpose for which the evidence is tendered;

(iv) the probative value of the evidence;

(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;

(vi) any prejudice to a party which the admission of such evidence might entail; and

(vii) any other factor which should in the opinion of the court be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice."

250. The panel failed to differentiate between the admissibility of hearsay evidence on racketeering charges, and predicated offences in the indictment which support the existence of a pattern of racketeering.

251. Section 3(1)(c) of the LEA Act is applicable only in predicated offences, and not on the racketeering charges. In this regard, the Commission is referred to the matter of **S v De Vries and others**[8]. The panel usurped the judicial powers of a court to pronounce on whether or not the admissibility of hearsay evidence will render the trial on the racketeering

[8] 2012 (1) SACR 186 (SCA)

GSM

charges unfair, a pronouncement which could only be made by a court, having considered the accumulative effect of all the available evidence.

252. The panel relied on what they say is evidence of Nxasana to the Commission to the effect that he informed the prosecution team that there was no case against Booysen. I dispute that Nxasana ever informed the prosecution team that there was no case against Booysen. In fact, in a briefing which was held on the 7th of April 2014, Nxasana requested the prosecution team to bring a prosecution memorandum on Booysen by the end of May 2014. The prosecution team prepared a memorandum signed by me and the application was forwarded by Noko to Nxasana on the 4th of June 2014. As per protocol, such applications go through the Organised Crime desk which was Mosing, at the time.

253. On the 26th of June 2014, Mosing drafted an internal memorandum to Nxasana, confirming that he has received the application for the issuing of the racketeering certificates, but there are shortcomings which he has discussed with the team leader and consequently he returned the documents to be amended and for additional substance to the memorandum.

254. The prosecution team became pre-occupied with the voluminous request for further particulars which had been received on the 26th of May 2014, and furthermore team members were involved in other operational responsibilities and did not get to submit the amended memorandum before Nxasana vacated office. Nxasana did not get to decide on the

GSM

application by the prosecution team due to the reasons as set out above and elsewhere in this affidavit.

255. Consequently it is incorrect that Nxasana advised the prosecution team that there was no case against Booysen, as stated in the De Kock report. There would have been no rational basis for the prosecution team to have submitted an application to Nxasana for his consideration and decision if he had informed the prosecution team that there was no case against Booysen, because he was, at the time, the repository of power to authorise racketeering certificates.

256. This further explains the shortcomings in the De Kock report caused by the lack of consultation with the prosecution team because had the panellists confronted the prosecution team with the evidence of Nxasana, the explanation as set out above would have been placed before them, before compiling the report.

257. With regard to Danikas' statement, I state as follows:

257.1. On the 19th and 20th of January 2016 I met and consulted with Danikas who was accompanied by his Greek lawyer, Spiros Spirobulous and an English barrister, Olive Powell. I was accompanied by the Head of Witness Protection, McAdam. I requested Danikas to ensure that the contents of our consultation forms part of the statement that he will furnish to me through diplomatic channels.

GSM

257.2. The Greek version of Danikas's statement was received through diplomatic channels which are in existence between the Republic of Greece and the Republic of South Africa in 2018. I received a copy of the Greek statement from Luckson Mgiba ("Mgiba") of the Extradition desk in the office of the NDPP. Knowing that Danikas is fully conversant in English, I was surprised that the statement was in Greek. On realising this fact, I requested Mgiba to have the statement translated to English. He informed me that the Department of Justice will be dealing with the translation by going out on tender to secure the translators who will then deal with the translation of the statement into English.

257.3. After approximately six weeks I received a statement from Mgiba which was the translated version in English. The statement was translated by one Marilena E M Piperides on the 12th of October 2018. I attach a copy of the English translation, with the Greek version of the statement attached to it, marked as annexure **"CM74"**.

257.4. I contacted Danikas' Greek lawyer in writing. I furnished the lawyer with both the Greek statement and the English translation and informed him that, in terms of South African law, the statement has to be discovered and made available to the defence team, and that I will forthwith do so.

GSM

257.5. Danikas contacted me through Whatsapp and pointed out certain translation mistakes in the English translation. I requested Danikas to address me in a formal way through his attorneys to bring his concerns to my attention.

257.6. Some weeks later, Danikas, through his attorney, brought to my attention a number of translation mistakes in the English translation. I then, in writing, informed Mgiba of the translation mistakes, and asked him to bring such mistakes to the attention of the translator.

257.7. A few days later, Thabisile Ngidi ("Ngidi"), a PA to Mgiba, contacted me and enquired whether a new translator should be appointed or whether the translation mistakes should be referred back to the existing translator. I told Ngidi that it is the Department of Justice's decision what to do but that I would suggest that the existing translator be used.

258. The prosecution team was removed from the matter. Ngidi contacted me after my removal from the matter and enquired about the translation with him. I informed Ngidi that I have been removed from the matter and that she must enquire from the prosecutors appointed to the matter.

259. Had the panellists contacted me, I would have given them the explanation set out above. There are also no reasons furnished as to why Danikas and the translator of the statement, whose details are clearly displayed on the translation certificate, were not contacted.

Asogram Pillay (Accused 29) ("A Pillay")

260. At paragraph 158 of the De Kock report, the panellists critised the prosecution team for charging A Pillay without mentioning specifically the offences in which he participated.

261. A Pillay participated in counts 35 to 39 and he is depicted on the photos published in the Sunday Times on the 11 December 2011, relating the crime scene photos in the Melmoth docket. These photos from the docket, depicting A Pillay at the crime scene, are attached hereto as annexures **"CM21.8"**, **"CM21.9"** and **"CM21.10"**. A Pillay was also identified by Col Mngwengwe.

262. Had the panellist consulted with the prosecution team, A Pillay's involvement would have been explained and the panellists would have had clarity of A Pillay's involvement.

263. Many of the issues raised and criticism against the prosecution team and the State's case, could have been resolved by the panelists consulting with the prosecution team, witnesses and the investigation team.

264. It is trite law that a witness is not expected to state all events at the time of deposing to the affidavit at the Police Station, but other crucial issues may surface at trial.

GSM

265. It is my respectful submission that the Commission should disregard the De Kock report based on the abovementioned procedural and substantive failures.

H. AFFIDAVIT OF BOOYSEN DATED 2 APRIL 2019

266. In this portion of my affidavit, I shall demonstrate that there is no factual and legal basis, justifying the allegations that I was manipulated and/or coerced and/or unduly pressured to prosecute any persons or perform my duties in any specific way. It shall further be demonstrated that I am not captured for any political or corrupt reasons.

267. In this affidavit, at the relevant portions, I have extensively dealt with some of the allegations that have been raised in the affidavit deposed to by Booysen on the 2nd of April 2019, as a result of which I do not deem it necessary to repeat my response. I will further not deal with any matters that I have not been involved in.

268. **Ad paragraphs 12 and 13**

268.1. It is critical to state that Booysen, in all the affidavits placed before Court, in his evidence before the Commission, did not disclose the political persons whose interests were served by the NPA, as alleged by Booysen.

268.2. I specifically deny the contents therein contained and that I was party to a meeting with Nathi Mthethwa ("Mthethwa") at which meeting he was alleged to have pressured the NPA officials to

GSM

affect arrests in the Cato Manor matter. I was also not involved in the matter that involved Panday, as already demonstrated above.

268.3. I specifically deny that Mthethwa put any pressure on me to prosecute any one or to perform my duties in any specific way.

269. **Ad paragraphs 75 and 76**

269.1. In this affidavit, in the section that relates to Cato Manor, a plethora of evidence is set out, justifying the prosecution of Booysen and members of the Cato Manor Section.

270. **Ad paragraph 80**

270.1. In this regard, I refer the Commission to the version of Mosing which I embrace, the relevant paragraph reads as follows:

> *"80. On the 8th of March 2012, three members of the IPID (then known as the ICD) came to the NPA Head Office and I was assigned to meet with them by the acting NDPP. They were Mr I Kgamanyane ("Kgamanyane"), Mr Glen Angus ("Angus") and Khuba. The following transpired during that meeting:*
>
> *80.1. They made a request through me to the NPA for the appointment of prosecutors to*

GSM

be assigned to the investigation they were busy with, which related to the so-called "Cato Manor Death Squad";

80.2. They explained to me the background of the investigations as well as the number of dockets involved, which were 51 dockets, of which they indicated that all of these matters ended up on inquests. In 12 of the cases they were convinced that there was wrongdoing on the part of the Cato Manor Police.

80.3. They advised me that 6 dockets were ready for decision making. In fact, they had the 6 dockets with them during that meeting and they insisted on having a decision on those dockets the following day. They handed the dockets to me for consideration.

80.4. They further advised me that there were 12 suspects from the Cato Manor Unit. They mentioned Booysen being the Provincial Commander for Organised Crime as one of the suspects. The evidence of photographs of the crimes were with General Mabula's

GSM

("Mabula") team, and they needed to get such photographs.

80.5. They also explained that they had a meeting with the former Minister of Police, Mr Nathi Mthethwa ("Mthethwa") and the then Acting National Commissioner, Gen Vilakazi ("Mkhwanazi") approximately a week before. They, as the ICD, together with a team from the DPCI, commanded by Mabula, were present at such meeting. They told me that the Minister was unhappy with the progress of the investigations which was pending since December 2011, and that the Minister told the two teams that he wanted arrests by that following week. The Minister also instructed the two teams to merge and to work together. As a result of such instruction, they worked throughout the weekend.

80.6. They told me that the challenge they were experiencing, was to involve prosecutors, and that Mabula met with Mlotshwa, the then Acting DPP of KwaZulu-Natal, who promised them that they would have two

GSM

advocates, but that the prosecutors would only be able to join them the following week. This was not acceptable to the aforesaid IPID members, as they were of the view that the matter required urgent attention.

80.7. At the conclusion of the meeting, I told them that I would discuss their requests with the NDPP and, if successful, prosecutors would then join the team by the following week at the ICD offices in Durban."

270.2. From the aforesaid, it is clear that Booysen is not even perturbed by making wild and unsubstantiated allegations.

270.3. Booysen's claims not to have knowledge that it is legally permissible for prosecutors from one division to prosecute in another division, is perplexing.

270.4. Section 20(4)(a) and (b) reads as follows:

"(4) Subject to the provisions of this Act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of-

GSM

(a) the area of jurisdiction for which he or she has been appointed; and

(b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director."

270.5. The lead prosecutor in the much publicised criminal matters that involve Shabir Shaik and currently the former State President, Mr Zuma, is Billy Downer SC who is attached to the Western Cape Division. The prosecution of Shabir Sheik occurred in KwaZulu-Natal, and similarly the matter involving the former State President is taking place in the same division. Initially Mathenjwa, who is from the South Gauteng Division, was part of the prosecution team.

270.6. The prosecutions arising from the recommendation that was made by Farlam J which is taking place in the North West Division, is being prosecuted by prosecutors stationed in the North and South Gauteng Divisions.

270.7. An inquest which arises from the killing of Nokuthula Simelane is being dealt with by Mathenjwa, despite the fact that the incident happened in the North Gauteng province.

GSM

270.8. I refer to my opinion, attached hereto, marked as annexure **"GSM9"** and the opinion of Torie, attached hereto, marked as annexure **"GSM10"**, which deal with this aspect. Adv Chris McAdam ("McAdam") compiled an opinion on this aspect which materially differs from myself and Torie's opinions. I attach hereto, marked as annexure **"GSM11.1"** a copy of the opinion.

270.9. It is my considered view that McAdam is wrong in his conclusion that prosecutors from one division cannot prosecute in another division. In this regard, I further refer to the engagement that the Chairperson of the Commission had with Simphiwe Mlotswa ("Simphiwe"). I attach hereto a copy of the relevant transcribed record, marked as annexure **"GSM11.2"**. Simphiwe had a similar view as McAdam and Booysen and, ultimately, was proved wrong and conceded that it was legal permissible for a prosecutor in one division to prosecute in another division.

270.10. The relevant engagement referred to above is set out below and reads as follows:

> *"149. In his oral evidence in the Zondo Commission, he contradicted himself regarding the existence or non-existence of legal prescripts that permits a prosecutor from one province prosecuting a matter in*

GSM

another province. The contradictions are more fully set out below:

149.1 The record states:

> *"CHAIRPERSON: I am asking about the general practice or a policy whether when you were Acting DPP in KZN you were aware of what policies exit within the NPA or what prescripts – legal prescripts exited that dealt with or governed the situation where a prosecutor will be taken from one province to go and prosecute in another province.*
>
> *ADV MLOTSHWA: None that I know of.*
>
> *CHAIRPERSON: Yes.*
>
> *ADV MLOTSHWA: Yes.*
>
> *CHAIRPERSON: Do you have any recollection whether the National Prosecuting Authority Act says anything about such things?*

GSM

ADV MLOTSHWA: As far as I remember there was nothing in the Act. Except that because of the nature of budget if a prosecutor from – if the DPP requests assistance. We request assistance from the NDDPP and then the NDPP will get assistance from a specific DPP who has to dispatch the prosecutor to go and assist. It is then that the issue of budget will be discussed.

Travelling arrangements and so on and so forth as to which office will have to pick up the tab – to pay the bill. So in this one I was not involved even with the arrangements, accommodation, travelling. I do not know what was – what happened.

CHAIRPERSON: But is your answer that as far as you know or rather that you are not aware of any provision in the National Prosecuting Authority Act that specifically deals with getting

G Smith

a prosecutor from one province to go and prosecute in another province?

ADV MLOTSHWA: That is affirmative Chair.

CHAIRPERSON: And you are not aware that there were any written policies on this?

ADV MLOTSHWA: None that I recall.

CHAIRPERSON: Are you aware of – were you aware of any practice that may have been followed over the years?

ADV MLOTSHWA: As I have indicated Chair … (Intervenes).

CHAIRPERSON: H'mm

ADV MLOTSHWA: That it will be the DPP because of some certain considerations feeling that look another division must send a prosecutor, but that require – request

GSM

will have to go via – the NDPP will make a determination from which division a request can be made to get a prosecutor to go and prosecute in that division.

CHAIRPERSON: So your understanding is that indeed the5re was a practice?

ADV MLOTSHWA: Yes. Yes."

271. **Ad paragraphs 83 and 84**

271.1. I have already demonstrated in this affidavit, at the relevant sections, the justification of the prosecution of Gordhan, McBride and the Cato Manor Detectives, Van Loggerenberg and Pillay.

271.2. All the decisions to prosecute or the prosecutions that I was involved in, occurred within the confines of all the applicable legal prescripts.

271.3. Save as aforesaid, the remainder of the allegations therein contained, are specifically denied and Booysen is put to the proof thereof.

272. **Ad paragraph 85**

GSM

272.1. The manner in which the mandate of the PCLU is set out in this paragraph is not complete. It includes any other priority crimes as determined by the NDPP as set out in the Proclamation itself. In this regard, I embrace the contents of paragraph 14.2.4 of Torie's affidavit in respect of the Omnibus Clause, which reads as follows:

> *"14.2.4. in terms of the Omnibus Clause Regarding "such other priority crimes" referred to in the 2003 proclamation, the discretion granted to the National Director is intended to be used for purposes of referrals regarding matters that require specialised skills or where the implicated persons are very high ranking officials or the matters are very sensitive, such that they may touch on the security of the state or the independence or integrity of state institutions. Such referrals are or were made."*

272.2. Booysen is aware that this list of matters that can be referred to PCLU, is not exhaustive, as he used the abbreviation "etc". From this, he should have been aware that his criticism of the PCLU is not justified in this regard.

273. **Ad paragraph 86**

GSM

273.1. Booysen, on his own version, testified that the prosecution of Gordhan had serious and "catastrophic" financial consequence for the economy of the country and, yet, seeks to trivialise the prosecution of Gordhan.

273.2. It is clear that the conduct that let to the prosecution of Pillay and Gordhan, has an impact on the fiscus of the country, because SARS paid a penalty to facilitate the early retirement of Pillay.

273.3. Gordhan testified before the Commission and, to the contrary, he was not supportive of the allegations made by both McBride and Booysen. It is critical to indicate that I was not given a Rule 3.3 Notice indicating that Gordhan, Pillay and Van Loggerenberg will implicate me in any wrongdoing whatsoever in their testimony before the Commission.

274. **Ad paragraphs 88 and 89**

I deny the contents of this paragraph, specifically that I have been capture. I have already dealt with the allegations contained therein elsewhere in this affidavit, and I do not deem it necessary to repeat same.

275. **Ad paragraph 99**

GSM

275.1. Booysen, in the affidavit deposed to on the 2nd of April 2019, did not disclose the political persons whose interests were served by the NPA or myself, as alleged.

275.2. It is clear from the fact that Booysen did not provide the details of the alleged political elite and/or their associates that had to be protected from prosecutions, that the allegations levelled against me are baseless, unfounded and malicious.

275.3. The Cato Manor prosecution has been fully dealt with in the relevant sections elsewhere in this affidavit and I do not deem it necessary to repeat same.

275.4. The insinuation that me being the lead prosecutor, demonstrates that I acted unprofessionally and unlawfully, is denied. I take the strongest exception to the defamatory allegations in this paragraph that I had been *"the clean-up- and go-to-person whenever the political elite and or their associates have to be protected from prosecutions."* when there are no evidence placed before the Commission to support such malicious allegations.

275.5. Save as aforesaid, the allegations contained in this paragraph are specifically denied, and Booysen is put to the proof thereof.

276. **Ad paragraph 100**

GSM

276.1. I admit that in the statement I filed in the investigation against Jiba I have stated that Bheki Diondio Mthiyane "*has been* killed" when, in fact, he died of natural causes. This was an honest mistake since I had last dealt with the docket over three years before I filed the statement in the investigation against Jiba.

276.2. I have mistaken Mthiyane with another witness, Simphiwe Cyprian Mathonsi who was killed. It was never my intention to either mislead or lie to the Court. It is also critical to state that if Booysen feels strongly that I committed any crime, then, as an experienced police officer, he should have laid a criminal charge against me.

277. **Ad paragraph 101**

277.1. I take note of allegation that a case for perjury and fraud was opened against me, however, I wish to state that I have not been approached by the investigating officer and I do not know the status of the matter.

277.2. I further wish to indicate that I have not been contacted by the GCB in this regard.

277.3. With regard to annexure "JWB17" to Booysen's statement, I shall demonstrate that it is riddled with lies and the intention thereof is to mislead the Commission. It is also critical to note

GSM

that Booysen does not vouch for the truthfulness and correctness of the allegations of what is stated in this annexure.

277.4. I respond to some of the allegations applicable to me, contained in this annexure, below:

277.4.1. Ad paragraph 2

277.4.1.1. The prosecution memorandum was prepared by a team that comprised of myself, Mathenjwa and Mlotshwa, and therefore it is not true that I am the only one who compiled the memorandum.

277.4.1.2. Similarly, the memorandum, together with its relevant annexures, was presented to the NDPP by the team, which included Noko. I attach hereto a copy of the memorandum with annexures hereto, marked as annexure **"GSM12"**.

277.4.2. Ad paragraphs 3 and 4

277.4.2.1. It is evident from this paragraph that Booysen is aware that even the investigating officers collaborates in

GSM

preparation of the presentation to the NDPP, and yet he seeks to single me out and give the wrong impression that I was the only one who was responsible for the preparation of the memorandum and its presentation to the NDPP. This has a material bearing on the reliability of the allegations levelled against me and on the credibility of Booysen.

277.4.2.2. This is a clear indication that Booysen has a vendetta against me. Even though I signed the memorandum, it is a product of the prosecution team's work. I signed the memorandum as team leader.

277.4.3. Ad paragraph 5

277.4.3.1. The allegations therein contained have been fully dealt with and it is not necessary to repeat same.

277.4.4. Ad paragraph 6 and 7

GSM

The allegations are fully dealt with in Brown's supplementary affidavit Annexure 62.2

278. **Ad paragraph 102**

278.1. Van Loggerenberg lodged a complaint with the National Director of Public Prosecution, which was referred to Adv Smit ("*Smit*"), the then Director of Public Prosecution, North West, for investigation. It was prudent for such a complaint to be dealt with by a person who was not involved in the matter of Van Loggerenberg. A copy of the alleged complaint is attached hereto, marked as annexure **"GSM13"**.

278.2. The investigation by Smit concluded that there was no substance or merit in the allegations levelled against me. A copy of the outcome of the investigation is attached hereto, marked as annexure **"GSM14"**.

279. **Ad paragraph 103**

279.1. It is denied that there is an aborted prosecution.

279.2. I have no knowledge of what Nhleko's plans were, as a result of which I cannot respond to these allegations. Full reasons have been advanced as to why McBride was charged.

GSM

280. **Ad paragraph 104**

280.1. It is denied that any investigations that related to McBride suffered a setback. Booysen is a senior police officer. If he was convinced that I committed any offence, he should have registered a case for defeating the ends of justice, which he did not do.

281. **Ad paragraph 106**

281.1. The allegations therein contained are specifically denied and Booysen is put to the proof thereof.

281.2. To the contrary, I prepared a memorandum, advising Simelane to retain Nel and Johnson, as prosecutors in the Agliotti matter.

282. **Ad paragraph 107**

282.1. I did not personally choose to get involved in the three prosecutions. My involvement in these three matters was as a result of the matters being allocated to me. There was no legal justification for me not to deal with the prosecutions complained of.

282.2. I was never involved in the prosecution of the Mphego matter.

282.3. Nel and Johnson were removed from the Agliotti matter by Simelane, who was the NDPP at that stage, contrary to my

GSM

advice, as evidenced by a memorandum I addressed to Simelane dated 3 February 2010, attached hereto, marked as annexure **"GSM15"**.

282.4. That I am based at the DPP office in Mmabatho, does not disbar me from being involved in prosecutions of matters that I was lawfully involved in.

282.5. Booysen's allegation that, in his almost 40 years career, he has never encountered a situation that prosecutors are appointed from one jurisdiction to undertake prosecutions in another jurisdiction, has already been addressed and it is not necessary to repeat same.

283. **Ad paragraphs 109 to 114, 121, 132-133, 215, 217, 227, 229, 230.1, 230.6 – 230.7,**

283.1. Insofar as the contents of these paragraphs are inconsistent with my version as contained in this affidavit, such allegations are specifically denied and Booysen is put to the proof thereof.

I. DEFEATING THE ENDS OF JUSTICE – McBRIDE, SESOKO AND KHUBA

284. In order to properly place the decision to prosecute McBride, Sesoko and Khuba with defeating the ends of justice into proper context, it is best to first set out the elements of the offence. They are:

GSM

284.1. Unlawfulness of the act;

284.2. defeating or obstructing;

284.3. administration of justice; and

284.4. intention.

285. In order to demonstrate how McBride, Khuba and Sesoko committed the offence, I list each element and thereafter set out the facts which demonstrate or shows the commission of the offence.

(a) <u>Unlawful conduct</u>

286. The unlawful conduct I considered at the time is as follows:

286.1. McBride, Khuba and Sesoko's action of removing the information which appeared at pages 9, 16, 20, 21, 26, and 30 of the first rendition report dated 22 January 2014 ("first report"), linking Lieutenant-General Anwa Dramat ("Dramat") and General Shadrack Sibiya ("Sibiya") to the commission of a crime when they prepared the second report dated 18 March 2014 ("second report"). I annex copies of the first and second report marked **"GSM16"** and **"GSM17"**, respectively.

286.2. With regard to the portions that appeared in the first report and were removed in the second report, I refer the Chairperson to

GSM

the manuscript notes I made on both the first and second report to show the portions removed.

286.3. McBride, Khuba and Sesoko's action of adding new paragraphs in the second report on pages 23, 24, 25, 26 and 30.

286.4. With regard to the additions of new information same is demonstrated, again, by the manuscript notes I made on the second report.

286.5. McBride, Khuba and Sesoko changed the recommendations from the one set out in the first report to the fact that "*no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them.*"

286.6. McBride, Khuba and Sesoko's continued assertions and averments in other judicial processes that Dramat and Sibiya were exonerated from any criminal liability. When McBride in fact knew when he made such assertions and averments that he had no legal authority to exonerate anybody from any criminal liability.

287. The reason I was of the view that the removal and additions made in the second report, were made solely with the intention of exonerating Dramat

GSM

and Sibiya was that there was no new evidence which justified the removal and additions.

288. The conclusion I reached when taking a decision to prosecute McBride, Sesoko and Khuba is supported by objective facts as evident from the investigation diary where Khuba changed his report as the investigating officer from being "A100" to "A102" and included a so-called forensic report as "A101" which report is dated 17 March 2014 and the entry in the investigation diary was made on 18 March 2014 the same day that the second rendition report was ostensibly finalised.

289. With regard to the analysis of the change in these entries in the investigation diary, I refer the Commission to paragraphs 389 to 398 of Anthony Mosing's ("Mosing") affidavit which has been filed with the Commission. Mosing is the prosecutor who guided the investigation. I set out paragraphs 389 to 398 for ease of reference. I incorporate the paragraphs referred to above into this affidavit, which reads as follows:

> *"388. Khuba submitted a final report to me on 22 January 2014. Khuba did not prepare his statement as the investigating officer and I requested him to submit same and to incorporate it into the final report. Khuba prepared his statement as the investigating officer, which, according to the investigation diary, was initially entered as "A100", on 5 February 2014. He brought the report to me which incorporated his statement of the investigating officer.*

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Khuba did not change the date of the report from 22 January 2014, and I did not insist that he correct the date, as it was not a significant number of days' difference.

389. *I interpose to mention that the entry number into the docket of Khuba's statement was changed from "A100" to "A102". I find this change quite peculiar, particularly when regard is had to what was filed as "A101" which is the "Analysis of statement by Precision Forensics".*

390. *I have since learnt that "A101" is relied on by Khuba before this Commission to discredit the statement of Madilonga, who was the police officer who phoned Dramat and confirmed that Dramat instructed him to permit the Zimbabwean police entry into South Africa. Madilonga's version is supported by other, independent objective evidence.*

391. *A further oddity about "A101" is that it is dated October 2013 and yet Khuba never discussed this statement with me during the time nor attached it to the docket. As such, it raises very serious questions which point to an attempt to "sanitise" the evidence that implicated Dramat. It is unheard of for an investigator to discredit his own key witness, especially for the reasons allegedly set out in the purported expert report. No wonder, the report dated 18*

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March 2014, changed the recommendation of the first report and no longer recommended that Dramat be charged. This clearly points to an attempt to defeat the ends of justice.

392. *McBride contradicts himself with regard to the weight to be attached to the report in that he complains that the so-called captured prosecutors do not prosecute in certain instances where IPID members have made a recommendation that certain persons should be prosecuted and, in the same breath he wants the Commission to attach no weight to the recommendations made by Khuba with regard to the rendition. The making of a report with recommendations is a statutory requirement as more fully set out in section 7(4) of IPID Act.*

393. *On Khuba's version, it appears that the Executive Director of IPID did not report for duty and that is why he signed the report.*

394. *Below, I set out the key points that demonstrate why the version of Madilonga is critical and carries weight, namely:*

394.1 *Confirmation that he made a telephone call to Dramat;*

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394.2 Confirmation that entry and exit of Zimbabwean Police was in line with the handing over of the victims to the Zimbabwean Police;

394.3 The pivotal role played by Maluleka in the illegal handing over of the Zimbabwean nationals to the Zimbabwean police.

395. On or about 14 February I delivered the docket to the DPP: South Gauteng for decision. I later in this affidavit set out the processes of how I reported on the investigation to the NDPP who had assigned the matter to me.

396. I later learnt that Khuba and his colleagues had retrieved the docket from DPP:SG and prepared a report dated 18 March 2014 and changed the recommendations. By so doing, I am of the considered view that Khuba was undoing his hard work which he did when he made a breakthrough in the case.

397. Having regard to the different versions Khuba has put forth in explaining why the report changed, it appears that he was pressurised to change his recommendations. This much is evident when one has regard to his transcript of the interview with Werksmans and the improbable versions he has given from then to now.

GSM

398. It is clear that the recommendations of the report were changed in order to "exonerate" Dramat and Sibiya, despite the evidence Khuba gathered. I discuss this detail when dealing with the evidence against Dramat."

290. A further analysis that supports the conclusion that there was no new evidence to justify the alteration of the recommendation made in the first report by producing the second report is set out in the affidavit of Jacobus Petrus Pretorius ("Pretorius"). The relevant paragraphs are incorporated into this affidavit and read as follows:

"160. It is prudent that I should demonstrate to the Commission the process that unfolded prior to taking the decision of charging McBride, Sesoko and Khuba with defeating the ends of justice.

161. At that stage, I was assigned to deal, inter alia, with criminal matters that arose from the recommendations that were made by the Marikana Commission of Enquiry. It was on a Friday afternoon, on the 26th of February 2016, when I was approached by Maema, who briefed and made a presentation to me regarding the matter under consideration. He was in possession of a memorandum which outlined how the investigation was conducted, and what his recommendations were arising from the investigation.

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*162. Maema extensively discussed the merits of the investigation that was done with me. A summary of the investigation is contained in a memorandum dated the 22nd of February 2016, attached hereto, marked as annexure **"JPP46"**.*

163. Maema presented the memorandum to me, which I read and considered over the weekend. I also took into account the probabilities in the matter. From the discussion I had with Maema, together with the contents of the memorandum and the probabilities, I was satisfied that there was prima facie evidence for making out a case for defeating and/or obstructing the ends of justice with reasonable prospects of success.

*164. Once I was satisfied, I made an appointment with the DPP: NG for Thursday, the 3rd of March 2016 to consult with Mzinyathi in his office and discuss the merits of the case with him. Mzinyathi agreed that there was a reasonable prospect of success and signed the memorandum accordingly. I attach hereto a confirmatory affidavit deposed to by Mzinyathi, marked as annexure **"JPP47"**, in support of this statement.*

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165. What is set out above is the checks and balances that are in place and have to be followed as a statutory imperative in the decision-making process at the NPA.

166. It follows then that the matter was properly, lawfully and legitimately referred to the PCLU for investigation as it was deemed a priority crime as, inter alia, it involved the Executive Head of IPID. It is a practice for the NDPP to refer for investigation to the PCLU, matters involving high ranking officials or matters that touch on the integrity or independence of state organs and thus it was referred in terms of the Omnibus Clause.

167. McBride, Khuba and Sesoko were adamant that the IPID report does not bind the NPA in making its decision to prosecute. They refer to the statements of Van Zyl, Mzinyathi and Baloyi who all stated that they either did not read the report or, if they did, it was a cursory reading and does not influence their decision, as they only consider the facts as contained in the docket which evidence was not deleted in the docket. Thus the case of fraud or defeating the ends of justice was contrived. It is clear that IPID's officials seek to turn a blind eye to what their mandate is, namely that after an investigation, they are expected to compile a report and make the necessary recommendations.

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168. I deny that the prosecution was contrived, for the following reasons:

168.1 It is common cause that the docket was uplifted from the DPP:SG after McBride was briefed on the matter;

168.2 McBride instructed that the evidence or investigation be reviewed and the new evidence be included and the report be finalised;

168.3 The so-called new evidence does not lay a basis for changing the recommendations contained in the report of 22 January 2020, especially the nature and import of the deletions of the first report, which I regarded as the final report, that convinced me that there is a cover-up. The result would be that only the foot soldiers would be prosecuted, and the Generals would get protected. Having regard to the probabilities, just prosecuting the foot soldiers would constitute a grave injustice.

168.4 On his own version, McBride had discussed at length with Nxasana who also agreed that there was no evidence against Dramat and Sibiya. It is unclear this alleged view of Nxasana was before or after he had considered the docket or only the

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report that was presented to him. Even worse, on McBride's evidence it appears this view was held at a meeting they had on 6 March 2014 after McBride was briefed and the docket was still at DPP:SG;

168.5 Even more, McBride issued media statements that the IPID exonerated Dramat and Sibiya, whilst knowing fully well that it is not the duty of the IPID to exonerate people but the role of the court and to that extent sought to create the impression that the NPA was persecuting and maliciously pursuing and charging Dramat and Sibiya;

169. It is therefore not a simple case of an incorrect analysis or summary of the evidence as remarked by the Chairperson, during the evidence of Minister Nhleko, but a very serious matter of the head of an independent and oversight institution envisaged in the Constitution, deliberately misrepresenting facts in the institution's report and issuing wrong media statements."

(b) <u>Defeating or obstructing</u>

291. In establishing this element, I rely on the facts set out below:

GSM

291.1. The removal of the docket from Adv Z Van Zyl ("Van Zyl"), by Khuba and Glen Angus ("Angus") under the false pretext that there were investigations to be done after which the docket would be returned to Van Zyl, knowing well that no investigations would be conducted and that the docket would not be returned to Van Zyl as undertaken;

291.2. The subsequent inserting and filing of the statement made by the Expert, Anne-Marie Van Staden and the changing of the numbering of the statements in the investigation diary of the docket was meant to give a wrong impression that the new evidence was subsequently obtained which justified the change in the recommendations made in the first report dated 22 January 2014.

291.3. To demonstrate that there was no new evidence obtained, I rely on the evidence as contained in the affidavits of Mosing and Torie. The relevant portion of Mosing's affidavit are quoted below:

"

545.3. I have demonstrated that the period between the 22 January 2014 and 18 March 2014, the only "evidence" that was entered therein which supposedly justified a dramatic change in the recommendations of IPID is the statement of the

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Secretariat which effectively mirrors her report dated 25 June 2012 and therefore could not amount to new evidence that would justify the change in recommendation.

545.4. *It is also apposite to mention that the statement of the Secretariat was deposed on 17 February 2014 but only filed a month later. This statement must be the reason Khuba wrote me an email on 28 February requesting to file a evidence in the docket and I indicated that he must file the evidence with the DPP: South Gauteng as the docket was with him.*

545.5. *The second entry made on 18 March 2014 is the statement analysis of Madilonga. The absurdity of this report*[9] *is that it is ostensibly a final report on the analysis of the attached statement of Madilonga which was analysed by one Anne-Mari van Staden and yet the analyses conducted on the attached statement is exactly the same analysis that was supposedly conducted sometime in 2013 when this Anne-Mari van Staden emailed Khuba the analysed statement on 4 October 2013.*

[9] A101 in the docket.

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545.6. The analysed statement of Madilonga and the email from Anne-Mari van Staden are attached to Khuba's main affidavit, deposed to on 16 July 2019, which attached the analysed statement as HIK6. On the other hand, the email dated 4 October 2013, is attached to a supplementary affidavit, deposed on 22 August 2019.

545.7. It is bewildering that, if indeed, Khuba obtained the statement analysis on 4 October 2013, he kept such a fact completely secret from me whilst I was guiding the investigation. Even more puzzling is that Khuba did not include this statement in the investigation diary, neither did he include it in his report dated 22 October 2013, a date after he supposedly received the analysed statement. Again, Khuba did not include this statement in his report dated 22 January 2014. All these point to the high probability that the statement was not analysed in 2013. The so-called analysis was a ruse to come up with some sort of "evidence" that casts doubt on the credibility of Madilonga's statement

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who at all times since April 2013 Khuba considered to be the main witness in the case.

545.8. The so-called report does not qualify as an expert report in that the "expert's" qualifications and experience are not set out therein. Neither has the "expert" filed an affidavit in support of the report or to demonstrate his field of expertise. Consequently, no reasonable person should or should have attached any weight to this report.

545.9. I take note of the reliance placed on IPID regulations and Standard Operating Procedure (SOP). However, once again the objective facts point to a stratagem to justify the report dated 18 March 2014 as the final report to achieve McBride's desired outcome.

545.10. I say this because, on Khuba's own version at the time the 22 January 2014 report was finalised the then Acting Executive Director of IPID, Mbeki, was no longer coming to the office and Khuba alleges that she only signed financial documents. As such, on McBride's version IPID

GSM

would be hamstrung from issuing reports in such instances. On a purposive interpretation this could never have been the intention of the legislature that when the Executive Head of IPID is, for whatever reason, unable to execute her duties, the functions of IPID "come to a grinding halt"."

292. The relevant portions of Torie's affidavit are set out below:

"124. A further report, compiled by A van Staden ("Van Staden") of Precision Forensics, confirmed that Madilonga's statement was analysed by Anna-Mari Van Staden and this report is dated 17 March 2014, a day before Khuba and Sesoko signed the report.

125. I am of the respectful submission that the so-called analysis and findings of the purported expert, are irrational, suspicious and lacks the necessary details. The report of the purported expert should not be relied on at all. It is clear that prior to compiling the report, Van Staden did not take into account other relevant independent material contained in the docket and was not sensitive and did not take into account the social background of Madilongwa. It is expected of an expert to

GSM

be objective, independent and rational. A copy of this report is attached hereto, marked as annexure "JPP38".

126. The person who analysed Madilonga's statement also failed to take into account that English is not Madilonga's mother tongue. The conclusion by the expert that Madilonga's statement is deceptive, is based mainly on the poor grammar used by Madilonga and lack of proficiency in English. It appears that the expert is not socially sensitised to sociological dynamics that make up different persons in South Africa.

127. For example, the so-called expert raised concern with the use of five pronouns in one sentence or a missing pronoun. Not every person is South Africa is proficient in the use of grammar and sentence construction. Sometimes non-English speakers use direct translation in their writing. As such, more was needed to cast doubt on Madilonga's statement and not just his use of grammar."

293. The evidence of McBride before the commission is that on 3 March 2014, which is three (3) days after his appointment, he had a meeting with Mr. Mxolisi Nxasana ("Nxasana") to discuss whether there was evidence implicating Dramat and Sibiya. McBride's evidence is also that Nxasana agreed with him that there was no evidence implicating Dramat and Sibiya in the commission of the crimes. The irregular exclusion of Van Zyl from

GSM

the meeting when the latter was seized with the matter, it is a further indication of this element of the crime.

294. The numerous media utterances and in the affidavits filed in numerous court proceedings by McBride that Dramat and Sibiya were exonerated when no decision had been made by the prosecuting authority.

295. The questionable conduct of Nxasana in keeping the docket for an unreasonable period of eight (8) months, the failure by Nxasana to confirm or deny the media utterances made by McBride.

(c) **Administration of justice**

296. The removal of the docket under the false pretext that further investigations had to be conducted and that the docket would be returned to Van Zyl on 14 March 2014, prejudiced the administration of justice.

(d) **Intention**

297. The failure to return the docket Van Zyl despite the undertaking and the numerous requests by Van Zyl directed to Khuba enquiring when the latter would return the docket and his failure to deny the assertion made by Van Zyl that it was Khuba's intention not to return the docket to Van Zyl. I annex a copy of the memorandum prepared by Van Zyl dated 27 June 2014 marked "**GSM18**".

298. I draw the Commission's attention to annexure "**GSM18**" paragraph 7 which reads as follows:

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"7. *I phoned Mr Khuba on 23 June 2014 and asked him why he lied to me when he uplifted the docket. I told him that they never intended to return the docket. He said that he still had one thing to do. He denied lying to me, but did not deny that they never intended to return the docket to me, despite me making that statement several times. Mr Khuba stated that docket had been handed to "... the NDPP's secretary" but he could not provide any name."*

299. From the aforesaid it is clear that the intention was not to return the docket, but to remove and change information in order to exonerate Dramat and Sibiya.

J. FRAUD

300. Although McBride only mentions that I charged Khuba, Sesoko and him with defeating the ends of justice, it is apparent from the charge sheet that I had also charged them with the offence of fraud. I attach hereto, marked as annexure **"GSM19"**, a copy of the charge sheet.

301. It is common cause that:

301.1. Khuba received instructions from the former Acting Executive Director of IPID, Ms Koekie Mbeki ("Mbeki") to conduct an investigation into the rendition of Zimbabwean Nationals by the members of the DPCI;

GSM

301.2. Khuba conducted an in-depth investigation into the said rendition of Zimbabwean Nationals by the DPCI, with the guidance of the NPA;

301.3. Khuba prepared a report dated 22 January 2014, and filed it with the NPA;

301.4. The report dated 22 January 2014 recommended that Dramat, Sibiya, together with other persons be criminally charged with kidnapping and defeating the ends of justice;

301.5. McBride instructed Khuba and Angus to uplift the docket from the DPP: South Gauteng offices; and

301.6. Khuba and Angus uplifted the docket on 7 March 2014 from the DPP: South Gauteng offices.

302. McBride, Khuba, and Sesoko removed information implicating Dramat and Sibiya from any criminal conduct in the kidnapping of the Zimbabwean Nationals. They changed the recommendation that was set out in the report dated 22 January 2014 to the one which stated that no charges should be brought against Dramat and Sibiya as the investigation established no *prima facie* case against them.

303. McBride, Khuba, and Sesoko misrepresented in various court proceedings that there was no evidence implicating Dramat and Sesoko and that the latter two were exonerated. McBride further made the

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misrepresentation in various media reports whilst he knew that they were false.

304. Hence, the aforesaid conduct prejudiced and/or had the potential to prejudice the NPA and the administration of justice. It is clear from the objective facts that there was sufficient evidence that justified the prosecution of McBride, Khuba, and Sesoko.

K. MCBRIDE'S MAIN AFFIDAVIT

305. **Ad paragraph 125**

305.1. McBride did not provide evidence of the matters and dockets that were brought to me for either a decision or prosecution which were investigated by IPID and I declined to prosecute. It is clear that this allegation is based on speculation or conjecture and ought to be dismissed.

305.2. In this affidavit, I have demonstrated that those who claim to be corruption fighters are themselves criminals who should be prosecuted for their unlawful activities which are dealt with in the applicable and relevant dockets.

305.3. I specifically deny that the NPA has lost any credibility as a result of my lawful and professional conduct, in that all the cases that were brought before me for either my decision or my prosecution were done so within the confines of the law.

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305.4. I am advised by my legal team that Torie, Mosing, Baloyi, Mashuga, Chuake and Mathenjwa vehemently dispute and deny the unfounded and malicious allegations levelled against them, and I align myself with the views that they expressed.

305.5. No particulars and/or details of the alleged subordinates who are experienced prosecutors whose decisions I overrode despite abundant evidence that justifies a prosecution. In this affidavit, I have extensively set out the sufficient evidence that was considered which led to the prosecution of McBride, Khuba, and Sesoko, as well as Booysen.

306. **Ad paragraph 126**

306.1. No evidence at all is set out in support of the allegations that my actions are politically driven;

306.2. I did not take the decision to charge Dramat and Sibiya, in fact, I took the decision to charge McBride, Khuba, and Sesoko for unlawfully exonerating Dramat and Sibiya in the kidnapping of the Zimbabwean Nationals. I also took a decision to charge Booysen in the activities of the Cato Manor section based at Cato Manor;

306.3. To demonstrate that I did not persecute McBride, I declined to prosecute McBride and Sibiya arising from the complaint that the latter two attempted to obstruct the members of Crime

Intelligence who had been to Sibiya's office to retrieve a Data 6 devise which was in his safe. The complaint was in respect of Hillbrow CAS 542/3/2015. I attach hereto as annexure **"GSM20"** my decision not to prosecute McBride in this matter.

306.4. Save as aforesaid, I deny the remainder of the contents of this paragraph.

307. **Ad paragraphs 127 and 128**

307.1. The allegations set out in these paragraphs are related to those set out in Rule 3.3 Notice, namely paragraphs 14, 50, 78, 87 to 118. I have already indicated above that I have never dealt with these matters, and therefore, have no knowledge of same.

308. **Ad paragraph 129**

308.1. As stated above, I did not take the decision to prosecute the rendition matter, instead, I took a decision to prosecute McBride, Khuba, and Sesoko with fraud and defeating the ends of justice. I have already extensively dealt with the basis upon which I took the decision to charge McBride, Khuba, and Sesoko; and

308.2. Save as aforesaid, I deny the remainder of the contents of this paragraph.

309. **Ad paragraphs 132, 133 and 134**

GSM

309.1. I have already set out the basis upon which I took the decision to prosecute McBride, Khuba, and Sesoko and do not deem it necessary to repeat same;

309.2. As already demonstrated above, I have already dealt with the basis upon which I took the decision to prosecute Minister Pravin Gordhan ("Gordhan"). I specifically denied that I either worked with or took instructions from Tom Moyane ("Moyane"). I specifically deny the involvement in preventing SARS legal advisor, Vlok Symington from leaving the boardroom;

309.3. I have already extensively dealt with matters in regard to the PCLU and it is not necessary to repeat same; and

309.4. Save as aforesaid, I deny the remainder of the contents of this paragraph.

L. THE PARAGRAPHS IN MCBRIDE'S AFFIDAVIT WHICH EXPRESSLY OR BY IMPLICATION REFER TO ME

310. With the above background in mind, and having perused and considered the affidavit of McBride and the allegations in the Rule 3.3 notice, annexure **"GSM7.1"** hereto, which implicate or may implicate me. As demonstrated above, I am not implicated. I proceed to deal with paragraphs that are expressly or by implication applicable to me.

311. The paragraphs that expressly or by implication refer to me are paragraphs 125, 126, 127, 128, 129,130,132,133 and 134.

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M. BASIS OF ALLEGATIONS OF CAPTURE AS SET OUT IN THE RULE 3.3 NOTICE OF McBRIDE

312. The Rule 3.3 notice I received from the Secretary of the Commission pertaining to the evidence of McBride, It is alleged that:

> *"2.1 You improperly and or unlawfully sought to:*
>
> *2.1.1 unduly interfere in the investigative independence of the national prosecuting authority ("NPA"), the Independent police investigative director 8 ("IPID") and all the Directorate for priority crime investigation ("DPCI") commonly known as the Hawks;*
>
> *2.1.2 unduly delayed end or declined recommended prosecution;*
>
> *2.1.3 participate in the undue persecution of officials of the NPA, IPID and or DPCI; and*
>
> *2.1.4 destabilized the NPA, IPID and/or all the DPCI.*
>
> *2.2 In acting as aforesaid, you allegedly sought to enable the state capture of the criminal justice system."*

313. The Rule 3.3 notice also state that the statement of McBride which implicates me or may implicate me set out the allegations that implicate me or may implicate me at paragraphs 14, 50, 78 and 87 to 118.

GSM

314. The Rule 3.3 notice further state that annexures "Q", "R" and "S" to the statement of McBride implicate or may implicate me in the above-mentioned allegations.

315. I have perused and considered the contents of paragraph 14, 50, 78, 87 to 118 and must at the outset state that these paragraphs do not in any way implicate me. Instead, there are paragraphs in the statement of McBride which makes reference to me and I will set these out later and respond thereto.

316. I now proceed to specifically deal with the paragraphs referred to in the Rule 3.3 notice *ad seriatim*.

317. **Ad paragraphs 13, 14 and 33**

317.1. There is no evidence to substantiate or corroborate McBride's version that the prosecution was politically driven or malicious. In any event, such is specifically denied and McBride is put to the proof thereof.

317.2. It is also critical to indicate that McBride did not institute any civil suit against the State based on malicious prosecution. It is denied that the prosecution referred to therein were malicious.

317.3. In paragraph 14, it is alleged that investigations and prosecutions pertaining to Toshan Panday ("Panday"), General Richard Naggie Mdluli ("Mdluli"), Phahlane and General Jan

GSM

Ntebo Mabula ("Mabula") are prime examples of matters that would have proceeded to finality were it not for my consistent interference.

317.4. Regrettably, the statement and evidence of McBride does not specify in what respect I interfered in the investigations and prosecution of these matters.

317.5. I was never involved in any investigation and/or prosecution of any of the matters in this paragraph and have never set an eye on the dockets pertaining thereto.

317.6. As such, I deny the inference and conclusion wish to portray from this paragraph.

317.7. The withdrawal of the charges was as a result of the fact that the State witnesses were no longer prepared to testify in line with the contents of their statements.

317.8. The withdrawal was not as a result of the alleged realisation that the State did not have a watertight case against the Accused.

317.9. Save as aforesaid, the remainder of the allegations therein contained are specifically denied and McBride is put to the proof thereof.

318. **Ad paragraph 50**

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318.1. In this paragraph it is alleged that Sesoko was victimized and suspended from his post, of Chief Director of Investigations and Information Management, by Kgamanyane because Sesoko had supported McBride's application to the Constitutional Court to challenge the constitutionality of section 6(3) and 6(6) if the Independent Police Investigative Directorate Act, Act 1 of 2011 ("the IPID Act"). Further that Sesoko was instructed by Kgamanyane to go to Limpopo and North West to collect the dockets in which former DPCI Head, Mthandazo Berning Ntlemeza ("Ntlemeza") and Mabula were suspects.

318.2. No facts are set out indicating how Sesoko's support of McBride Constitutional Court application and the resultant suspension from his post relate to me or in what way I played a role in respect of same. It is also not set out in what manner the alleged retrieval of dockets pertaining to Ntlemeza and Mabula relate to me.

318.3. Despite Sesoko having testified before the Commission, it was not his case that I ever played any role in his victimization, suspension and the initiation of any disciplinary steps, nor in any of the dockets referred to in this paragraph. I have also never laid an eye on such dockets.

318.4. I therefore deny any inferences and or conclusions sought to be drawn from this paragraph.

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319. **Ad paragraph 78**

319.1. In this paragraph it is alleged that that Crime Intelligence had infiltrated IPID as an official from Crime Intelligence, Brigadier Tiou Kgomo ("Kgomo") had been appointed as Director: Investigations at IPID by Kgamanyane. It is also alleged that Kgomo approached two IPID officials, the late Mandla Mahlangu ("Mahlangu") and Cedrick Nkabinde to offer them Brigadier positions in order to induce them to make false statements to implicate IPID managers in wrongdoing.

319.2. Attached to this paragraph is annexure "Q" which is alleged to be a transcript of the recording made by Mahlangu wherein he had a conversation with Kgomo. It is alleged that in the transcript Kgomo made such an offer to Mahlangu and also confirmed to Mahlangu that he (Kgomo) is working with the North West team led by Mabula investigating a concocted case that would bring McBride down along with other IPD investigators and thus torpedo the investigation against Phahlane. Lastly, the paragraph alleges that Kgomo took Mahlangu to Potchefstroom to meet Mabula.

319.3. Once again, no facts are set out to indicate what any of these allegations have to do with me and or how am I connected thereto.

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319.4. Similar to the previous paragraphs, I have no knowledge of the alleged infiltration of IPID by Crime Intelligence nor do I have knowledge of the Brigadier posts which were alleged to have been offered to IPID officials and therefore deny the inference and conclusions sought to be drawn from this paragraph.

319.5. I take note of the transcription of the alleged conversation between Kgomo and Mahlangu, annexure "Q", save to state that I see no relevance thereof in so far as it may implicate me in interfering with the investigative independence of the NPA, IPID and DPCI and destabilising these institutions, delaying recommended prosecutions and participating in the persecution of the NPA, IPID and DPCI officials and thus enabling the state capture of the criminal justice system, I deny any involvement with the alleged conduct of Kgomo or any knowledge thereof.

320. **Ad paragraphs 87 to 100**

320.1. These paragraphs, *inter alia*, allege that:

320.1.1. O' Sullivan laid a complaint at IPID against Phahlane pertaining to the construction of his Sable Hills residence. The IPID under Kgamanyane did not investigate this complaint and only did so when McBride returned from suspension when the latter constitute a task team to investigate the complaint

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with the assistance of O'Sullivan and Trent (see paragraph 88);

320.1.2. In response to this IPID investigation the SAPS commenced with counter investigations against IPID officials, which counter investigations resulted in a case being opened, under Kameeldrift 12/01/2017, against O'Sullivan and Trent. These charges resulted in IPID officials, Mahlangu and Binang, being joined by Molatlhwa Mashuga ("Mashuga"), the prosecutor in the matter, with O'Sullivan and Trent in the charges preferred against the latter two for contravening section 33(5) and 33(2) of the IPID Act.

320.2. Once again, no facts are set forth to explain what role I played in all these events and how such role was played out.

320.3. I was never involved in the investigation nor prosecution of this matter as is evident that it was Mashuga who is the prosecutor who dealt with this matter. As mentioned earlier in this affidavit, Mashuga has filed an extensive affidavit with the Commission explaining his involvement in this matter. Mashuga's confirmatory affidavit is attached hereto as annexure **"GSM4"**.

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320.4. As such, I deny the inferences and conclusions sought to be drawn from these allegations.

321. **Ad paragraphs 101 to 118**

321.1. These paragraphs, *inter alia*, allege that:

321.1.1. The purpose of the SAPS' counter-investigation was to impede the IPID investigation and thus undermine its independence.

321.1.2. As a result of such counter-investigation the IPID launched an urgent interdict against Phahlane, Mabula and Brigadier Ncube and later the rest of the Mabula team who were conducting counter-investigation against the IPID officials were added as respondents.

321.1.3. There is a recording in which one of the suspects admits to torturing the deceased in the Makau case which implicates Mabula. The recording which allegedly implicates Mabula was transcribed and is attached to McBride's affidavit as annexure **"R"**. It appears that the so-called suspect admitted such allegation to Booysen who recorded the conversation.

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321.1.4. The parties to the urgent interdict reached agreement to the effect that the SAPS would stop the counter-investigation against IPID officials.

321.1.5. McBride approached the Portfolio Committee on Police ("PCP"), the Minister of Police, Bheki Cele ("Cele") and the National Police Commissioner of Police General Kehla Sitole ("Sitole") and despite such requests for assistance none bore fruit.

321.2. Once again, no facts are set forth to explain what role I played in all these events and how such role was played out.

321.3. I have no knowledge of these court proceedings nor the alleged assistance sought from the Minister, the National Commissioner and or the PCP.

322. As such, I deny the inferences and conclusions sought to be drawn from these allegations.

N. AFFIDAVIT OF KAREN HELEN VAN RENSBURG

323. I specifically deny the allegations pertaining to me in this affidavit. I was never involved in the Kameeldrift as already demonstrated above.

O. AFFIDAVIT OF HELEN ELIZABETH VAN JAARSVELD

324. I specifically deny the allegations pertaining to me in this affidavit. I was never involved in the Kameeldrift as already demonstrated above.

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P. THE ROGUE UNIT (BROOKLYN CAS 427/05/2015)

(a) Overview

325. In a nutshell, the Rogue Unit matter is about:

325.1. Whether SARS officials installed listening and monitoring devices at the offices of the Directorate of Special Operations (*"DSO"*) and NPA offices of the following officials:

325.1.1. The former NDPP, Adv Vusi Pikoli (*"Pikoli"*);

325.1.2. The former DNDPP, Adv Mokotedi Mpshe (*"Mpshe"*);

325.1.3. The former DNDPP, Mr Willie Hofmeyer (*"Hofmeyer"*);

325.1.4. Adv Kiliany Pillay (*"Pillay"*);

325.1.5. Adv Gerrie Nel (*"Nel"*);

325.1.6. Mr Andrew Leask (*"Leask"*);

325.1.7. Ms Thanda Mgwengwe (*"Mgwengwe"*).

325.2. If such devices were installed, as alleged by Helgard Lombard (*"Lombard"*) and Skollie:

325.2.1. Who authorised such installations;

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325.2.2. On what authority did such person rely;

325.2.3. If it was SARS management, whether SARS has the statutory authority not only to authorise, but also to carry out such surveillance.

326. I will demonstrate that SARS has no authority to authorise and/or conduct such surveillance, save for limited instances where SARS act with other law enforcement agencies, such as the Intelligence Division of the SANDF, the Intelligence Division of SAPS and the National Intelligence Agency, currently known as the State Security Agency.

327. I will also demonstrate by reference to legislative prescripts and witness statement that:

327.1. SARS is not statutorily authorised to act as it did; and

327.2. There is undisputed evidence that such surveillance equipment was installed in the offices of the officials referred to above.

(b) **<u>Formation</u>**

328. The High-Risk Investigation unit (commonly referred to as the Rogue Unit) owes its origin from the memo written from the office of the General Manager of the Enforcement and Risk division of SARS, Pillay dated 2 February 2007 and the then Commissioner of SARS, Gordhan directed to the former Minister of Finance, Mr Trevor Manuel ("Manuel") to seek approval for the funding of special capability within the former National

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Intelligence Agency (NIA) (currently known as the State Security Agency) to supply SARS and other law enforcement agencies with the necessary information to address the illicit economy, from where SARS was losing a lot of revenue. The Unit was called the Special Projects Unit, later it was referred to as the National Research Group and then it was called the High-Risk Investigations Unit ("HRU"). It was managed by Skollie from inception until 2008 and Van Loggerenberg from 2008 to 2009. A copy of the memorandum is attached hereto, marked as annexure **"GSM21".**

329. The purpose for the creation of the Unit is outlined in paragraph 1 of the Memo:

> "*To seek approval to fund a special capability* ***within NIA*** *to supply SARS and law enforcement with the necessary information to address the illicit economy.*" (my emphasis).

330. It is clear that SARS had a huge challenge of loss of revenue within the illicit economy and that only a multi-disciplinary approach of dedicated law enforcement agencies could address the challenge effectively. The initial intentions of establishing the unit are genuine and perfectly in order. The idea was to place the unit within the NIA and it makes perfect sense, as NIA is the agency that has the legal mandate and the capability to collect covert intelligence.

331. Paragraph 2 of this memo recognises this fully that:

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*"2.1 Collecting tactical intelligence invariably means penetrating and intercepting organised crime syndicates, an activity for **which SARS does not presently have the capability (including the legislative mandate to manage clandestine activity).***

*2.2 Discussions are taking place within the National Intelligence **to supplement SARS intelligence capability. NIA is willing to create a ring-fenced capability,** provided funds are made available to cover personnel costs. All other costs are covered by NIA. **NIA is willing to formalise the above-mentioned arrangement into a Memorandum of Understanding (MOU)."***

332. It appears clearly from this portion of the memo that there was awareness that there are organised crime syndicates in operation in the field concerned, which required to be penetrated, for a breakthrough to happen and that SARS alone does not have the capability to achieve this goal. There was anticipation that SARS and NIA would have to engage to face this challenge. What is strange is that the engagement between SARS and NIA only happened at the instance of Manala Manzini ("Manzini"), the former Director General of the NIA, and already at that time (in 2007) the recruitment and training of staff was already done by SARS alone, without any engagement of NIA.

333. After consulting with Manzini, and having his statement reduced to writing, I gained the distinct impression that Manzini expected that SARS would initiate the process of interaction as their memo is clear that *"discussions*

GSM

are already taking place within NIA to supplement SARS's intelligence capability". Instead SARS had started the process of recruiting staff on its own without involving NIA. I agree with Manzini's expectation as SARS is the institution that required the assistance of NIA.

334. Gordhan signed the said memo on 8 February 2007 and the Deputy Minister, Mr Jabu Moleketi ("Moleketi") approved the request on 22 February 2007 and made hand written comments as follows: -

> *"Supported however this is a strange way of executing what I consider to be an economic mandate of NIA… it seems as an add on rather than part of NIA's mandate"*.

335. Manuel approved the request on 22 February 2007 and explained that his approval was against an address by the former President Thabo Mbeki ("President Mbeki") on 9 February 2007 which hinted a process to modernise SARS and to improve inter-departmental structures in dealing with cash in transit heist, drug trafficking and poaching of game and abalone, which is commonly referred to as the illicit economy. It is clear that this capacity was being created within NIA not within SARS and that the memo seeks budget of NIA to be increased at an accelerated amount to cater for this expense. Moleketi's hand written endorsement recognises this as part of the economic mandate of NIA.

336. Manzini engaged with Pillay in respect of the establishment and location of this unit at the instance of NIA and an agreement was not reached as NIA correctly insisted that the Unit should be located within NIA in

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compliance with the National Strategic Intelligence Act 39 of 1994 and the Intelligence Services Act 65 of 2002. At the time of this engagement, the recruitment and training of staff attached to this unit was already done by SARS alone without any involvement of NIA.

337. It must be noted that the Legal Enforcement Division of Customs at SARS was requested on 22 January 2007 to provide a legal opinion or advice relating to the possible amendment of the National Strategic Intelligence Act 39 of 1994 wherein the former Director General of Justice, Adv Menzi Simelane ("Simelane") was asked for support for the amendment to the Interception Act, Act 70 of 2002 the effect of which SARS would be added as a Law Enforcement Agency together with NIA, the Defence and SA Police Service. It appears that SARS was impatience with the stance adopted by NIA that this additional specialised capacity to address the illicit economy should be based with NIA to support SARS.

(c) **Contravention of Section 49(1), read with the Provisions of section 2 and Section 51(1)(b), as well as Section 1 of the Regulation of Interception of Communication and Provision of Communication – Related Information Act 70 of 2002 (RICA) – Unlawful Interception of Communication (against Pillay and Skolile)**

338. The abovementioned charge relates to the unlawful fitment of Surveillance and Listening equipment within the offices of the former DSO and NPA offices (Operation Sunday Evenings). The elements of this offence are as follows:

338.1. Unlawful and intentional;

GSM

338.2. Interception of communication; and

338.3. Without authorisation of the designated judge in terms of section 16 of the RICA Act.

I. **Unlawful and intentional conduct**

339. Leask was the lead investigating officer of a case in which the former National Commissioner of Police and former Head of Interpol, Mr Jackie Selebi ("Selebi") was investigated for involvement in corrupt activities for his dealings with Mr Glen Norbet Agliotti ("Agliotti") for receiving quid *pro quo* payments and benefits from Agliotti.

340. In a meeting in the office of the former NDPP, Pikoli, attended by the management of the disbanded Directorate of Special Operations ("the DSO"), an agreement was reached that steps needed to be taken to enhance the security around the Selebi investigation to protect the officials involved therein.

341. The installation of security equipment which Pikoli authorised was overt, not covert. Adv Leornard McCarthy ("McCarthy"), Nel and Mngwengwe were parties to the meeting.

342. McCarthy advised Leask to seek the assistance of Skollie for advice on what steps could be taken to enhance the security of their documents and staff. Leask remembered that Skollie used to frequent the offices of the DSO when Pete Richer ("Richer") was at the DSO.

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343. Leask contacted Johannes de Waal ("de Waal") asking him if he could get hold of Skollie, as they wanted to upgrade their security at the DSO offices. De Waal gave Leask the contact details of Skollie. Leask then contacted Skollie enquiring about a security upgrade at the NPA and DSO offices. Leask arranged a meeting with Skollie where they discussed the security equipment required. Leask and Nel informed Skollie that the equipment they required must have the capability to detect real time intrusions, remote viewing and recording.

344. Lombard stated that Skollie instructed him not to tell Leask and Nel that they were SARS employees, as they could use the business of installing the equipment as an opportunity to a make profit for the Special Projects Unit.

345. Lombard used his dormant company, Protech Security Consultants to submit a quotation to the NPA. Pieter Jonker ("Jonker") of the DSO paid Lombard two (2) separate cash amounts of R900 000 and R250 000 to purchase the equipment. The cash amounts were withdrawn from the Confidential Fund (C-Fund) of the DSO. Lombard then deposited the cash amounts into his wife's ABSA Bank account, with the permission of Skollie. I annex hereto a statement of Jonker, marked as annexure **"GSM22"** where the aforementioned is stated. From the aforesaid, it is clear that the manner in which the cash money was dealt with, was to avoid linking the DSO to the transactions.

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346. In his statement, Lombard stated that he enquired from Skollie about the existence of section 16 of the RICA Act authorisation ("the authorisation"). A week later, Skollie informed him that he had spoken to Pillay, who informed him that the authorisation was with the lawyers, and also that, President Mbeki had given approval of the operation. I attach hereto the statement of Lombard (A34 in the docket), marked as annexure **"GSM23.1"**, together with annexures A to Z thereto. I attach hereto the affidavit of Lombard (A129 of the docket) dated 24 October 2016, marked as annexure **"GSM23.2"**. I attach hereto Lombard's supplementary affidavit (A147 of the docket), marked as annexure **"GSM23.3"**.

347. Lombard and Skollie installed the surveillance equipment in the late afternoons and evenings when there were no employees at the offices of the NPA and DSO. Some of the offices in which the surveillance equipment was installed include the following offices and boardrooms:

347.1. The office of Pikoli and his boardroom;

347.2. The office of Mpshe;

347.3. The office of Hofmeyer;

347.4. The office of K Pillay;

347.5. The office of the Director Administration of the NDPP, Danie Schmidt ("Schmidt");

GSM

347.6. The office of the Divisional Head of Operational Support Division, John Izak Welsh ("Welsh");

347.7. The office of Nel;

347.8. The office of Mngwengwe;

347.9. The office of Leask; and

347.10. The office of the Special Investigator, Slang Mangwale ("Slang").

ii. **Interception of communication – The capability of the equipment fitted**

348. In his statement, Lombard indicated that the equipment had the capability to detect an intrusion and send a signal via cell phones to the identified NPA and DSO members who could then view it remotely and have it recorded onto a disk.

349. Lombard stated that he was able to access the equipment remotely because Leask had reported that from time to time the system would hang up and the NPA and the DSO officials would not have access thereto. Upon investigation, Leask discovered that the signal was poor and there was a bug on the 3G routers which caused the system to hang up from time to time. Lombard then asked Leask for permission to connect remotely to prevent the hanging ups. Leask gave him verbal permission to connect remotely.

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350. Lombard and de Waal indicated that they used it as an opportunity to eavesdrop on the NPA and DSO at the request of Pillay and Skollie in 2007, as Pillay was interested in the investigation which the DSO was conducting into the activities of the former Commissioner of Police, Jackie Selebi and Glen Agliotti. Skollie informed Lombard that he had been contacted by Leask to install a security system at the NPA and DSO offices, as Leask and Nel suspected that the SAPS had gained access to sensitive documents relating to the Selebi investigation. Lombard stated that Skollie informed him that Pillay and President Mbeki were also interested in knowing more about the prosecution of the Jacob Zuma ("Zuma"), which the DSO was contemplating or investigating at the time.

351. The covert equipment initially requested is listed in Annexure "B" to annexure "**GSM23.1**" hereto, which consisted of:

351.1. CCTV cameras, overt and concealed complete with digital video recorders and microphones;

351.2. Equipment to monitor and view remotely, ie GSM 3G routers;

351.3. Alarm systems at certain offices; and

351.4. Access control system in the Special Investigation area Boardroom protection to counter eavesdropping devices Window tint.

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352. Leask and Nel later verbally added the following audio capability to be used with the CCTV cameras:

352.1. Cellular phones with remote viewing software;

352.2. Digital audio recorders & concealed microphones; and

352.3. Cell phone encryption with Military specification software, to install this service one must register with the Department of Communication as a "Cryptography service provider", which he did on 21 August 2007. A receipt of R300 of a Nedbank deposit for registration as a "Cryptography service provider" to the Department of Communications is attached to Annexure **"GSM23.1"** hereto as Annexure "C".

353. On 12 July 2007, Jonker called Lombard and informed him that the funds for the installation of the equipment were ready, and Lombard was given R300 705.46 in cash which he deposited into his wife's ABSA Bank account. On 17 July 2007, he received a further amount of R600 000.46 which he also collected from Jonker and deposited into the same account. The bank statements annexed to Annexure **"GSM23.1"** hereto as Annexure "D" confirm the deposits into his wife's bank account.

354. In order to verify the capability of the equipment that Lombard had installed in the offices of the NPA and DSO, I requested the investigating team to confirm the capability of the equipment as indicated by Lombard. Captain Freddy Sewele ("Sewele") instructed Izak Johannes Fisher

GSM

("Fisher"), a Colonel at the Head Office of the Crime Intelligence, attached to the Technical Support Unit, who holds a Diploma in Police Administration, Electrical Engineering, and a Higher Diploma in Electrical Engineering, to inspect the equipment to verify its capability. I annex hereto a copy of Fisher's statement marked as **"GSM24"**.

III. Without Authorisation of the Designated Judge in terms of Section 16 of the RICA Act – The Installation of the Surveillance Equipment

355. The installation of the equipment commenced in July 2007. In the beginning, Skollie accompanied Lombard and assisted with the installation. The installation mainly took place after-hours to avoid exposure from the staff who had links with the SAPS. The Manuals of the equipment fitted at the NPA and DSO offices are attached to Annexure **"GSM23.1"** hereto as Annexure "F" to "J", and include the following:

355.1. Pinhole Cameras (Leask; Nel)

355.2. High resolution cameras (Leask; Nel; Pikoli; Slang)

355.3. Minidome cameras (Leask; Mgwengwe)

355.4. CMOS snake camera (Nel; Welsh)

355.5. Mobile phone video monitoring Software (Schmidt; Mgwengwe; Nel; Welsh; Leask; Slang)

355.6. Firewall pro

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355.7. Magical Security 128 Encryption

355.8. Diasonic Voice Recorder

355.9. Solid Voice recorder

355.10. PMD660

355.11. Marantz Recorder

The above brackets are the names of the officials in whose offices the equipment was installed.

356. Lombard further stated that the Digital Video Recorders ("DVR") could be accessed by any official into whose office the equipment was fitted and could only be downloaded by Leask, Nel and Lombard. The equipment was set up on basic security mode with username "administrator" and password "000000". There was no server, and hence, the dates were kept on the equipment's hard drive. Each DVR had an 80GB Hard Drive Disk ("HDD") installed and all the videos were recorded on the HDD. A notebook could be used to download data (audio or video) from the HDD of the notebook. A list of all SARS notebooks, with their serial numbers, used to download the videos and recordings is provided in Annexure **"GSM23.1"** hereto as Annexure "L" ("the list"). After downloading the data (Video or audio), de Waal would burn a CD of it and hand it to Skollie.

357. On 25 May 2016 from 19:21 to 22:25, Lombard accompanied by his legal representative, Adv Fanie Schnetler ("Schnetler"), pointed out all the

GSM

offices where the surveillance equipment was installed to Colonel Tshabalala of East Tshwane police station in accordance with section 208 of the Criminal Procedure Act 51 of 1977.

358. It was at this pointing out session that additional surveillance equipment which was still within the offices of the NPA and DSO was removed with the assistance of the officials from Crime Intelligence Technical Support Unit.

iv. **Evidence of Unlawful Conduct – Listening and Transcribing of the video/audio**

359. In early October 2007, de Waal was requested by Skollie to transcribe audios of the videos from the offices of the NPA and DSO in which the equipment was fitted, at his house in Irene, Centurion. De Waal asked Skollie if there was an authorisation for the operation, and Skollie explained that "only the President" and Pillay were aware of the operation. Skollie added that he would show de Waal the authorisation once he obtained it, but never did. Skollie further added that Lombard would never have fitted the equipment if there was no proper authorisation. De Waal stated that, at the time, he knew that the DSO was investigating cases relating to Selebi, Shabir Schaik ("Shaik") and Zuma. Further, he stated that at the time, there were tensions between the DSO and SARS, as Pillay was refusing to release tax information of persons that the DSO was investigating.

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360. De Waal downloaded the video and audio portions of the recordings every Sunday evening on Skollie's laptop. Thereafter, he transcribed the audio portions of the recordings, and subsequently handed them over to Skollie, who would then give them to Pillay. Skollie perused the documents and placed them in an envelope(s) and gave de Waal instructions to hand-deliver the envelope(s) to Pillay.

361. De Waal stated that Pillay never opened the envelope(s) in his presence and never discussed the contents of the envelope(s) with him. De Waal transcribed the first audio on 3 October 2007, and the last on 28 November 2007. Before joining SARS, de Waal was involved in numerous operations at the NIA under the management of Skollie and had always worked on verbal instructions without having seen the actual authorisation.

362. The objective facts set out above demonstrate that the charges in the Rogue Unit case were not "trumped up charges", as alleged by Booysen and McBride. As far as I am aware, none of the persons in respect of whom it is alleged that the charges were "trumped up", came before the Commission in support of Booysen and McBride's unfounded and malicious allegations.

v. **<u>The Accused persons</u>**

363. The abovementioned charges were preferred against Pillay in his capacity as General Manager of the Enforcement and Risk Division of SARS, Skollie, in his capacity as a Specialist Agent within the Enforcement and

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Risk Division of SARS in charge of the Surveillance Unit and Van Loggerenberg, in his capacity as a Special Officer in the office of the General Manager of the Enforcement and Risk Division of SARS.

(d) **(Contravention of the Section 10, read with Sections 1, 2, 24, 25, and 26(1)(a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 – Unauthorised Gratification by a Party to an Employment Relationship (against Pillay and Van Loggerenberg)**

364. The abovementioned charge relates to the unlawful and unauthorised gratification in the amount of approximately R100 000.00 for the benefit of Lombard, for acting in relation to the exercise, carrying out or performance of his powers, duties or functions within the scope of Lombard's employment with SARS. This amount was the remainder of the funds utilised for the unlawful installation of video and listening equipment within the offices of the NPA and DSO. The elements of this offence are as follows:

364.1. Employment at SARS;

364.2. Performance of duties;

364.3. Unauthorised gratification;

364.4. Benefit of themselves or another.

365. Below I discuss in detail the elements of the offence.

(e) **Employee of SARS**

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366. In 2005, whilst Lombard was employed at South African Defence Force Intelligence ("DI"), Charl Fourie ("Fourie") and De Waal approached him to enquire whether he was interested in taking up a position in a Unit that SARS intended to establish. He informed them that he was interested. Whilst Lombard was at DI, he was involved in surveillance operations together with SAPS and the DSO.

367. In 2006, Lombard received a call from Skollie and he was questioned about his technical abilities, after which he was invited to participate in a psychological, integrity and IQ test. After obtaining a Top Secret Clearance, Lombard was offered a position as a Specialist Agent: Custom Border Control Unit at SARS, and commenced in that capacity on 1 March 2007. A copy of his appointment letter is annexed to Annexure **"GSM23.1"** hereto as Annexure A.

368. Lombard reported to Skollie, who, in turn, reported to Pillay, who reported to Gordhan. At the time of Lombard's appointment, Skollie advised him that members of the newly formed Unit would not be exposed to other SARS employees, would work from home or guest houses, and the Unit would operate on a need-to-know basis. Lombard's version is corroborated by various witnesses, whose statements are attached hereto, marked as follows:

368.1. Jappie Tshabalala ("Tshabalala") – Annexure **"GSM25"**;

368.2. Eric Khulekani Khwela ("Khwela") – Annexure **"GSM26"**;

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368.3. Norah Pitsi ("Pitsi") – Annexure **"GSM27"**;

368.4. Dillo Nyapudi ("Nyapudi") – Annexure **"GSM28"**;

368.5. Danie le Roux ("Le Roux") – annexure **"GSM29"**;

368.6. Francois van Niekerk ("Van Niekerk") – annexure **"GSM30"**.

(f) **Performance of duties**

369. In May 2007, Skollie enquired from Lombard whether it was possible to instal video and listening equipment at the offices of the NPA and DSO. Lombard stated that it was possible if they had the requisite authorisation in terms of Section 16 of RICA from the designated judge.

370. In June 2007, Skollie informed Lombard that Leask from the DSO had contacted him to instal video and listening equipment at the offices of the NPA and the DSO, as they expected that SAPS had gained access to sensitive documents relating to the Selebi and Agliotti investigations. Lombard and Skollie met with Leask and Nel who advised them what equipment they required and they furnished a quotation for such equipment to Leask and Nel. Jonker phoned Lombard to advise him to collect the money for the equipment.

371. In July 2007, Lombard and Skollie installed the video and listening equipment at the offices of the NPA and DSO. The equipment was removed on 2 June 2016. Photos of the equipment which were removed from the offices of the NPA and the DSO, the premises it was and the

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process of its removal, are attached as annexure **"GSM31"**. Lombard is depicted in many of the photos, removing the equipment.

372. In Mid September 2007, Skollie requested Lombard to monitor the meetings in the offices where the video and listening equipment was installed. Lombard verbally reported to Skollie, who requested him to download the footage and recordings. Lombard did so and handed the footage and recordings over to Skollie, who, in turn, requested De Waal to transcribe the recordings.

(g) **Unauthorised gratification for and Benefit of themselves or others**

373. After all the equipment had been installed at the offices of the NPA and the DSO, and all the reconciliation of the finances on the installation had been concluded, an amount of approximately R100 000.00 was left of the amount collected by Lombard.

374. Lombard enquired from Pillay and Van Loggerenberg into which account of SARS the above amount must be paid. Both Pillay and Van Loggerenberg advised Lombard that there is no provision made for such an amount and the amount cannot be paid to SARS. They further advised Lombard that he must keep the money for himself, and should anybody ask about the money, he must tell them that it was a private installation. Lombard declared in the 2008 tax year a profit of R112 740.00 and paid an amount of R45 096.00 as 40% tax.

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375. It is clear from the above that the amount paid for the installation was not authorised through the normal process of SARS, hence the fact that no provision was made for the money left over to be paid back to SARS.

376. In 2008, in order to bring the unauthorised transaction in line with the requirements of SARS with regard to private employment by SARS employees, Van Loggerenberg signed an authorisation to Lombard in respect of the private installation, despite the fact that Van Loggerenberg was not in charge of the Unit at the time of the installation. The authorisation is attached to Annexure **"GSM23.1"** hereto as Annexure

(h) **Alternative count – General corruption**

377. This charge relates to general corruption. In the event that the Court would find that there was no employment relationship between SARS and Lombard, this alternative charge was proffered in order to demonstrate that the receipt of the approximate R100 000.00 by Lombard, amounted to general corruption.

Q. **EARLY RETIREMENT OF PILLAY AND REAPPOINTMENT IN THE SAME CAPACITY**

(a) **Overview**

378. As the investigating team and I were working on the settlement package between Skollie and SARS, which was causing uneasiness amongst some SARS employees, we came across correspondence relating to the early retirement of Pillay. Perusal of the correspondence appeared to display a possible irregular, fruitless and wasteful expenditure and

GSM

unauthorised expenditure in respect of the early retirement of Pillay by SARS. It appeared very improper that SARS could pay a retirement penalty for an employee particularly when he takes early retirement due to purely personal reasons.

379. I illustrate below that the payment of the early retirement penalty by SARS exposed SARS to irregular expenditure and was criminal. The opinion supplied by Symington is in my view incorrect and not in line with the law and GEPF Regulations. I did not have Symington's statement in the docket when the decision to prosecute was made. I only received it after representations were submitted to Abrahams. The decision would still have been the same with the opinion as it does not provide sound legal reasons and motivation for the view expressed by Symington.

380. Booysen alleges that I am part of prosecutors who prosecuted Gordhan, McBride, van Loggerenberg, Pillay, Magashula, Sesoko and Van Rensburg maliciously. He further alleges that I acted in disregard of the Constitution and the oath of office. I will demonstrate by reference to legislative prescripts and evidence in witness statements that there were cogent justification for pursuing the charges which were preferred against the person in respect of whom the charges were preferred. Despite the fact that the charges have been withdrawn, I still hold the view that they were wrongly withdrawn. It must also be noted that it is not Gordhan, Magashula or Van Rensburg raising these issues, it is Booysen and McBride complaining on their behalf.

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381. The charges against Gordhan, Pillay and Magashula were the following: -

381.1. Fraud in that a false pretence was given to SARS and National Treasury to its prejudice that SARS was liable to pay in excess of a million rands to the Government Employees Pension Fund (GEPF) on behalf of Pillay which was a penalty for taking early retirement for personal reasons.

381.2. Contravention of the Public Finance Management Act by causing SARS to incur or failing to prevent irregular, fruitless, wasteful and unauthorised expenditure.

381.3. A further fraud in that a false pretence was given out to the Human Resources of SARS to its prejudice to enter into an employment agreement with Pillay for a remuneration package for a period of five (5) years instead of three years which was in the approved memo.

381.4. A further fraud in that a false pretence was given to Human Resources of SARS to its prejudice to enter into an employment contract with Pillay for a period of four (4) years when there was no approved internal memo or letter authorising same.

382. Pillay in a memo attached to Christina Susana Visser's statement as "CSV 03" informed Magashula in his capacity as Commissioner of SARS that he has decided to take early retirement and was requiring that the

GSM

Minister approve of his early retirement with full benefits, for family considerations and that the Minister of Finance should reappoint him in the same capacity as a contract employee for three (3) years. A further request was that the Minister should approve that the early retirement penalty imposed on his pension in terms of Rule 14.3.3 (b) of the GEPF rules, be paid by SARS to the GEPF.

(b) **Fraud**

383. In this affidavit, I only set out the elements of the offence of fraud, because the evidence pertaining to contravention of the PFMA and GEPF Rules were fully set out in the affidavit of Torie to which I make reference and quote in this affidavit for ease of reference.

384. The elements of the offence of fraud are: -

384.1. The unlawful making of a misrepresentation,

384.2. to SARS and or the Human Resources division of SARS,

384.3. to the prejudice or potential prejudice of SARS,

384.4. knowing that such representation was false when it was made,

384.5. with the intention to defraud.

385. The following evidence was at my disposal in the docket when the decision to prosecute was made: -

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385.1. On 12 August 2010 the former Commissioner of SARS, Magashula requested the former Minister of Finance, Gordhan to approve the early retirement of Pillay from SARS with full retirement benefits with effect from 1 September 2010 and that SARS must pay the early retirement penalty that is payable to the GEPF as contemplated in Rule 14.3.3(b) of the GEPF Pension law read with section 19 of SARS Act and section 16 (2A) of the Public Service Act, 1994. Approval was also sought for Pillay to be retained as Deputy Commissioner on contract for three (3) years. Effectively Pillay would be enabled to pay for his children's education and continue his employment at SARS for another three (3) years, whilst SARS would suffer financial loss of in excess of a million rands;

385.2. Provision is made in the memo for the former Deputy Minster, Nhlanhla Nene to recommend the proposal but the former Minister, Gordhan approved the early retirement without any signature of Nene. Nene explained that he had no recollection of the memo being presented to him for comment. The statements of Susan Venter (A130), Nico Coetzee (A102), Estelle van Niekerk (A100) and others based at Human Resources and Finance sections of SARS are in the docket. Gerda van den Heever (A104) who also took early retirement from SARS at an age of 58 after serving SARS for twenty-seven (27) years was not accorded the same privilege as Pillay, she repaid her penalty to GEPF after SARS paid it;

G.S.M

385.3. After Pillay went on early retirement, Magashule entered into an employment agreement with Pillay in the same capacity for a period of five (5) years commencing 1 January 2011 knowing that the approval granted was for a period of three (3) years only;

385.4. When Gordhan was appointed a Minister of Co-operative Government in May 2014, he extended Pillay's contract for another four (4) years when there no internal memos authorising same when his employment contract was terminating in 2015. The contract still had a year to run before it expired.

(c) <u>The representations made by Pillay and Magashule, the opinion of Symington and the prosecution teams view pertaining thereto</u>

386. After, Pillay and Magashule had made representation and an application was instituted by Freedom Under Law ("FUL") against President of South Africa and NPA, Abrahams became aware of the opinion prepared by Symington. Abrahams was of the view that the prosecution could not prove intention on the part of the accused because they relied on the opinion.

387. Abrahams in line with the trite principle of seeking the views of the prosecutor seized with the matter requested that I consider the opinion prepared by Symington and furnish him with my views. In response to Abrahams request, I expressly stated that the opinion supplied by

GSM

Symington was (and still is) in my view incorrect and not in line with the law and GEPF Regulations. As such, my decision would still have been the same (and is still the same) with the opinion as it does not provide sound legal reasons and motivation for the view expressed.

388. I expressed my views in a memorandum dated 19 October 2016, attached hereto, marked as annexure **"GSM32"** addressed to Pretorius and Abrahams where I, *inter alia*, stated as follows:

"A: INTRODUCTION

The purpose of this report is to provide the Acting Special Director of the Priority Crimes Litigation Unit with the prosecuting team's inputs having read the representations received by the office from accused 1 and 2's legal representatives.

We thank Adv Pretorius for the opportunity and hope that our inputs will be given due consideration.

B: BRIEF SUMMARY OF THE REPRESENTATIONS

Oupa Magashula

Tilney Incorporated rely on a note dated 18 October 2016 prepared by Adv De Jager SC. It appears therefrom that there are no factual disputes, only the interpretation of the law seems to be the points in issue. We do not agree, there are factual disputes, Mr Pillay wrote

GSM

two(2) separate internal memos undated, one addressed to Accused 1(Magashula) and the other addressed to Accused 3 (Gordhan)

In the one addressed to Magashula he mentions the reason for his early retirement as "I was expected to perform at a very high level accompanied by accountabilities that go with the performance of such a high level job. This exacted its toll from me in the sense that my health condition is slowly deteriorating. Added to this, my family responsibilities, for a long time, suffered on account of the dedication required by my job…I have decided to take early retirement."

In the one addressed to Accused 3 (Gordhan) he states:

> *"I have reached a stage in my life where it has become a reality that I had to make some very important decisions about the education of my children. The decision I have taken will require a considerable capital investment, money that can be raised by means of a bank loan, but which would be prohibitively expensive in view of the current financial circumstances where very high rates of interests are the order of the day and indications are that this situation will prevail for the foreseeable future. In view of this I have decided to inform you that I intend to retire in 2009 when I reach the age of 56 years. As I have already reached the earliest optional retirement age of 55 years in terms of the SARS retirement provisions, the retirements benefits will provide me with a lump sum benefit (which will*

G sm

financially support the decision I have made in terms of the education of my children) as well as a monthly pension. Whilst this may not be ideal in terms of maximum benefits when finally retiring, I am of the opinion that this is the best option available to me as far as my children's education is concerned.

This brings me to the second issue at stake, namely how I view my retirement as raised above. Clearly I am doing this on account of a matter that has nothing to do with my work at SARS. I still feel that I am still capable of doing my work, I still have the enthusiasm and will to do it and I am of the opinion that through my work, I can still contribute to the establishment of an even better South Africa for all its citizens."

Clearly the two separate reasons for early retirement are very different and mutually contradictory to each other. Section 16(6)(a) of the Public Service Act 103 of 1994 requires that the Executive Authority may authorise an employee to take early retirement if there are sufficient reasons (our underlining) to take such early retirement. In our view the reasons advanced for such early retirement, mutually contradictory to each other as they are, are purely personal and have nothing to do with his obligations towards SARS. The officials at Human Resources did warn accused 1 that implementation of the decision will amount to SARS paying for the education of Pillay's children, but they were simply ignored.

GSM

In the accused representations, it is alleged that the accused received legal advice from Mr Viok Symington from the SARS Legal and Policy Department, with respect this advice, despite being unsigned, is in our view very vague and no reasonable person may rely on such unmotivated and baseless advice. It is non-committal, as it only states that "approached individually, all three elements are technically possible under the rules of the GEPF read together with the Employment Policies of SARS. It is not clear what he means that the Minister may "waive" the early retirement penalty as if the penalty is payable to the Minister, the penalty should be paid to the GEPF and Rule 14.3.3 requires it to be paid by the employee and not the employer. No legislation authorises the Minster to direct that the early retirement penalty should be paid by the employer and to the extent that the Minister caused SARS to incur such unnecessary expenditure, the Minister is equally liable in terms of the law.

We have asked the Investigating team to approach Mr Viok Symington to verify the veracity of his opinion and we should receive his statement tomorrow.

We are of the view that there are sufficient facts to prove unlawfulness and intention to defraud SARS. The Minister did not exercise his discretion in accordance with the law, he exercised his discretion contrary to Rule 14.3.3 and the fact that some legal advisor from Legal and Policy Affairs of SARS says it is permissible without the legal basis of such an opinion does not make his conduct lawful. The Minister

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acted ultra vires his powers and not in line with Rule 14.3.3 of the GEPF. It is significant that the representors do not mention this rule at all and why the accused 2 should be "exempted" from paying the early retirement penalty.

The 3 000 employees from various government departments in respect of whom early retirement with full benefits were approved, referred to as Appendix A in the memo could not be traced and if it were to be located, would differ materially with Mr Pillay's case in that they were early retirements for entirely different considerations (dispensation for affirmative action considerations, not purely personal reasons like those advanced by Pillay). The same applies to the five such requests which were allegedly approved by the Minister and or the former Minister.

Representations on behalf of Pillay

The representations on behalf of Accused 2 refer to sections of the Act that we have already dealt with and do not raise any new issues. We are not aware what public policy considerations the NDPP was addressed on and cannot comment thereon. If the public policy consideration referred to is the prevailing public criticism of the decision to charge the accused, it would then mean the NPA should succumb to pressure and thereby lose its independence and credibility.

C: RECOMMENDATION

GSM

It is recommended that in the absence of cogent reasons why prosecution should be reconsidered, the representations must be turned down and prosecution of all three (3) accused persons must continue."

389. The views expressed in my memorandum were also confirmed by private counsel who was briefed to draft the NPA's answering affidavit in the FUL application and the contents of that affidavit are set out in detail in the affidavit of Torie's filed in the Commission. I align myself with the contents of Torie's affidavit as set out in paragraphs 241.3 to 250 as well as paragraph 250 to 306 in respect of the analysis of the employment contract of Pillay. For ease of reference, I quote these paragraph below:

"Despite the fact that the charges have been withdrawn, I still hold the view that they were wrongly withdrawn."

390. One of the complaints that McBride and Booysen have lumped into the litany of matters they rely on to try and prove a point that the NPA is captured, relates to criminal charges that were preferred against Mr Oupa Magashula ("*Magashula*"), Pillay, and the then Minister of Finance Mr Pravin Gordhan ("*Gordhan*"), relating to the pension pay out to Pillay. This prosecution came midstream in the investigation of the unlawful interception of communication at 12 NPA offices.

391. Whilst guiding the investigation pertaining to the unlawful SARS intelligence unit, certain facts came to my attention, which facts indicated a possible contravention of legal prescripts relating to the pension pay out

GSM

of Pillay. Since the PCLU has to guide and manage the investigation of matters referred to them, and matters incidental thereto, I was obliged to guide the investigators and request them to investigate Pillay's pension pay out.

392. I have perused the affidavit of Pretorius and agree with what is stated in his affidavit pertaining to the reasons for instituting criminal proceedings against Magashula, Pillay and Gordon. In this regard I specifically refer the commission to the relevant paragraphs of Pretorius' affidavit and for ease of reference set out same herein below:

> *241.3* In this memorandum, Pillay motivated his first retirement application as follows:
>
> *"PURPOSE*
>
> *The purpose of this memorandum is to explain that I have decided to take early retirement as well as to request you to consider to recommend for possible approval by the Minister certain related matters that will flow from my decision to take early retirement.*
>
> *DISCUSSION*
>
> *As you know, I have been working in the Public Sector for the past 15 years, 10 which have been*

GSM

spent at SARS. For the most part of this period, especially my tenure with SARS, I was expected to perform at a very high level accompanied by the accountabilities that go with the performance of such a high-level job. This exacted its toll from me in the sense that my health condition is slowly deteriorating. Added to this, my family responsibilities, for a long time, suffered on account of the dedication required by my job. With the aforementioned in mind, although still not easy, I have decided to take early retirement.

However, I am still enthusiastic about SARS and the tremendous contribution it makes towards the establishment of an even better South Africa for all its citizens. With a view thereto, I am willing to serve in SARS in a different capacity where the demands of such a job will positivity support the reasons why I am in the first instance taking early retirement. (my emphasis)

Should you favourably consider my proposal to serve SARS in a different capacity, such service will have to be subject to that I be appointed as a contract employee. This will allow me more flexibility in terms of making a decision to finally

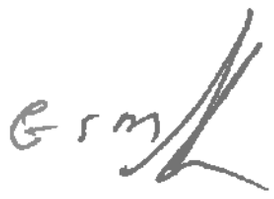
G S m

part ways with SARS, should I come to such a decision. The second condition would be that my early retirement is approved in terms of the provisions of section 16(6)(a) and (b) of the Public Service Act, meaning that the Minister, in terms of the provisions of the abovementioned section approve that the penalty imposed on my pension benefits per Rule 14.3.3(b) of the GEPF Rules be paid by SARS to the GEPF. The GEPF has indicated that the penalty amount on my pension benefits that the employer has to pay on my behalf is R1 292 732,68. (my emphasis)

RECOMMENDATION

My recommendations are that you please:

- *take note that I intend to take early retirement*
- *consider to approve that I be appointed in a different capacity in SARS on a contract basis; and*
- *consider to recommend to the Minister that he approves that the penalty on my pension benefits be paid on my behalf to the GEPF by the employer."*



242. What is clear from the above quoted memorandum is the following:

242.1 Pillay's decision to take early retirement was for personal reasons which had absolutely nothing to do with the business of SARS at the time (and even thereafter);

242.2 Pillay asked to be appointed in a "different capacity" where the demands of such a job will positively support "the reasons why I am in the first instance taking early retirement";

242.3 Pillay was fully aware that the ordinary consequences of his decision to take early retirement were, amongst others, that he himself would have to pay a penalty to the GEPF for his early retirement. It is for this reason that he then asked SARS "to pay on (his) behalf" of himself the amount of R1 292 732.68 as opposed to him paying the penalty himself from his own personal funds, by having his pension benefits reduced.

243. Also, in 2009 Pillay wrote directly to the Minister where he made a different request to approve his application for early retirement for different reasons ("the second retirement application").

G S M

244. In his undated memorandum attached as "SA10" "to Annexure "B" in the main application, motivating the first retirement application, Pillay said the following the Gordhan:

"Dear Pravin,

PURPOSE

The purpose of this memorandum is to explain the reason why I have decided to take early retirement as well as to request you to consider to approve/recommend certain related matters that will flow from my decision to take early retirement.

DISCUSSION

I have reached the stage in my life where it has become a reality that I had to make some very important decisions about the education of my children. The decisions I have taken will require a considerable capital investment, money that can be raised by means of a bank loan, but which would be prohibitively expensive in view of the current financial circumstances where very high rates of interest are the order of the day and indications are that this situation will prevail for the foreseeable future.

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In view of this I have decided to inform you that I intend to retire in 2009 when I reach the age of 56. As I have already reached the earliest optional retirement age of 55 years in terms of SARS retirement provisions, the retirement benefits will provide me with a lump sum benefit (which will financially support the decision I have made in terms of the education of my children) as well as a monthly pension. Whilst this may not be ideal in terms of maximum benefits when finally retiring, I am of the opinion that this is the best option available to me as far as my children's education is concerned.

This brings me to the second issue at stake, namely how I view my retirement as raised above. Clearly I am doing this on account of a matter that has nothing to do with my work at SARS. I still feel that I am still capable of doing my work, I still have the enthusiasm and will to do it and I am of the opinion that through my work, I can still contribute to the establishment of an even better South Africa for all its citizens. Taking this into account, I will appreciate it if you could consider to approve that immediately after my early retirement, appoint me as a contract employee. No legal provision prevents you from making such an appointment.

GSM

The third matter is slightly more technical and complicated and it concerns my early retirement benefits payable by the GEPF. Although the Rules of the GEPF provides that a member of the GEPF can elect to retire from the age of 55 years and onwards, there is a penalty payable in terms of the benefits ... As I intend to take early retirement at age 56 years ... my pension benefits will be reduced by 14.4%. it was realized that the provisions of this particular GEPF Rule prevented many employees from an early retirement and in many instances these were employees Departments would have liked to take early retirement. In an effort to address the situation, Section 16(6) of the Public Service Act ... was amended to provide that where early retirement is applied for, Ministers can approve that employees (Departments/SARS) pay the penalties imposed on early retirees in terms of the GEPF Rules.

In view of this it would be appreciated if you, when I take early retirement, would recommend to the Minister that SARS pay to the GEPF my early retirement GEPF penalties. It is estimated that the penalties will amount to R1 064 257."

245. *In the above quoted memorandum:*

GSM

245.1 Pillay states correctly that what "I am doing ... has nothing to do with my work at SARS";

245.2 Pillay appreciates that "there is a penalty payable in terms of the benefits" for the early retirement which he has decided to take and that "my pension benefits will be reduced by 14.4%";

245.3 Pillay is wrong in saying that section 16(6) of the Public Services Act was amended to enable government employees to pay penalties on behalf of their early retirees. The correct position is that the penalty is imposed by the Rules of the GEPF and the relevant Rule has never been amended to do that which Pillay asked the then Commissioner at the time, Gordhan, to do;

245.4 Pillay further says that whatever decision he has taken (to take early retirement) is intended to provide him with funds for the purpose of paying for the education of his children which funds "can be raised by means of a bank loan, but which would be prohibitively expensive in view of the current financial circumstances where very high rates of interest are the order of the day ...". It is therefore clear from this that Pillay simply wanted

G Sm

the taxpayers to save him from the ordinary financial hardships which he was facing and to which all taxpayers are exposed.

245.5 The first retirement application was not approved. It is not clear why it was not approved.

246. The fact that Pillay was fully aware of the aforesaid financial implications of his decisions to take early retirement is also apparent from the contents of the so-called Symington memorandum. In this memorandum, which is dated the 17th of March 2009 (which is a date long before the date of Pillay's above quoted memorandum dated the 27th of November 2009) Symington said the following:

> *"However, the financial soundness of his decision to apply for early retirement is dependent on whether the Minister approves SARS payment of the benefit penalty to the GEPF as well as whether SARS contracts with him for a period of post-retirement employment. This is so because of the relatively young age at which he will be retiring vis-à-vis his projected life expectancy. If the Minister does not approve his request or if SARS does not contract with him after his retirement, the financial risk of his decision will increase substantially and*

GSM

my advice then would be for him to review his application for early retirement and to possibly withdraw it.

...

... However, if the minister is unable to approve his request relating to the penalty of if SARS is not in a position to contract with him after retirement, then his decision to apply for early retirement should probably all together be withdrawn."

247. *The following is apparent from the Symington memorandum:*

247.1 *It is dated the 17th of March 2009 and it is addressed to the Commissioner for SARS.*

247.2 *Gordhan was the Commissioner for SARS until May 2009 and the Symington memorandum must have been addressed to him. There is nothing to suggest that Gordhan did not receive the Symington memorandum.*

247.3 *What Symington is saying in his memorandum is simply that Pillay's decision to take early retirement is not financially sound unless:*

GSM

247.3.1 *the Minister of Finance (at the time Trevor Manuel) approved the payment by SARS of the benefit penalty to the GEPF the payment of which would have been triggered by Pillay's early retirement; and*

247.3.2 *the Minister of Finance also approved that SARS should at the same time enter into a post-retirement contract of employment with Pillay.*

247.4 *Symington did not say that it was lawful for Gordhan and Magashule to burden the taxpayer with Pillay's penalty in excess of R1.2 million levied upon him as a result of his decision to take early retirement – which decision was clearly a ruse to enable him to access his pension benefits to fund the education of his children. At the end, SARS ended up financing a big portion of Pillay's children's education as stated in the affidavits to which I refer below.*

248. *The effect of the above is simply that in order to ensure that Pillay's early retirement did not result in financial prejudice to*

G Sm

him, SARS had to pay the benefit penalty to the GEPF. It then entered into a post-retirement employment contract with him, otherwise, according to Symington, Pillay's decision to take early retirement would not have been financially sound.

249. *It is for this reason that Symington made it clear in his memorandum that unless the Minister of Finance approved the whole package, i.e. early retirement, payment of the benefit penalty to SARS on behalf of Pillay, and post-retirement employment of Pillay by SARS (without advertising the position), Pillay would have had to forget about taking early retirement and would have had to raise finance for the education of his children differently. Symington did not take into account the total effect of the combination of the three elements, as set out above.*

250. *At the time when Maema decided to charge Pillay, Magashula and Gordhan, approved by myself and Mzinyathi, we did not have the Symington memorandum in our possession. The Symington memorandum was provided to the NDPP when Pillay and Magashula made Section 179(5) representation on the 14th of October 2016 for the withdrawal of the charges against them. In their representation, they provided new information in the form of the Symington memorandum."*

GSM

393. Paragraphs 251 to 306 reads as follows:

"250. *The other document which we, the prosecutors (Maema, Mzinyathi and myself) had in our possession is a letter dated the 12th August 2010 from Magashula, (reflecting the third application from Pillay), who at the time was the Commissioner for SARS, addressed to Gordhan. In this letter, Magashula motivated the early retirement of Pillay with full retirement benefits as follows:*

"1. *PURPOSE*

The purpose of this memorandum is to request approval from the Minister for the early retirement of Deputy Commissioner Ivan Pillay with full retirement benefits from the GEPF as contemplated in Rule 14.3.3(b) of the Government Employees Pension Law, 1996, read with section 19 of SARS Act and section 16(2A)(a) of the Public Service Act, 1994 ...

In addition, approval is requested to retain Mr. Pillay as Deputy Commissioner of SARS on 3 year contract with effect from 1 September 2010.

2. *BACKGROUND*

...

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Ivan has always excelled at his job and made a significant contribution towards the establishment of SARS as the high respected organisation it is today.

For personal reasons, he has requested to take early retirement with effect from 1 September 2010. He is currently 56 years old.

Given Ivan's critical skills, experience and leadership, he has agreed to remain in the employ of SARS as Deputy Commissioner after his retirement on a 3 year contract to assist with the on-going leadership transition.

3. MOTIVATION FOR RETIREMENT WITH FULL BENEFITS

In the light of Ivan's exemplary service and sacrifice in the service of the people of South Africa, it is requested that he be granted early retirement with full retirement benefits as provided for in section 19 of SARS Act, 1997, read with section 16(2A)(a) of the Public Service Act, 1994.

Over the past 5 years the GEPF has approved over 3 thousand requests from various government departments for staff members to retire before the age of 60 with full benefits. The statistics are attached to this memorandum as received from the GEPF (Appendix).

In addition, the former and current Minister of Finance have approved at least five such requests over the past 2 years (see Appendix B).

4. MOTIVATION FOR REAPPOINTMENT ON A 3 YEAR CONTRACT

Ivan's wealth of knowledge and experience within SARS and his leadership position as Deputy Commissioner is an invaluable asset to the organisation. This is particularly important given the on-going leadership transition within the organisation following the departure of the Minister and the recent restructuring of the top leadership of the organisation as part of the revised Operating Model.

Ivan's continued guidance, leadership knowledge over the next 3 years will provide critical continuity as well as playing an important mentoring role in developing the next generation of SARS leaders.

In addition, it should be noted that there is precedent for the termination of employment and immediate rehiring of the same person under different conditions of employment within the public sector.

In this regard, advice was sought from the Acting Director-General of the Department of Public Service and Administration

GSM

... regarding the proposed early retirement of Mr. Pillay and his retention on a 3 year contract. He confirmed that there is no restriction on the appointment to the public service or to the same department of a person who has left on an Employee Initiated Severance Package (EISP) and that he was aware of previous such cases.

5. FINANCIAL IMPLICATIONS

The financial implication of early retirement with downscaled benefits for Ivan will be considerable as his lump sum benefit will decrease by R243 605 to R121 443 and his monthly pension by R47 402 to R48 563.

The financial implications for SARS, should approval be granted to allow Ivan to take early retirement with full retirement benefits, will be an amount of R1 258 345.99 which SARS will be liable to pay the GEPF in terms of the provisions of section 17(4) of the GEPF Law, 1996."

252. *The above quoted memorandum concludes with a recommendation that Gordhan approves Pillay's early retirement without downscaling his retirement benefits and that Gordhan also approves the reappointment of Pillay as Deputy Commissioner of SARS on a 3 year contract with effect from 1 August 2010 with the same remuneration that he was earning prior to the so-called early retirement.*

GSM

253. The recommendations were approved by Gordhan on 13 October 2010. It is worth nothing that the then Deputy Minister of Finance, Mr. Nhlanhla Nene, did not approve the recommendation despite the fact that the memorandum made provision for his approval to be obtained. I understand that is also part of internal requirements in government that a Minister approve a recommendation only after the Deputy Minister has applied his mind to it. This did not happen in this case.

254. We also had in our possession the following documents which we considered when we made the decision to bring the charges in issue.

Affidavit of Nico Johan Coetzee

255. The affidavit deposed to by Nico Johan Coetzee ("Coetzee"), who was previously employed by SARS is attached as "SA11" to Annexure "B" in the main application. There are other documents attached to such affidavit and I refer to them individually below.

256. In his affidavit, Coetzee says that in 2008, he was instructed to prepare a ministerial memorandum to be signed by Gordhan (who was Commissioner of SARS at the time), to recommend to the then Minister of Finance (Trevor Manuel) that he approve Pillay's early retirement.

GSM

257. Coetzee further states that:

"4.

I awaited the approval by the Minister of the request by Mr. Pillay. In October 2009 while waiting for the approval of the memorandum, I received a revised memorandum from the office of the Commissioner, Mr Oupa Magashula. The memorandum contained different reasons from my original memorandum as to why the Minister should approve Mr. Ivan Pillay's early retirement. The reasons on the revised memorandum were that Mr. Pillay wished to go on early retirement in order to enable him to provide for his children's education and not as I have previously stated that he wished to pursue other interests. I raised concerns to the Commissioner through the e-mails dated the 8th and the 9th October 2009 respectively, that if the Minister should approve Mr. Pillay's application on the grounds of personal interest may create a precedent in terms of which, other employees might come forward with similar request for early retirement."

258. In the e-mails dated 8 and 9 October 2009 referred to in his affidavit, Coetzee said the following to Magashula:

"Hi Oupa

GSM

Luckily for me I have dealt with this matter during June this year but I do not know why the matter was not promoted at the time as I have certainly started the process. I have amended the two submissions (attached) to fit in with Mr. Pillay's latest request. It is not unusual that a retirement employee is re-appointed after retirement in a contract capacity. What may raise some eyebrows in this particular case is that the employee is appointed in the same position he held before his retirement. Ordinarily such a re-appointment will be a different and a lower-graded position. It will have to be decided if satisfactory reasons can be given for the re-appointment in the same position. We had two similar application for early retirement, both which were not approved by the Minister as the Minister could not find sufficient reason to approve early retirement. In terms of section 16(6) of the Public Service Act, the Minister only has consider if sufficient reason exist to approve Mr. Pillay's early retirement ..."

259. *In Coetzee's e-mail of 9 October 2009, he said:*

"I am resending this e-mail on account of a slight change I have made to the two attached documents. The changes indicated that the reason why Mr. Pillay is requesting approval for early retirement is to provide for

GSM

his children's education and not as I have previously stated that he wished to pursue other interests. You will now have to consider to recommend and the Minister consider to approve if this is sufficient reason to recommend/approve Mr. Pillay's application for early retirement. If his application is duly recommended/approved, it could technically be construed that SARS is willing to contribute from its budget an amount of ±R340 000 towards the education of his children. I admit it is a rather cynical viewpoint, but it can be a viewpoint that may be held by other parties as well and that may put yourself and the Minister in a tight spot, especially because Mr. Pillay was re-appointed in his present position. The argument may be that he was able to continue with his present functions, but his early retirement and reappointment was purely to assist him to be able to provide for his children's education with a R340 000 'contribution' from SARS."

Pillay's contract of employment

260. *Pursuant to Magashula's recommendation, Gordhan approved Pillay's early retirement and re-appointment. The approved re-appointment was to be for a period of three years. Gordhan also approved that Pillay's penalty to the GEPF be paid by SARS.*

GSM

261. Despite the fact that the Minister approved Pillay's re-appointment to be for a period of three years, on the 7th of February 2011, Magashula and Pillay concluded a five year contract, a copy of which is attached as "SA12" to Annexure "B" in the main application. This contract was clearly not approved by Gordhan and all the payments made in terms thereof were not lawfully authorised. Magashula and Pillay were fully aware of this illegality. They acted in contravention of the empowering approval given by Gordhan to conclude a three year contract (even though that approval itself was unlawful).

262. The aforesaid contract was to have come to an end in 2016. But, on the 26th of March 2014, Gordhan concluded a new contract, just weeks before his appointment to a different ministry. In terms of that contract, Pillay was appointed with effect from the 1st of April 2014 to the 31st of December 2018. There does not appear to be a lawful reason for concluding another contract before the expiry of the contract concluded in February 2011.

Affidavit of Chrisna Susanna Visser

263. Visser' affidavit, which is attached as "SA13" to Annexure "B" in the main application, largely confirms that there was no business reason for SARS to pay Pillay's penalty.

GSM

264. Visser deals with other things in her affidavit, amongst others, the circumstances under which Pillay concluded an employment termination agreement with Skollie. Of relevance for purposes of this application, Visser says the following:

"8

Nic Coetzee and I were both uncomfortable with the request as it was for personal reasons and we could find no business reasons to pay the penalty on behalf of Mr. Pillay. We were requested to draft a memorandum to the Minister of Finance for his approval. Nic Coetzee and I both advised Mr. Oupa Magashula in the Commissioner's boardroom that it is not advisable to continue with the early retirement of Mr. Pillay because it was personal reasons and not business reasons. We were also concerned that it could set a precedent whereby others could come and claim the same benefit. We informed him that no such case was recommended in the past as it was for personal reasons. He instructed us to continue with the memorandum.

...

I was presented with the signed approved memorandum by the Minister and I initiated the process of the exit of Mr. Ivan Pillay from the Pension Fund and his re-

GSM

employment on a contract basis. Part of this process was to sign a contract of employment with Mr. Ivan Pillay. I drafted a three year contract of employment to be signed by Mr. Oupa Magashula as the Commissioner and Mr. Ivan Pillay as the employee. The contract document was however amended to five years ... Mr. Oupa Magashula requested that I sign as a witness. I queried the matter of the contract that was amended to five years. Mr. Oupa Magashula indicated that they decided that it will be five years and not three and continued to sign the contract. I signed as witness as I believed it was merely to indicate that it was Oupa Magashula who signed the contract. I advised but the advice was case aside and not taken.

11

In 2014 a new contract of employment ... was requested from my Office via Rita Hayes who was employed by Mr. Ivan Pillay. I enquired why a new contract was needed as the previous employment contract was still valid however I was just advised that the Minister Pravin Gordhan and Mr. Ivan Pillay wanted to conclude a new contract. I then continued to e-mail a draft contract to her office. I was presented with a new contract of employment to implement for Mr. Ivan Pillay."

G Sm

265. Pillay's aforesaid contract was concluded in April 2014 – the very last year of Gordhan's tenure as Minister of Finance. In view of the fact that Pillay's contract of employment signed in February 2011 was still valid and of full force and effect until February 2016, there was no lawful reason to conclude a new contract other than to unduly benefit Pillay with a further contract of employment for another period of two years after what would have been the end of his contract concluded in February 2011.

Statement of Gordhan

266. In his own statement attached is attached as "SA14" to Annexure "B" in the main application, which statement was not made under oath, ***the Minister*** *says the following about Pillay's early retirement and his approval thereof:*

> *"15. Mr Pillay took early retirement and was re-appointed when I was Minister of Finance. I seem to recall that it happened in early 2010.*
>
> *16. The then Commissioner of SARS, Mr Oupa Magashula, addressed a memorandum to me on 12 August 2010, seeking my approval for Mr Pillay's early retirement and re-employment on a fixed term contract. I was told that Mr Pillay sought in this way to gain access to his pension fund to finance the education of his children. I*

GSM

understand that Mr Magashula had established from enquiries made with the Department of Public Service and Administration that the terms of Mr Pillay's early retirement and re-appointed were lawful and not unusual. I approved Mr Magashula's proposal because I believed it to be entirely above board and because I thought it appropriate to recognise the invaluable work Mr Pillay had done in the transformation of SARS since 1995."

267. Gordhan's statement creates an impression that he approved Pillay's early retirement package on the basis that Pillay needed money to finance his children's education. This, however, is not what is stated in Magashula's memorandum to Gordhan of August 2010. The issue of raising funds to provide for the education of Pillay's children is referred to in Pillay's memorandum to Gordhan in 2008, which is not the one which Gordhan approved in 2010.

268. What Gordhan does not say in his unsworn statement is the following:

268.1 The legal basis on which he approved the request that Pillay's penalty to the GEPF be paid by SARS;

GSM

268.2 The fact that the memorandum which he approved in 2010 does not say anything about Pillay wanting to access his pension benefits on order to provide for the education of his children;

268.3 That he became aware of Pillay's need for money to educate his children when he still worked with him whilst he was still the Commissioner for SARS;

268.4 Why he did not approve the request made to him by Pillay in 2008;

268.5 Why he considered it to be above board to approve the early retirement and re-appointment of Pillay in circumstances where he knew that upon early retirement, the position of Pillay had to be advertised to enable interested parties to apply to be considered for the position – and more so when Magashula resigned from the position of Commissioner for SARS pursuant to allegatons that he offered a member of the public employment at SARS without following the prescribed recruitment procedures;

268.6 That he was, in fact, a party to the "enquiries made with the Department of Public Service and Administration" referred to in paragraph 16 of his statement. In this regard, in an e-mail dated 23 July 2010, which is attached

GSM

as "SA15" to Annexure "B" in the main application (and which was obtained only in the review process), addressed to the then Acting Director-General of the Department of Public Service and Administration, Magashula said:

> *"Dear Kenny,*
>
> *Thank you very much for a quick discussion yesterday with my Minister regarding the early retirement of our Deputy Commissioner of SARS. In my discussion this morning with my Minister we agreed that I should ask you for a written response to our discussion and the questions I posed yesterday ..."*

269. *The reference to "my Minister" in the above quoted e-mail is a reference to Gordhan. It is clear from the above quoted e-mail that Gordhan was fully involved in the process leading to Pillay's early retirement. The enquiries referred to in his statement were made at his request, yet he does not say this in his statement.*

270. *In his aforesaid e-mail, Magashula did not enquire about the payment of Pillay's penalty to the GEPF or the legality of paying it. Of relevance, for purposes of the charges in issue, he asked the following questions:*

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- *"Is there a precedent for authorising early retirement and re-engaging the same person on a short contract completely different from permanent employment, with a scaled down responsibility, salary and other conditions of employment?*

- *...*

- *Related to the first bullet point – do you have any statistics of how many of these early retirement cases without re-engagement have been processed thus far?"*

271. *The response from the Acting Director-General of the Department of Public Service and Administration is attached as "SA16" to Annexure "B" in the main application, and it was silent on the question whether it was lawful for SARS to pay Pillay's penalty to the GEPF. This response must necessarily be silent on this issue due to the fact that the issue was not raised. In fact, the response shows that what was asked in the discussion was the so-called Employee Initiated Severance Package, which is completely different from what Pillay wanted to do.*

272. *The Employee Initiated Severance Package was introduced into the public service in terms of a ministerial determination made by the Minister of Public Service and Administration. A copy of the relevant determination is attached as "SA17" to Annexure "B" in the main application. Paragraph 1 of this determination says that it is "applicable to all employees appointed in terms of*

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the Public Service Act, 1994, as amended." Pillay was employed in terms of the South African Revenue Service Act 34 of 1997 and the determination did not apply to him. Furthermore, the determination did not apply to Pillay due to the fact that in terms of paragraph 3 thereof, its purpose is to:

> *"... allow employees affected by transformation and restructuring who wish to exit the public service, to apply for an employee-initiated severance package."*

273. *Pillay's application was in any event not made in terms of the ministerial determination referred to above.*

274. *What appears from Gordhan's statement is that he was not a party to the process which led to Pillay's application for early retirement and re-appointment and that he only became involved in that process when he was Minister of Finance. As demonstrated by the documents to which I have referred above, this is simply not true.*

275. *In his memorandum dated 27 November 2009, Pillay requested that his approval be granted in terms of section 16(6)(b) of the Public Service Act, 1994. It provides.*

> *"(b) If an employee is allowed to so retire, he or she shall notwithstanding anything to the contrary contained in subsection (4) be deemed to have*

GSM

retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection."

276. Section 16(4) of the Public Service Act, 1994 provides that an officer, other than a member of the services or an educator or a member of the State Security Agency who has reached the age of 60 years may, subject in every case to the approval of the relevant executive authority, be retired from the public service. Pillay had not reached the age of 60 years provided for in this section. This being the case, section 16(4) of the Public Service Act did not apply to him.

277. Section 16(6)(a) of the Public Service Act, 1994 upon which Pillay also relied on his aforesaid memorandum provides that an executive authority may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for dismissal in terms of section 17(2), if sufficient reason exists for the retirement. This provision simply authorises the executive authority, Gordhan in this case, to authorise the early retirement of an employee who has not yet reached the age of 60 years. This provision, however, is silent as far as the retirement or pension benefits are concerned.

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278. *In his letter to Gordhan referred to above, Magashula sought Gordhan's approval in terms of section 16(2A)(a) of the Public Service Act 1994. This section provides that:*

> *"(2A)(a) Notwithstanding the provisions of subsections (1) and (2)(a), an officer, other than a member of the services or an educator or a member of the State Security Agency shall have the right to retire from the public service on the date on which he or she attains the age of 55 years, or any date after that date."*

279. *This section simply creates a right of a Public Service Employee to retire at the age of 55 years or after attaining that age. The executive authority's approval is not required for that purpose.*

280. *In his letter to Gordhan, Magashula further relied on Rule 14.3.3(b) of the Rules of the GEPF. Rule 14.3.3 deals with members with 10 years and more pensionable service. Rule 14.3.3(b) provides that:*

> *"(b) A member who retires on account of a reason mentioned in Rules 14.3.1(d) or (e) and who has at least 10 years' pensionable service to his or her credit, shall be paid the benefits referred to in Rule (a) above: Provided that such benefits shall be reduced by one third of one percent for each*

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complete month between the member's actual date of retirement and his or her pension-retirement date."

281. *It is clear from Rule 14.3.3(b) that it only applies to a person who retires on account of a reason mentioned in Rules 14.3.1(d) or (e).*

282. *Rule 14.3.1(d) deals with a member who retires before his or her pension-retirement date but not on a date prior to the member attaining the age of 55 years: Provided that such a member has the right to retire on that date in terms of the provisions of any Act which regulates his or her terms and conditions of employment. Pillay had a right to retire n terms of provisions of the Public Service Act 1994 referred to above. Accordingly, Rule 14.3.1(d) is the one which applied to him.*

283. *Rule 14.3.3(b) to which reference has already been made above, provides that a person who retires on account of a reason mentioned in Rule 14.3.1(d) or (e) shall be paid "the benefits referred to in Rule (a) above: Provided, that such benefits shall be reduced by one third of one percent for each complete month between the member's actual date of retirement and his or her pension-retirement date." This Rule applied to Pillay because in terms of Rule 14.3.1(b) he was retiring "before his or her pension-retirement date in terms of the law governing*

GSM

his or her terms and conditions or service" being the Public Service Act to which reference has been already been made above.

284. *There is no provision in the Public Service Act, 1994, in particular in section 16 thereof, in terms of which provision is made for SARS to pay what Pillay himself described in his memorandum as "the penalty imposed on my pension benefits per Rule 14.3.3(b) of the GEPF Rules." Rule 14.3.3(b) of the GEPF Rules simply makes provision for the reduction of the pension benefits of a person who retires before his or her pension retirement date and does not make provision for the employer of such a person to pay the penalty which is imposed in terms thereof.*

285. *When we decided to bring charges, we clearly took into account that there was no authorisation in law for SARS to pay the penalty, effectively financing Pillay's retirement and education of his children.*

286. *In addition, we took into account that the so-called early retirement was in fact not an early retirement at all. This is so due to the fact that Pillay did not intend to retire and both Gordhan and Magashula were fully aware that Pillay did not truly intend to retire. The fact that Pillay did not genuinely truly intend*

GSM

to "retire" is not concealed in his memorandum dated 27 November 2009.

287. *In the aforesaid memorandum, a false impression is created that Pillay was to serve SARS in a "different capacity" where the demands of such a job will "positively support the reasons why I am in the first instance taking early retirement." The reason given for early retirement is that "my health condition is slowly deteriorating" and "my family responsibilities, for a long time, suffered on account of the dedication required by my job.". Despite all of this, Pillay was at the very same time reappointed to the very same position from which is so desperately wanted to "retire".*

288. *In the light of the above, we were quite correct in bringing the charges against the three individuals.*

289. *In addition to the above, the fact that Pillay was reappointed at the same time that he went on early retirement clearly meant as far as we were concerned, that the position of Deputy Commissioner of SARS, to which he was reappointed immediately was not advertised and other interested parties were not given an opportunity to apply to be appointed to that position. This would have been necessary due to the fact that at the very moment that Pillay took early retirement, his position of Deputy Commissioner became vacant and the position had to*

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be advertised to give all interested parties an equal opportunity to apply for it. This was not done.

290. Pillay, Magashula and Gordhan's reliance upon the provisions of section 17(4) of the GEPF Law, 1996; Rule 20 of the Rules of the GEPF; and the contents of the Government Employees Pension Fund Members Guide is not only incorrect, it is also misleading the public because Pillay, Magashula and Gordhan's papers have been published for all to see.

Section 17(4)

291. Section 17(4) of the GEPF Law, 1996 deals with a situation where the employer or if any legislation adopted by parliament places an additional financial obligation on the GEPF. In that event, the employer or the government shall pay the financial obligation it has placed on the GEPF. This is not what happened in this case. The penalty obligation was imposed upon Pillay by the Rules of the GEPF and not upon the GEPF. The penalty obligation also did not arise from the employer's action or operational requirements, it arose from Pillay's early retirement.

292. Section 17 of GEPF Law deals with the funding of the GEPF. The section does not deal with penalties which must be paid by employees who are taking early retirement. The section is clearly not concerned with penalties which the Rules of the fund

G Sm

impose upon retiring employees. The GEPF is not funded by penalties levied upon early retirees.

293. *Section 17(4) makes it clear that it is concerned with any action taken by the employer or if any legislation adopted by parliament (places any additional financial obligation on the Fund) the person who places such an obligation on the Fund is then made responsible to pay the fund "an amount which is required to meet such obligation."*

294. *In the case of Pillay, no obligation whatsoever was placed on the GEPF. On the contrary, the obligation was placed on Pillay to pay the penalty. In the premises, section 17(4) of the GEPF Law does not assist Pillay, Magashula and Gordhan.*

Rule 20

295. *Rule 20 of the Rules of the GEPF similarly does not assist Pillay, Magashula and Gordhan. Rule 20 deals with compensation to the GEPF on retirement or discharge of a member prior to attachment of the member's pension retirement date.*

296. *The Rule applies to a situation where a member "becomes entitled in terms of Rule 14.8 to the pension benefits in terms of a severance package, referred to in that Rule, or is discharged prior to his or her pension retirement date and at such retirement*

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... in terms of the Rules becomes entitled to the payment of an annuity or gratuity or both an annuity and a gratuity in terms of the Rules, and any of these actions result in an additional financial liability to the fund."

297. *In this case, the GEPF did not attract "an additional financial liability". On the contrary, it is Pillay who attracted a penalty for himself. He, and not SARS, had to pay the penalty.*

The Guide

298. *Pillay, Magashula and Gordhan's reliance on the Government Employees Pension Members Guide is completely wrong. The sentence quoted therefrom, is inconsistent with what is contained in the GEPF Law and the Rules of the GEPF.*

299. *It cannot be, as Pillay, Magashula and Gordhan are suggesting that the guide supersedes the GEPF Law and the Rules. In any event, on any proper and rational interpretation of the guide upon which Pillay, Magashula and Gordhan seek to rely, the only situation which could be contemplated therein is where "the employer granted permission for your early retirement" for the employer's own operational reasons. There can be no basis on which the government should fund the early retirement of its employees. In circumstances where that has nothing to do with the government's operational reasons.*

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300. When regard is had to the above background and provisions of the GEPF Law and the GEPF Rules, it cannot be said that there was no rational basis to bring charges against Gordhan, Pillay and Magashula.

THE DECISION TO PROSECUTE

301. Maema made a full and comprehensive presentation to me and Mzinyathi. The final decision to prosecute was made by me, and Mzinyathi concurred. The decision was taken pursuant to a consideration of the available evidence at the time.

302. As required by protocol, a memorandum was sent to the President, advising the President of the prosecutorial decision, once it was taken, to charge Gordhan, prior to levelling the charges against him.

303. I also took into the public interests into account prior to taking the prosecutorial decision to charge Pillay, Magashula and Gordhan.

304. Thus, once again, a Section 24(3) of the NPA Act Consultation was held with Mzinyathi in compliance with the statutory imperative of checks and balances in the system.

305. In this case:

GSM

305.1 The outside world was told that Pillay took early retirement;

305.2 In fact and in truth, Pillay never retired;

305.3 Pillay remained in the very same position of deputy commissioner which, according to his first memorandum, he desperately wanted to retire from;

305.4 The GEPF was made to understand that Pillay was leaving the public service by way of an early retirement, when, in fact, he was not leaving the public service;

305.5 The transaction was concluded to enable Pillay to have access to his pension benefits to provide for the education of his children;

305.6 The early retirement transaction would not have been concluded if Pillay did not need to provide for the education of his children;

305.7 Gordhan approved a three-year contract of employment; however, Pillay and Magashula concluded a five-year term contract commencing in February 2011 with the intended end date being in 2016;

306. The transaction was therefore, not a genuine, lawful and proper early retirement transaction because an early retirement

GSM

transaction results in the retiree actually leaving the employment of the employer. It is common cause that Pillay did not leave the public service, nor was it intend that he would leave the public service.

CONCLUSION

394. Mindful of the fact that this Commission was established by the President and will report its findings to the President, this Commission should not allow itself to be used to draw the President into an invidious position of pronouncing upon the prosecution of individuals, thereby interfering with the Constitutional independence of the NPA, where no legal basis and/or justification for such exist.

395. It behoves me to draw the Commission's attention to the totality of the evidence set forth in this affidavit, particularly about the impact of the allegations made against me by the witnesses. While the persistent attacks may at first blush appear to be confined to my person, the impact these attacks have on the NPA as a Constitutional institution cannot and should not be trivialised.

396. I have alluded to the fact that allegations are made that the core group of advocates, of which I am alleged to be one, have for years been on a path of destabilising persons and institutions that are corruption busters whilst they protect and refuse to prosecute persons against whom there is evidence to sustain charges of corruption and malfeasance. The cumulative effect of these allegations is that the NPA is not to be trusted

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to effectively and properly deliver on its Constitutional and legislative mandate.

397. I have shown in this affidavit that all these allegations are made without any substantive evidence to support or sustain them. On close scrutiny, it is clear that the complainants as well as those they favour should be treated differently from the rest of the citizens.

398. In the prevailing environment in the country where integrity and reputation are easily eroded through negative publicity in the media, those of us who have to take arguably difficult prosecutorial decisions may be hampered from exercising our prosecutorial decisions without fear, favour or prejudice.

399. It was not without reason that the drafters of the Constitution deemed it prudent to provide for prosecutorial independence in section 179 of the Constitution. Any threat to the independence of the prosecutors undermines the Constitutional imperative for prosecutors to act without fear, favour or prejudice. Not only that, but the persistent negative statements these witnesses publish seeking to impose upon the prosecutors' decisions that are favourable to them and those that they favour, is a direct violation of section 32(1)(b) of the NPA Act.

400. In the course of my work, I acted in good faith at all times. Therefore, I urge the Commission not to make any adverse findings against me. In this regard, I refer to Section 78 of POCA which provides as follows:

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"78. Liability

Any person generally or specifically authorised to perform any function in terms of this Act, shall not, in his or her personal capacity, be liable for anything done in good faith under this Act."

401. I further refer the Commission to Section 42 of the NPA Act, which provides as follows:

"42 Limitation of liability

No person shall be liable in respect of anything done in good faith under this Act."

402. In conclusion, I have instructed my legal representatives to apply for leave to make legal submissions as envisaged in Rule 3.9.

403. I respectfully submit that a case has been made out for the relief prayed for in the notice of motion to which this affidavit is attached.

G S MAEMA

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at

PRETORIA on this 17th day of MAY 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:

THOMAS KHAZAMOLA BALOYI
PRACTISING ATTORNEY - RSA
COMMISSIONER OF OATHS
23 BUREAU LANE STREET
OFFICE 301, CENTENARY
BUILDING PRETORIA

DATE: 17th, MAY, 2021

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ANNEXURES

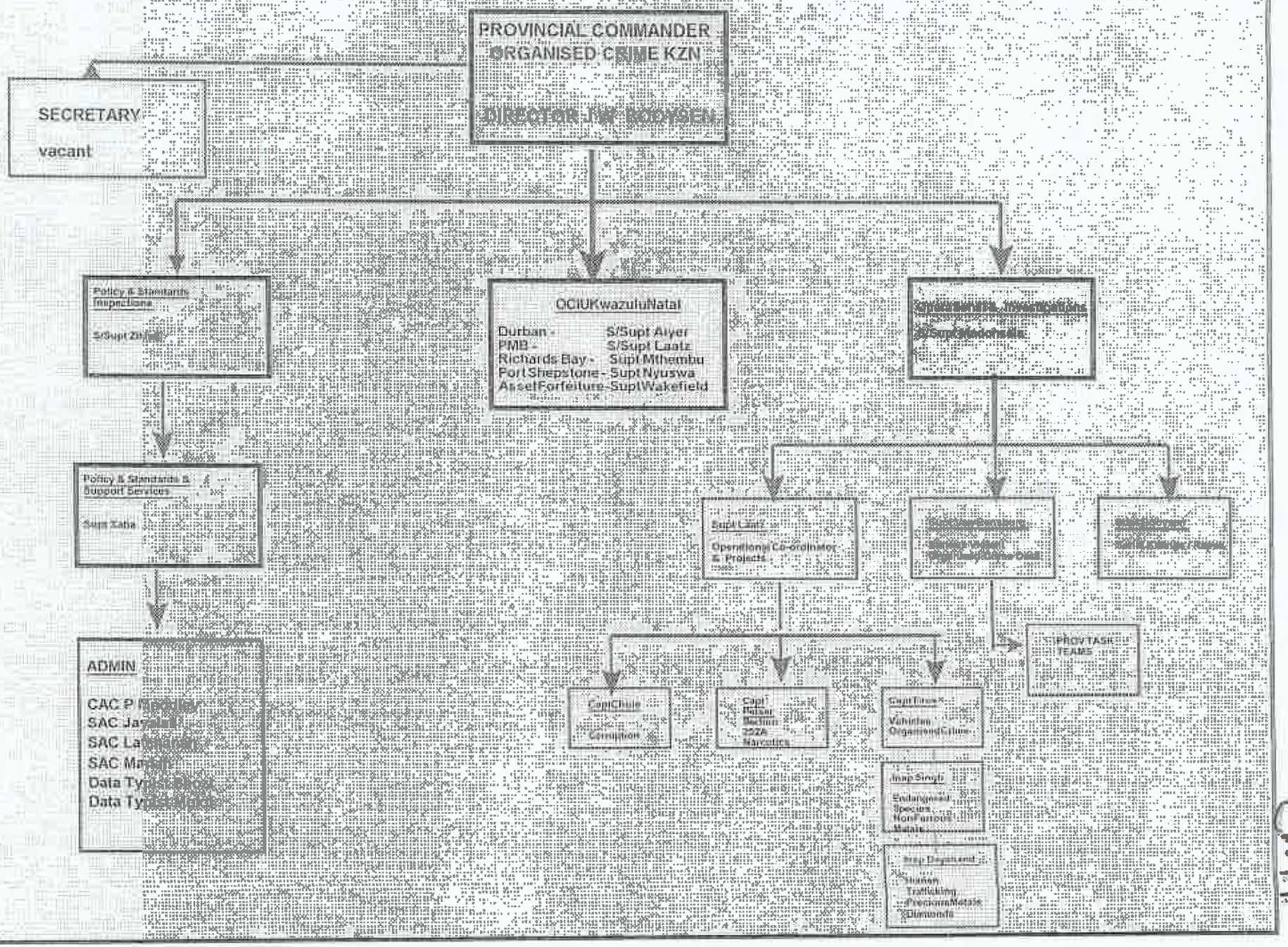
CATO MANOR

CM1	Organogram
CM2	Statement of Aiyer dated 4 August 2012
CM3	Statement of Aiyer dated 31 August 2012
CM4.1	Standing Order 251
CM4.2	Motivation for monetary and non-monetary awards
CM5	Annexure "NJ6" – Affidavit by Booysen
CM6	Statement of Mthiyane dated 31 July 2012
CM7	Statement of Mkhize dated 1 August 2012
CM8	Statement of Shozi
CM9.2 to CM9.7	Photos – Counts 3 to 7 Buthelezi
CM10.1 to CM10.5	Photos – Counts 8 to 12 Ndimande and Tembe
CM11.1	Statement by Warren Julie
CM11.2	Statement by Herman Thiart
CM12	Forensic statement – Steyl
CM13.1 to CM13.3	Photos – Count 19 Mkhize
CM14	Statement of Sgt Tilakharee
CM15	Statement of Mangena
CM16.1 to CM16.5	Photos – Counts 20 to 24 Mkhize
CM17.1 to CM17.3	Photos – Counts 25 – 30 Ndimande
CM18	Statement of Nokuphiwa
CM19.1 to CM19.7	Photos – Counts 31 – 34 Ndimande
CM20.1 to CM20.4	Photos – Counts 35 – 38 Msimango
CM21.1 to CM21.10	Photos – Counts 39 – 52 Bongani and Khayisani Biyela
CM22	Sunday Times Article
CM23	Statement of Bongokhule
CM24.1 to CM24.3	Photos – Counts 53 – 57 Njapha
CM25	Statement of Portia
CM26	Statement of Njabulo
CM27.1 to CM27.5	Photos – Counts 58 – 61 Nxuza
CM28	Statement of Behari
CM29	Statement of Steyl
CM30	Statement of Nqaba Mdluli
CM31	Statement of Hurley
CM32	Statement of Padayachee
CM33	Statement of Stoltz
CM34.1 to CM34.	Photos – Counts 62 – 65 Thabede (Mtako)
CM35	Statement of Wiseman Ndlovu (father of deceased Ndlovu)
CM36	Statement of Captain Mangena
CM37.1 to CM37.3	Photos – Counts 66 – 69 Ndlovu
CM38.1 to CM38.4	Photos – Counts 70 – 79 Ngcobo and Shozi
CM39	Statement of Sibongiseni
CM40.1 to CM40.2	Photos – Count 80 – Bhengu
CM41.1 to CM41.2	Photos – Count 81 – Mgobhozi

CM42	Statement of Tshepiso
CM43.1 to CM43.2	Photos – Count 82 – Mbonambi
CM44	Statement of Sosibo
CM45.1 and 45.2	Statement of Wandile
CM46	Mangena's report with Photos – Counts 94 – 97 – Gwala
CM47	Statement of Sandile (deceased's brother")
CM48.1 to 48.	Photos – Counts 98 to 101 – Zwane
CM49	Statement of Mazimbuko (deceased's girlfriend)
CM50	Statement of Mngomezulu
CM51.1 to 51	Photos – Counts 102 to 103 – Majola
CM52	J56
CM53.1 to CM53.	Photos – Counts 104 to 108 – Masondo
CM54	Statement of Jabulisiwe
CM55	Post Mortem
CM56.1 to CM56.	Photos – Counts 109 to 112 – Phiri
CM57	Statement of Mavundla dated 10 January 2012
CM58	Statement of Mavundla dated 21 March 2012
CM59	Post mortem report
CM60	Photos – Counts 113 to 116 – Mhlango (No photos – skipped)
CM61	Statement of Aiyer 31 March 2013
CM62.1	Statement of Brown 8 May 2013
CM62.2	Supplementary statement 9 May 2013
CM63	Mkhize's affidavit
CM64	Booysen's answering affidavit
CM65	Court Order dated 14 November 2008
CM66	Statement of Danikas
CM67	Monetary awards 14 October 2014
CM68	Statement of Cochrane
CM69.1	Manuscript Statement of Mathonsi
CM69.2	Typed Statement of Mathonsi
CM70	Statement of Dlondlo
CM71	Statement of Bongani Mkhize
CM72	Legodi J judgment
CM73	Jiba SCA judgment
CM74	Translated statement of Danikas with Greek version attached
CM75	Reply to request for further particulars
CM76	Opinion of Thenga 13 August 2015
CM77	Prosecution memorandum 10 July 2012

2008/2009

PROVINCIAL ORGANISED CRIME ORGANIGRAM



SEQ 29/2021-312

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I HEREBY STATES IN ENGLISH UNDER OATH

RAJENDRAN SANJEEVI AIYER

I AM COLONEL IN THE SAPS IN KZN. MY CONTACT DETAILS AS FOLLOWS : 0827730046

I WISH TO STATE THE FOLLOWING ;

ON THURSDAY 2012-08-02 AT 08:45 I MEET WITH BRIGADEIR MOKOENA IN MY OFFICE AT 3RD FLOOR IN SERVAMUS BUILDING. I WAS REQUESTED TO SUBMIT A STATEMENT. REGARDING THE STRUCTURES OF ORGANISED CRIME SINCE DECEMBER 2006 ON APPOINTMENT AS UNIT COMMANDER DURBAN ORGANISED CRIME

SHORTLY THEREAFTER IN JANUARY 2007 THE SERIOUS AND VIOLENT CRIMES UNIT CLOSED THE NATIONAL COMMISSIONER. ONLY FOURTEEN MEMBERS (14) FROM SERIOUS AND VIOLENT CRIME UNIT WERE RESTRUCTURED INTO THE DURBAN ORGANISED CRIME. IN TERMS OF THE ORGANISED CRIME MANDATE THE SERIOUS AND VIOLENT CRIME INVESTIGATION BECAME THE MANDATE ORGANISED CRIME.

I WAS INFORMED THAT THEN DIRECTOR JW BOOYSEN WAS APPOINTED AT PROVINCIAL COMMANDER OF ORGANISED CRIME IN KZN IN FEBRUARY 2007.. ALL FOUR UNIT COMMANDERS OF ORGANISED CRIME HAD REPORT TO THEN DIRECTOR JW BOOYSEN, DIRECTLY IN KZN . THEN DIRECTOR JW BOOYSEN WAS ACCOUNTABLE TO PROVINCIAL HEAD OF DETECTIVE SERVICES ,THEN ASSISTANT COMMISSIONER PT BROWN (RETIRED IN 2011) .

AS UNIT COMMANDER OF DURBAN ORGANISED CRIME HOLDING THE RANK OF SENIOR SUPERINTENDENT (COLONEL), I HAD THREE SUPERINTENDENT (LT COL.) WHO HAD TO REPORT TO ME AND WERE ACCOUNTABLE ME ; AS SECTION COMMANDERS . NAMELY SUPERINTDENT (F) TT DUBE SUPPORT AND ADMINISTRATION. THE SUPERINTENDENT WC OLIVIER IN CHARGE OF SERIOUS AND VIOLENT CRIMES SECTION. THE ANOTHER BEING SUPERINTENDENT GART LE ROUX IN CHARGE OF DRUG, FIREARMS, VEHICLES AND GOLD DIAMOND .

BETWEEN THESE TWO SECTION COMMANDERS (WC OLIVIER AND GART LE ROUX) ,ALL OPERATIONS CONDUCTED UNDER THEIR SUPERVISION.

UNDER THE COMMAND OF SUPERINTENDENT WC OLIVIER HE HAD THREE CAPTAINS ACCOUNTABLE TO HIM, NAMELY CAPTAINS VAN TONDER ,SMITH, LOCKHEM . TOTAL , ALL INCLUSIVE OF 14 MEMBERS TO BE PLACED AS A TEAM TO ADDRESS SERIOUS AND VIOLENT CRIMES IN THE POST AT THE UNIT AND ALSO ATTEND TO OTHER CRIMES . DURING FEBRUARY 2007 THESE MEMBERS WERE PLACED INTO THOSE POSTS IN DURBAN ORGANISED CRIME.

SHORTLY THEREAFTER PROBLEMS STARTED TO SURFACE WITH SERIOUS AND VIOLENT CRIME SECTION. AFTER A INSPECTION CONDUCTEDS BY THEN DIRECTOR NGHINGA (HAWKS)OF THE NATIONAL ORGANISE CRIME OFFICE, IN HER INSPECTION REPORT , SHE WANTED TO KNOW WHY

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WAS UNIT SPILT INTO TWO ,HER INSTRUCTION WAS THAT ALL MEMBER MUST REPORT TO ONE OFFICE NAMELY 136 VICTORIA EMBANKMENT WERE MY OFFFICES HAD BEEN.

I TRIED TO EXPLAIN SUPERINTENDENT WC OLIVIER WHO WAS NOT TOO HAPPY REGARDING THE DECISION. I FULLY AWARE THAT SUPERINTENDENT WC OLIVIER WAS CLOSE THEN DIRECTOR JW BOOYSEN. I TOLD SUPERINTENDENT WC OLIVIER MERGER HAS TAKE PLACE ON THE INSTRUCTION OF NATIONAL OFFICE. SUPT WC OLIVIER CHANGED HIS ATTITUDE TOWARDS ME . .

I NOTICED THAT SUPT. WC OLIVIER REPORTING ALL INCIDENT DIRECTLY TO THEN DIRECTOR JW BOOYSEN . I WAS MERELY INFORMED AFTERWARDS OR LONG AFTER ANY SHOOTING INCIDENT HAD TAKEN PLACE HIS SECTION . ALMOST EVERY WEEK THE CATO MANOR OFFICES WERE VISITED BY THEN DIRECTOR JW BOOYSEN WITHOUT ME BEING INFORMED. I KEPT TELLING HIM TO REGISTER ALL OPERATION OR RAIDS ON CAS SYSTEM BUT NOTHING OF THAT HAPPENED . HE STARTED FRUSTRATE ME AS UNIT COMMANDER. IT CLEAR THAT SUPTRENTENDENT OLIVIER WAS ACTING ON OWN ACCORD,HE WAS FORMING HIS OWN UNIT AT CATO MANOR AND HE HAD BACKING OF THEN DIRECTOR JW BOOYSEN WHO CONSTANTLY VISIT THE CATO MANOR OFFICE.

THE TROUBLE STARTED TO SURFACE WHEN I NOTICED STRANGE FACES AND MEMBERS ALLEGING TO BE MEMBERS OF DURBAN ORGANISED CRIME UNIT AT CATO MANOR OFFICES.SOME OF THESE MEMBERS AND RESERVIST CLAIMED TO BE MEMBERS OF DURBAN ORGANISED CRIME UNIT . I HAD NO INDICATION WHO THESE MEMBERS EG CAPTAIN EVA REPORTED TO CATO MANOR WITHOUT ANY WRITTEN DOCUMENT, MEMBERS LIKE SGT G PADAYCHEE ,WARRANT OFFICER GHANESS MANY MOVED WITHIN UNIT WITHOUT MY PERMISSION . THESE MEMBERS STARTED BEHAVE AS THEY FELT AND BECAME HOSTILE TOWARDS ME. INFORMATION WAS THAT ALL THESE MEMBERS ARE ONLY ACCOUNTABLE TO THEN DIRECTOR JW BOOYSEN.I HAD SNO SUPPORT FROM THEN DIRECTOR JW BOOYSEN .

WHEN I EVENTUALLY INFORMED THEM WE CANNOT RUN TWO OFFICE AND I SERVED THOSE MEMBERS WITH NOTICES TO MOVED FROM CATO OFFICES THAT IS WHEN THE AGGRESSION AND ANGER SURFACED . ALL OF THEM RAN TO THEN DIRECTOR JW BOOYSEN OFFICE AT PROVINCE . THEN DIRECTOR JW BOOYSEN CAME DOWN ON ME HEAVILY. HE WALKED INTO MY OFFICE ON THAT DAY RAISED HIS VOICE AND STATED THAT THE DECISION REGARDING CATO MANOR IS IN HIS HANDS AND I SHOULD NOT INTERFER ANYMORE AND HE LEFT FOR THE AIRPORT. IT WAS VERY CLEAR THAT I WAS NOT IN COMMAND OF THE CATO MANOR OFFICES. I SHOCKED THAT SINCE THAT DAY SUPT WC OLIVIER OPERATED ON HIS OWN THEY DID NOT REPORT TO ME.

I WAS VICTIMISED ,MY SON WAS ATTACKED IN SCHOOL AGAIN THEN DIRECTOR BOOYSEN, TARGET ME NOTHING CAME OF THE DEPARTMENTAL CHARGES .I WAS NOT GUILTY AND CHAIRMAN MADE BRIG MS MOODLEY MADE SERIOUS REMARKS AGAINST THE CONDUCT OF DIRECTOR BOOYSEN , AGAIN NOTHING CAME OF IT.

MY CELLPHONE WAS ILLEGALLY BUGDED FROM THE 13TH FLOOR SERVAMUS BUILDING IN DIR JW BOOYSEN BOARD ROOM . I RECEIVED A CALL ON A CELLPHONE WHICH WAS ILLEGALLY BUGGED WITH USE OF THREE CORRECTIONAL OFFICERS NAMELY BRIG MOHAN AND CAPT GOVENDER OF WESTVILLE PRISON AND ANOTHER MEMBER AND WITH DIRECTOR BOOYSEN .I HAVE SUPPORTING DOCUMENT TO PROVE THE BUGGING . NOW MAJOR GENERAL NGOBO DETECTIVES SERVICES WAS INFORMED TO INVESTIGATE ME ON INSTRUCTION COMMISSIONER PT BROWN.

THE SECTION UNDER LT COLONEL WC OLIVIER STARTED TO CALL THEMSELVES THE CATO MANOR ORGANISED CRIME UNIT. STATE RESOURCE, EMAILS AND FINANCIAL WERE SENT DIRECTLY TO THEN DIRECTOR JW BOOYSEN . ALTHOUGH I WAS THE UNIT COMMANDER, I WAS NOT IN CONTROL OF THEM. I REPORTED THIS TO VERY SENIOR OFFICER THAT DID NOT HELP.

THE MORE I TRIED THE ACT ON ISSUE THE MORE I WAS VICTIMISED BY NOW MAJOR GENERAL JW BOOYSEN. HE TRIED EVERYTHING POSSIBLE TO SUPEND ME AND MISUSED THE DEPARTMENTAL PROCEDURE TO TARGET ME. HE TRIED EVERYTHING IN HIS POWER TO MOVE ME OUT OF UNIT .HE RECOMENDED THAT I MUST BE MOVED OUT FROM MY POST SO THAT HE COULD PUT SOMEONE HE WANTS TO RUN THE UNIT.

EVENTUALLY HE DID GET ME OUT. BRIG ZAKHALI WAS MOVED OUT OF PROVINCIAL HAWKS AND ACTED IN MY POST . I TRIED TO FIGHT MY CASE BUT ODDS WERE STACKED AGAINST ME UNTIL NOVEMBER 2011 I RECEIVED A OFFICIAL NOTICE THAT I BEING TRANSFERRED WITH POST. THIS IS A UNFAIR LABOUR PRACTICE BUT I COULD DO NOTHING.

IT CLEAR THAT MAJOR GENERAL JW BOOYSEN WAS UNTOUCHABLE IN THE POLICE AND HE HAD THE BACK UP SENIOR OFFICERS IN THE SAPS. HE COULD DO WHAT HE WANTED TO DO WITH ME. HE WAS EVEN PROMOTED TO MAJOR GENERAL AS DEPUTY PROVINCIAL HEAD OF THE HAWKS KZN.

TO THIS VERY DAY I AM FACING HUMILATION OF ACTION AND I WAS FORCFULLY MOVED OUT OF HAWKS ENVIROMENT AS UNIT COMMANDER. I FELT ABUSED BY THE SYSTEM BECAUSE SO MANY OF THEM GANGED UP AGAINST ME. THEY MADE IT SEEM LIKE I WAS TROUBLE MAKER. ALL I WAS TRYING TO DO WAS JOB AS UNIT COMMANDER. I FOLLOWED ALL PROTOCALLS, RIGHT UP MINISTER OFFICE WITH MY COMPLAINT. I WAS THEATEN WITH DEPARTMENTAL ACTION AND INFORMED BY A BRIG KADWA HE HAS BEEN APPOINTED TO INVESTIGATE ME FOR ADRESSING MY COMPLAINT TO THE MINISTER OFFICE. THOSE MEMBERS AT CATO MANOR OFFICE ACTED UNDER COMMAND OF MAJOR GENERAL BOOYSEN ALL THE TIME . ALL MEDIA REPORTS ON ALL INCIDENTS CAME FROM M/GENRAL BOOYSEN AND NOT ME. ALL GRAHIC PICTURE OF SHOOTING ON CRIME SCENE WAS PUT IN BY JOURNALIST CALLED MR ANIL SINGH (A FRIEND OF BOOYSEN) OF DAILY SUN NEWSPAPER . I DO NOT KNOW HOW THIS JOURNALIST GOT TO THOSE CRIME SCENE AND WERE HE OBTAINED THOSE PICTURES.

I AM VICTIM AND THAT MAJOR GENERAL BOOYSEN ABUSED HIS POSITION TO TARNISH MY IMAGE SAPS AND HAVE ME REMOVED AS UNIT COMMANDER OF ORGANISED CRIME DURBAN. IT IS SHOCKING THAT EVERYTIME I HAVE RAISED THIS ISSUE I WAS TARGETED. I HAVE BEEN THREATEN AND EVIDENCE IS POINTED AT THEM YET THEY WALKING FREELY. MY LIFE IS IN SERIOUS DANGER RELATING THOSE TO ISSUES ABOVE

I AM WILLING TO CLEAR ANY OMISSION OR ANY UNCLEAR ISSUE WHEN CALLED UPON TO DO SO .

I KNOW UNDERSTAND CONTENTS OF THIS STATEMENT

I HAVE NO OBJECTION TO TAKING THE PRESCRIBED OATH

I NO OBJECTION TO TAKING THE PRESCRIBED OATH

.....RS AIYER COLONEL DATED : 2012-08-03

(cont)

I CERTIFY THAT DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT. THIS STATEMENT IS SWORN TO BEFORE ME AND DEPONENTS SIGNATURE WAS PLACED THEREON IN MY PRESENCES AT SERVAMUS BUILDING ON FRIDAY

2012-08-04 AT TIME :09:00

_____COMMISIONER OF OATHS.

RANK: LT COLONEL RICHARD RAMUKOSI

ADDRESS:1 OCKERSE STREET KRUGERSDORP

WEST RAND GAUTENG

.....

GSM

ANNEXURE 'A 2'

267

CM3

RAJENDRAN SANJEEVI AIYER
STATES IN ENGLISH UNDER OATH

I AM COLONEL IN THE SAPS . ON THURSDAY 2012-08-30 I WAS APPROACHED BY INVESTIGATION TEAM I WANT TO MAKE ADDITIONAL STATEMENT AS FOLLOWS:

IT WAS BROUGHT TO MY ATTENTION THAT CAPTAIN VAN TONDER WAS HAVING MEETING WITH ALL ROLE PLAYERS IN RESPECT OF CITI CRIMES ON A WEEKLY BASE. HE HELD THIS MEETING WITH STAKE HOLDERS . AT TIMES WHEN I CALLED ,THEN DIRECTOR JW BOOYSEN (PROVINCIAL COMMANDER OF OCU) AT THE PROVINCIAL OFFICE I WAS TOLD BY STAFF THAT HE IS ATTENDING A MEETING AT CATO MANOR OFFICES WHICH I HAD NO KNOWLEDGE OF, HIM BEING THERE .I WOULD CONTACT MEMBERS WHO CONFIRMED BOOYSEN PRESENCES CATO MANOR OFFICES. THAT WAS NOT PROTOCALL OF DIRECTOR BOOYSEN ,JUST TO GO DIRECTLY TO MY OFFICES WITHOUT INFORMING ME . I RECEIVED INFORMATION FROM RELIABLE SOURCES WITHIN THE UNIT MEMBERS I WAS TOLD THAT DIRECTOR BOOYSEN IS AT THE UNIT IN CATO MANOR. I WAS TOLD BY LATE WARRANT OFFICER NXUMALO, ON A CERTAIN DAY AFTER MY WEEKLY MEETING AT MY OFFICES I SHOULD BE VERY CAREFUL OF BOOYSEN AND OLIVIER AND I SHOULD PROTECT MYSELF. THEY ARE UP TO SOMETHING. HE WAS DISTURBED WHEN HE NOTICED LT COL OLIVIER WALK TOWARDS MY OFFICE AND PROMISE TO DISCUSS THIS LATER. HE WAS SHOT AND KILLED SHORTLY THEREAFTER WHILST IN AN OPERATION IN THE INANDA AREA UNDER THE COMMAND OF CAPT LOCKHEM.

I THEN COMPLAINED TO COMMISSIONER PT BROWN THEN PROVINCIAL HEAD OF DETECTIVES (PT BROWN) . DIRECTOR BOOYSEN AND I WAS CALLED IN AT PROVINCIAL COMMISSIONER NGIDI'S OFFICE IN PRESENCES OF PT BROWN ,I TOLD THE PC OF KZN WHAT DIRECTOR BOOYSEN WAS DOING .HOW ,BOOYSEN WAS VISITING THE CATO MANOR OFFICES WITHOUT MY KNOWLEDGE . A DECISION WAS TAKEN BY THE PC IN KZN I SHOULD REMAIN UNIT COMMANDER DURBAN ORGANISED CRIME AND DIRECTOR BOOYSEN SHOULD REMAIN AS PROVINCIAL COMMANDER NOT TO INTERFERE WITH EACH OTHER JOBS. I WAS IN AGREEMENT , YET BOOYSEN IGNORED THE INSTRUCTION AND CONTINUED TO GO TO CATO OFFICES WITHOUT TELLING ME AS THE UNIT COMMANDER. I WAS ALWAYS TOLD BY PT BROWN THAT BOOYSEN WAS MY COMMANDER AND I HAVE WORK ON HIS INSTRUCTION . I CONSTANTLY REMINDED A/ COMM. PT BROWN ,AS HE WAS TASKED BY THE PC TO OVERSEE THE INSTRUCTION OF PC IN KZN. I TOLD HIM I WILL COMPLY IF IT IS ONLY LAWFUL INSTRUCTION FROM BOOYSEN .I ALSO PICKED IT UP, THAT THE SENIOR MANAGER HAD A CERTAIN FEAR OF BOOYSEN .

CONTON PAGE 2.....

GSM RSA

268

SEVERAL CASES OF SHOOTING LIKE RAJA KILLING ,PAVILLION SHOOTING , BALI ATM BOMBING, SHOOTING OF ATTORNEY SHAM KILLERS AND MANY OTHERS, I ESTABLISHED THAT DIRECTOR BOOYSEN WAS AT THE CRIME SCENES. WITHOUT ME INFORMING HIM . LATER WHEN I ARRIVED AT A FEW OF THE CRIME SCENE I NOTICED BOOYSEN PRESENCES .I SAID NOTHING EVEN THOU I WAS VERY UPSET . IT CLEAR LT COLONEL OLIVIER WAS WORKING HAND IN HAND WITH DIRECTOR BOOYSEN . HIS TELEPHONE RECORDS INCLUDING HIS CELLPHONE RECORDS WILL SHOW . I RECALL SHOOTING INCIDENT WHEN I REPORTED A SHOOTING INCIDENT TO DIRECTOR BOOYSEN IN THE N3 NEAR CATO RIDGE AREA BY CST SHANE NAIDOO AND OTHERS . I WAS UNWARE THAT BOOYSEN WAS ON LEAVE AT TIME YET HE CONFIRMED HE IS AT SCENE . I WAS SHOCKED I HAD NO COMMENTS.

CAPTAIN EVA WAS NOT APPOINTED TO DURBAN ORGANISED CRIME . COMMISSIONER PT BROWN AND DIRECTOR BOOYSEN WAS INVOLVED IN THE PROCESS ,THEY MUST EXPLAIN WHAT PROCESS THEY USED. I DID NOT APPROVE MOST OF MEMBERS AT CATO OFFICE MEMBERS TO ORGANISED CRIME DURBAN. ALL THEY DID WAS JUS CLOSED THE UNIT SERIOUS VIOLENT UNIT AND REOPENED AS THE CATO MANOR ORGANISED CRIME OFFICES. MANY OF THOSE MEMBERS HAVE LONG STANDING RELATIONSHIP WITH DIRECTOR JW BOOYSEN FROM DAYS OF MUDER AND ROBBERY UNIT. I DEMANDED THAT ALL THESE MEMBERS BE VETTED . NOTHING CAME OF THAT PROCESS. THEY CONTINUED TO OPERATE AS TWO SEPARATE UNITS.

I RECEIVED INFORMATION FROM RELIABLE SOURCES IN THE TAXI ASSOCIATION THAT WARRANT OFFICER MOSTERT IS WORKING WITH FOR A TAXI GUY IN THE STANGER TAXI ASSOCIATION . THERE GOING TO PUT A HIT ON ME AS I AM PROBLEM IN THERE OPERATIONS . ALLEGATIONS OF LARGE AMOUNTS OF MONEY WAS EXCHANGING HANDS. SHORTLY THEREAFTER I RECEIVED INFORMATION FROM A SOURCE THAT A DIRECTOR GOPAUL AND BOOYSEN WERE SEEN TOGETHER. DIRECTOR GOPAULS MEMBERS FROM THE DURBAN HARBOUR POLICE PROCEEDED TO UMHALI AREA AND GUN DOWN INNOCENT INDIAN BOY,PLUS THE DRIVER AFTER A CAR CHASE . THE STATION COMMANDER AT UMHALI AT TIME WAS UNAWARE OF HARBOUR POLICE WORKING IN THE AREA. THEY HAD NO MANDATE TO ENTER THAT POLICING AREA. CAPTAIN MANIVASHEN OF KWA DUKUZA SAPS ALSO REPORTED THE CONDUCT OF WARRANT OFFICER MOSTERT REGARDING A HIT ON A PRISONER NOTHING HAPPENED.

IN TERMS OF LOGISTIC AND RESOURCES MOST OF FINANCIAL APPROVALS BY PASSED ME AS UNIT COMMANDER RELATING TO CATO MANOR. I FINANCIAL CLERK INFORMED ME THAT MONIES HAVE BEEN TAKEN FROM OUR BUDGET AND PROVINCIAL OFFICE WAS TELLING US WHAT TO DO WITH OUR BUDGET, AT OCU DURBAN .

CONT PAGE 3.....

RSG

G Sm

269

I WAS LATER ALSO INFORMED BY SOURCES THAT LT COLONEL GARTH LE ROUX WAS INVOLVED IN MKIZE INCIDENT . IT IS ALLEGED THAT HE ESCORTED IN HIS RED CORSA(STATE CAR) MKIZE BEFORE THE KILLING. I DISCUSSED THIS MATTER TO WILLIAMS OF ICD . I TRUSTED WILLIAMS.
I CONFIRM THAT ON THE DAY OF MKIZE KILLING I WAS IN THE COMPANY OF ANOTHER CONSTABLE TERRANCE MUNUSAMY FROM POINT POLICE WHEN I CALLED LT COLONEL OLIVIER TO FIND OUT IF HE KNEW OF THE SHOOTING OF MKIZE IN UMGENI ROAD . HE TOLD ME THAT ONLY NIU MEMBERS ARE INVOLVED ,NONE OF THE CATO MEMBERS ARE INVOLVED. I ONLY LATER DISCOVERED THAT LT COLONEL OLIVIER HAD TOLD ME LIES . I IMMEDIATELY TASKED MY SOURCE TO CONFIRM WHAT IS GOING ON IN UMGENI ROAD. MY FEEDBACK WAS THAT CATO MANOR MEMBERS ARE ON THE SCENE AND THEY ARE INVOLVED IN THE SHOOTING. I IMMEDIATELY MADE OB ENTRY . I CALLED ICD OFFICE TO FIND OUT WHAT'S GOING ON . INFORMATION WAS THAT DIRECTOR BOOYSEN AND BRIG MADONSELA HAD ALSO PROCEEDED TO THAT SCENE , YET THERE WAS A COURT ORDER. MY SOURCE ASKED WHO DRIVING A BEIGE MINI BUS ,IF WE HAVE ONE ,I TOLD HIM I DON'T KNOW. I LATER DISCOVERED THIS BEIGE MINI BUS WAS GIVEN TO CATO MANOR OFFICES WITHOUT MY KNOWLEDGE.
I DID MAKE CALL TO BOOYSEN AND TELL HIM OF SHOOTING INCIDENT AND REPORT I RECEIVED FROM LT COLONEL OLIVIER ABOUT SHOOTING INCIDENT THAT OUR MEMBERS ARE NOT INVOLVED IN THE INCIDENT. I WAS TOTALLY UNAWARE OF LIES GIVEN TO ME BY OLIVIER. I WILL REVEAL THE SOURCE TO INVESTIGATORS ,AS HE FEARS HIS LIFE. I ALSO CONFIRM THAT I HAD A WITNESS IN MY OFFICE WHEN I CALLED LT COLONEL OLIVIER. THE OB WAS STOLEN SHORTLY THEREAFTER FROM MY OFFICES. BOOYSEN CONCEDED IN A MEDIA REPORT HE ATTENDED TO MKIZE SHOOTING INCIDENT.

WARRANT OFFICER GANESH AND SGT PADAYCHEE WERE ONLY DEALING WITH DRUGS . THESE MEMBERS TAKEN TO CATO MANOR BY DIRECTOR BOOYSEN. I HAD NO SAY IN THE MATTER. MOST OF THE TRANSFERS AND SECONDMENT TO DURBAN ORGANISED CRIME WAS DONE BY DIRECTOR BOOYSEN. . I HAD VERY LITTLE SAY ,BY THAT TIME, I HAD NO COMMAND OVER LT COL OLIVIER AND THOSE MEMBERS AT CATO MANOR.

YES, WHEN THE NATIONAL OFFICE CLOSED CATO MANOR SVC OFFICES I HAD REQUEST FOR LOGISTICAL AUDIT . INVENTORY OF STATE PROPERTY WAS NOT IN ORDER INCLUDING UNACCOUNTED FIREARMS . I ISSUED A SINGLE 4X4 NISSAN HARDBODY TO LT COL OLIVIER. ALL OTHER RESOURCES WAS GIVEN FROM DIRECTOR BOOYSEN OFFICE INCLUDING\ COMPUTERS WHICH BROUGHT TO MY NOTICE LATER ON .
WHEN I CLOSED CATO MANOR OFFICES , BOOYSEN STEP IN AND WALKED INTO MY OFFICE AND TOLD ME THAT I HAVE NO DEALING WITH CATO MANOR OFFICES AND HE TAKE OVER THAT SECTION AND MAKE DECISION .
ALL MEDIA REPORTS OF SHOOTING BY CATO MANOR SECTION WAS MADE BY BOOYSEN .
ALSO OF UNLAWFUL ARREST OF WARRANT OFFICER SWART OF OCU

GM

270

DURBAN COMPLAINED ABOUT BOOYSEN ARRESTING HIM UNLAWFULLY. I WITNESS WARRANT OFFICER KARL SANDERS OFFICE BEING RAIDED BY BOOYSEN WITH WARRANT PETER GEORGE AND WARRANT OFFICER MOSTERT. I CALLED BOOYSEN ASIDE AND INFORMED THAT THIS A UNLAWFUL SEARCH AND ARREST OF MEMBERS. I CAUTION BOOYSEN AGAINST ARREST OF MY MEMBERS. I ALSO AWARE THAT SPAR HAD DONATED A LAPTOP TO CATO MANOR OFFICES WITHOUT MY KNOWLEDGE. ONE CREAM OR BEIGE MINI BUS CUMBI WAS ISSUED WITHOUT ME BEING INFORMED DIRECTLY TO LT COL OLIVIER AND HIS TEAM , THIS CAN BE CONFIRMED BY CAPTAIN NI SHANGE FROM DURBAN ORGANISED CRIME UNIT. I WAS LATER TOLDED , IT WAS DISCOVERED TO BE USED IN MKIZE SHOOTING INCIDENT.

LT COL OLIVIER DID NOT OBTAIN HIS AFTER HOURS AUTHORITY FROM ME, AS I WAS HIS IMMEDIATE COMMANDER . I DO NOT KNOW WHO ISSUED HIM AFTER HOURS AUTHORITY TO USE A STATE VEHICLE AND RESOURCES. I WAS INFORMED SOME STATE VEHICLES REPAIRED AT PRIVATE PANEL SHOPS. I WILL DISCLOSE THIS TO INVESTIGATORS. e7

ALL THOU MY OFFICE KEPT THE ALL MEMBERS PERSONAL FILES. THESE MEMBERS WERE MAKING APPLICATION TO TRAVEL WITHOUT MY SIGNATURE OR I DID NOT HAVE ANY KNOWLEDGE OF THEIR OPERATIONS. SOMETIMES ,THEY TRAVEL WITHOUT ANY WRITTEN APPROVAL . I HAD FALL OUT WITH THE UNIT COMMANDER OF OCU RICHARD BAY , HE WANTED TO KNOW WHAT ARE MEMBERS OF CATO MANOR DOING IN HIS AREA .I COULD NOT GIVE HIM AN ANSWER, I MERELY REFERRED HIM TO BOOYSEN . I HAVE EVIDENCE THAT BOOYSEN WAS BUGGING MY CELLPHONES WITH A BRIG MOHAN AND CAPTAIN GOVENDER FROM WESTVILLE CORRECTIONAL SERVICES. THIS UNLAWFUL TO BUG MY CELLPHONES. e9

I THESE ALLEGATION AGAINST BOOYSEN ACTION AGAINST ME WILL RUN INTO PAGES WITH SUPPORTING DOCUMENTS. LT GEN MASEMOLA WAS AWARE OF THESE ISSUES. MOST OF SENIOR POLICE ON TOP KNEW WHAT WAS GOING ON . I REPORTED THIS LT GENERAL DRAMAT AS WELL. ALL I DID WAS BECOME A VICTIM , BOOYSEN MANAGED MOVE ME OUT OF MY POST AS UNIT COMMANDER. I BROUGHT THIS ISSUE TO GENERAL CELE ATTENTION VIA MY ADVOCATE ,I RECEIVED NO JOY. I WROTE TO MINISTER OF POLICE OFFICE THAT IS WHEN BRIG KADWA OF HAWKS INVESTIGATED ME ON THE INSTRUCTION OF LT GENERAL DRAMAT. I AM HONEST POLICE OFFICIAL DOING MY JOB YET I TARGETED FOR NO REASON. APPLICATIONS FOR STATES RESOURCES SUCH ACCOMMODATIONS AND TYRES FOR CATO MANOR ETC . MOST TRAVELING PLANS WENT DIRECTLY TO DIRECTOR BOOYSEN OFFICES.

I REPORTED THE SERIES OF SHOOTING INCIDENT DURBAN ICD OFFICES. I SPOKE TO MISS WILLIAMS WHO SHARED MY CONCERNS . IT WAS CLEAR VERY LITTLE COULD BE DONE AGAINST CATO MANOR .

RSA

G Sm

YES DID RECEIVE REPORTS AFTER SHOOTING INCIDENT . THIS DONE ONLY BECAUSE I FORCED THEM TO DO SO. I WAS AWARE OF DIRECT COMMUNICATION OF THESE MEMBERS TO DIRECTOR BOOYSEN . YES I DID QUESTION WHY SO MANY CASES KILLING TOOK PLACES. I TRIED TO REMOVE THE ATTORNEY SHAM MURDER DOCKET AND GIVE IT ANOTHER INVESTIGATOR BUT DIRECTOR BOOYSEN CALLED FOR MEETING . IN MY PRESENCES THE NEW INVESTIGATOR WARRANT OFFICER RENEYCKE HAD TO GIVE BACK THE DOCKET TO LUIT MOKESH PANDAY ON INSTRUCTION OF DIRECTOR BOOYSEN. I WAS UNDERMINED ALL THE TIME BY DIRECTOR BOOYSEN .HE ONLY VISITED MY OFFICE FEW TIMES.ONCE IN A FORMAL MEETING HELD AT DURBAN .

ALL THESE PRIVATE COMPANIES FREQUENTED CATO MANOR OFFICE YET I WAS COMMANDER. I WAS AWARE THAT SPAR DONATED COMPUTERS TO CATO MANOR OFFICE. CATO MANOR HOSTED HUGE YEAR FUNCTIONS AT DURBAN HARBOUR AFTER DURBAN OCU FINISHED HAVING YEAR END FUNCTION . AGAIN I COULD NOT QUESTION THEM AS DIRECTOR BOOYSEN WAS PRESENCES TO OPEN THAT FUNCTION . I DO NOT KNOW WHERE THE MONEY CAME ,AS LT COL OLIVIER MUST EXPLAIN .THIS PARTY WAS WELL IN ACCESS OF ONE HUNDRED THOUSAND RAND. LARGE NUMBER PEOPLE WERE INVITED . I WENT SEE AND WAS TREATED LIKE OUTSIDER TO THIS CATO MANOR OFFICE :

I WAS FORCEFUL REMOVED FROM MY OFFICE ON RECOMMENDATION OF DIRECTOR BOOYSEN THAT HE USED HIS POSITION AND THE DEPARTMENTAL PROCEDURE AGAINST ME . I WAS AWARE THAT BOOYSEN HAD INTENTION TO REMOVE ME FROM MY OFFICE A LONG TIME AGO . BRIG MADONSELA TOOK LOCKSMIT FORCED THE DOOR OPEN OF MY OFFICE. I FOUND A PLACARD READING EX UNIT COMMANDER ON MY DOOR . MOST OF KILLING WERE REPORTED TO ME LONG AFTER THE ICD HAD ATTENDED AND DIRECTOR BOOYSEN ,THEY ONLY SUBMITTED WRITTEN REPORTS TO ME LATE IN THE DAY.

I WANT MAKE IT VERY CLEAR THIS IS A VERY SERIOUS MATTER AND ACCORDING TO MY VIEW , THESE MEMBERS ARE VERY DANGEROUS. THEY HAVE BEEN GRANTED BAIL BY COURTS TO WORK FROM THE SAME OFFICES. IT CLEAR THAT NOBODY RESPECT THE WITNESS. I WILL ONLY MAKE A PROPER STATEMENT WHEN ALL SAFETY MEASURES ARE PUT INTO PLACE. MY RIGHTS ARE RESPECTED BY THE COURTS.

I FULLY UNDERSTAND THE RIGHTS OF SUSPECT BUT CASES SUCH AS THESE THE COURTS HAVE TO INTO CONSIDERATION SERIOUS NATURE OF CASE AND UNDERSTAND DANGERS OF DEALING WITH ORGANISED CRIMINAL NETWORKS. IT SEEMS THAT CERTAIN PUBLIC INVOLVEMENT IN THIS MATTER IS CREATED FALSE PERCEPTION OF FACTS. IN ORDER FOR TRUTH TO BE EXPOSED FAIR PRINCIPAL OF JUSTICE MUST APPLY.

G S M R.

272

I PREFER TO EXPOSE FACTS IN COURT IF MY LIFE IS GOING TO BE EXPOSED ,TO THIS KIND OF DANGER. THERE ARE LOTS OTHERS, WHO NOT BEEN ARRESTED , GOING AROUND IN PUBLIC PLACES CREATING PERCEPTIONS YET EMPLOYED BY THE STATE IN ORGANISED CRIME AND SAPS IN KZN .THERE LOT OF PRESSURE PUT ON ME ,AS I STILL WORK IN THE SAPS IN KZN.

I WILL STILL ADD TO WHAT I HAVE SAID AND WILL CLEAR OUT ANY OMISSION IF THAT NEED BE .I WILL ADD TO MY STATEMENT UNDER CROSS EXAMINATION IN COURT.

R. S. AYER 2012-08-31

I CERTIFY THAT DEPONENT HAS ACKNOWLEDGED THAT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT . THIS STATEMENT WAS SWORN BEFORE ME AND DEPONENTS SIGNATURE PLACED THEREON IN AT DURBAN ON FRIDAY 2012-08- 31 AT 10:45

.....COMMISSIONER OF OATHS
LT COLONEL RICHARD RAMUKOSI
ADDRESS: 1 OCKERSE STREET KRUGERSDORP
WEST RAND GAUTENG

GSM

CM4.1

STANDING ORDER (GENERAL) 251

PART III

POLICE DUTIES

DUTIES OF THE RELIEF

USE OF ARMS

251.1. The maintenance of law and order is a duty imposed on the Police by law.

251.2. When a member is required to perform duties in a neighbourhood or in circumstances perilous to life, he shall be adequately armed for self-preservation or the protection of life and property. He must not, when necessary, hesitate to make use of his arm(s).

251.3. For obvious reasons it is not possible to make hard and fast rules with regard to all the circumstances under which fire-arms may be used.

251.4. As a member is often required to act on his own initiative, it is essential that all members have a thorough knowledge of the circumstances under which fire-arms may legally be used.

251.5. Members may be justified in using their fire-arms under the following circumstances:

251.5.1. If their station or barracks is attacked;

251.5.2. if an attempt is made to relieve them of their prisoners or deprive them of their arms;

251.5.3. to defend themselves or any other person or persons from death or serious injury if attacked,;

251.5.4. when other means are ineffectual, to effect the arrest or to prevent the escape of a prisoner convicted of a serious crime or of a person who has committed or is suspected of having committed an offence included in Schedule 1 to Act No 51 of 1977. [In this connection attention is especially drawn to the provisions of Section 49(2) of Act No 51 of 1977.]

251.6.1. It must constantly be borne in mind that, however justified a member may consider himself to be in shooting, whether or not the results are accompanied by the loss of life, this act with all its accompanying circumstances will have to be subjected to an investigation. A member who is placed in such circumstances, shall have to prove that he acted with all reasonable care and without recklessness or negligence, but that he was compelled by circumstances to make use of his fire-arm and that

G sm

SEQ 29/2021-324

the degree of force and the nature of the weapon used, were not out of proportion to the circumstances necessitating the use of it.

251.6.2. Escape from lawful custody is a Schedule 1 offence, in the Criminal Procedure Act, only if the person who escapes or attempts to escape, has been arrested for having committed an offence in Schedule 1 or for the offence of escaping from that lawful custody. It is strictly prohibited to shoot at a person who has committed or is accused of having committed a petty offence [ie an offence other than that referred to in Schedule 1 of the Criminal Procedure Act] simply because he resists or escapes or attempts to escape. In such circumstances only the force [killing excluded] which is reasonably necessary to overcome the resistance or to prevent the escape, may be used.

251.6.3. If, under certain circumstances, it would suffice merely to wound or maim a person, care must be exercised not to kill that person. A member should familiarise himself with his weapon(s) in order to control the use of it. If a member has a valid reason to believe that his life is in imminent danger, he is entitled to shoot to kill that person.

251.6.4. A member who, under certain circumstances, is authorised and compelled to discharge a fire-arm must, however, always take care not to hit an innocent person.

251.7. The Riotous Assemblies Act [Act No 17 of 1956] makes special provision for the suppression of riotous assemblies. [See Sections 7 and 8 of the Act.] Attention is however directed to the provisions of Section 9, regarding the provisions in other enactments relating to the dispersal of riotous gatherings.

251.8. It is of the utmost importance that the officer [or other senior member present] should give all his attention to the supervision of the members under his command. He should not, therefore, except in the case of extreme necessity, himself fire but should, by a deliberate word of command, order one or more members under his command to fire a specified number of rounds at a particular person or persons indicated by him.

251.9. The Commander shall cause the members to fire at the leaders of the mob and such members must, as far as possible, attempt to hit the persons indicated. Firing shall not take place before the Commander has given a definite word of command to that effect.

251.10. Care must, however, at all times be taken that an innocent person, who is not identifying himself with the mob, is not hit.

251.11. Only as many members as may be considered necessary in the

GSM

circumstances shall be assigned to fire.

251.12. If the necessity for firing arises and only the officer [or the other senior member in charge] is armed, he shall hand his weapon to a responsible member of the section. In all cases, before giving an order to fire, he must exercise the utmost forbearance, consistent with the safety of the members under his command and, as to the extent of the firing, exercise a humane discretion.

251.13. As soon as the necessity for firing has ended, a further shot shall not be fired.

251.14. If women and children are present, or are intentionally being used to thwart Police action, or to incite the emotions of the public, tear-gas must be used as the primary means to disperse the crowd. If this is not successful, the use of batons and fire-arms may be considered.

251.15.1. If a member, irrespective of the circumstances, fires a weapon, allows a weapon to be fired or orders the firing of a weapon, he must immediately report the fact to his immediate commander, or if he is not available, to the senior member at the police station in the area in which the incident occurred.

SO 251.15.1 are replaced by FO(G) 13/1989

251.15.2. If an officer was not present at the time of the incident, such Commander [or other senior member] shall immediately arrange to notify an officer about the incident, in order that, that officer can visit the scene without delay to investigate thoroughly the circumstances of the shooting incident.

251.15.3. If an officer is not readily available, or, owing to the distance he has to cover, he can reach the scene after a long time has expired, that Commander [or other senior member] shall immediately visit the scene personally and thoroughly investigate the shooting incident. If, however, the investigation reveals any of the following circumstances -

251.15.3.1. that a person has been killed or injured;

251.15.3.2. that property has been seriously damaged;

251.15.3.3. that the events reveal the unjustified use of the fire-arm and/or its reckless or negligent handling; or

251.15.3.4. that the events cause particular public interest or are of such a nature that Head Office ought to be informed;

GSM

an officer shall, as soon as possible thereafter, visit the scene and verify the investigation that has already been done.

251.15.4. On his arrival at the scene, the Commander [or other senior member] must:

- identify himself;
- make known the purpose of his visit;
- determine who fired the shot; and
- warn that person in accordance with Judges' Rules before he questions him.

251.15.5. A full factual report about the shooting incident shall then, in accordance with the provisions of SO 231.5.3 and 231.5.4, be submitted under the following headings, under the member's personal file [or if the member is from another station area, under the general file of the station concerned] to the Commander of that member and the District Commissioner in whose District the shooting incident occurred:

251.15.5.1. <u>The shooting incident</u>

251.15.5.1.1. A concise description of the incident without any unnecessary repetition of the other facts which are required.

251.15.5.1.2. The date and time of the incident.

251.15.5.1.3. Where exactly the incident occurred, stating the station area and the Division where it had taken place.

251.15.5.1.4. The reason for the incident and a clear description of the crime which motivated the incident, together with the CR reference number.

251.15.5.2. <u>The member(s) who acted as marksman (-men)</u>

251.15.5.2.1. Full particulars of the member(s), including the station to which attached, capacity in which appointed [permanent, reserve or reservist], sex, age and years of service.

251.15.5.2.2. Whether the member was on duty or had placed himself on duty.

251.15.5.2.3. Whether he had acted on his own initiative or had reacted to an order.

251.15.5.2.4. Whether he had given a verbal warning before firing.

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251.15.5.2.5. Whether he fired any warning shots, and if so, the number of shots fired.

251.15.5.2.6. Whether he attempted to hit the target with the minimum of violence, eg did he aim at the victim's legs, the vehicle's tires, or whatever the case may be.

251.15.5.2.7. Number of rounds fired [excluding warning shots].

251.15.5.2.8. Whether his actions were legal, or not. [If doubtful, this should be specifically mentioned.]

251.15.5.2.9. If the incident is being investigated, the CR or Inquest reference number must be furnished.

251.15.5.2.10. Whether or not a member has been suspended.

251.15.5.3. <u>The fire-arm(s) concerned</u>

251.15.5.3.1. The type of fire-arm, stating the calibre and whether it was an official or a fire-arm belong to the member.

251.15.5.3.2. Mechanical condition of the fire-arm.

251.15.5.3.3. The number of rounds issued when reporting for duty. [If less than the capacity of the relative weapon, the reason therefor must be recorded.]

251.15.5.3.4. The number of shells found at the scene.

251.15.5.4. <u>Target/victim</u>

251.15.5.4.1. Nature and number of the target(s)/victim(s), eg, brick building, motor vehicle, person, or whatever the case may be.

251.15.5.4.2. Whether or not it was the original arget(s)/victim(s) fired at. [If not, the relationship between the target(s)/victim(s) and the incident, eg an innocent pedestrian, part of the mob, or whatever the case may be.]

251.15.5.4.3. Whether or not the target(s)/victim(s) was hit, and if so, a full description of the position, eg left thigh, from the front/back/side, etc.

251.15.5.4.4. Surname and initials of each victim, stating the race, sex and age.

251.15.5.4.5. Condition of the victim/target after the incident.

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251.15.5.4.6. Whether the victim/target was implicated in, or was sought for, any crime, other than that from which the incident arose, reporting full particulars.

251.15.5.5. Arrest(s) resulting from the incident

Number of arrests, stating race and age.

251.15.5.6. The date and time at which an officer [or other member] arrived at the scene, as well as his name. [Should an officer not have visited the scene, the reasons for this must be stated.]

251.15.6. Should the member who fired the shot prefer to remain silent, the information as required in paragraph 15.5 must be obtained by means of witnesses and from own observations. The Commander [or other senior member] shall specify in his report the manner by which he obtained the information and, if a witness is not available, the fact that his report is based on presumptions.

251.15.7. If a member who was involved in a shooting incident, shows signs of shock, he must be given the necessary support, but without detracting from the applicable legal aspects.

251.15.8. The District Commissioner in whose District the shooting occurred, may order any officer under his command further to investigate the incident. If the shooting gives rise to the investigation of a case docket for an alleged crime against the member(s) concerned, the directions in SO 107(6)(c) must not be lost sight of.

251.15.9. As other provisions apply in the case where fire-arms were used in the combating or suppression of riots, such an occurrence must not be treated in accordance with these provisions. If, however, a criminal investigation or an inquest follows as a result of a shooting incident during riots, the provisions in SO 107 and 110 must not be lost sight of.

251.16. If a member has handled a fire-arm recklessly or negligently, or if he was not justified in discharging it or to order it to be discharged, the designated officer shall, after the conclusion of any criminal and/or disciplinary action, give serious consideration to the question as to whether a board of inquiry should not be convened in terms of Regulation 64.

251.17. Since all members have been adequately trained in the handling of fire-arms, it is the bounden duty of every member, irrespective of rank, who has the good name of the Force at heart, to be safety conscious and to use fire-arms with the greatest care, prudence and competence.

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008 NOV 27 8:37

ANNEXURE EJ CM4.2

GP-8.04-022 SAP 21

SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

136 Victoria Embankment
Durban 4000

Verwysing / Reference: 12/18/2
Navrae / Enquiries: S/Supt Alyer, Supt W Olivier
Telefoon / Telephone: (031) 333 8045
Telephone: (031) 203 7323
Faksnommer / Fax number: (031) 203 7318
( )

OFFICE OF THE
TACTICAL COMMANDER
ORGANIZED CRIME
DURBAN

2008-10-14

THE PROVINCIAL COMMANDER
ORGANIZED CRIME
KWA-ZULU NATAL

ATT: DIR BOOYSEN

MONETARY AND NON-MONETARY AWARDS

MAPHUMULO CAS 99/08/2008: MURDER AND ATTEMPTED MURDER ON SAPS MEMBERS SUPT CHONCO AND INSP M KHANYILE

1. Details of candidates:

0070031-2	Dir JW Booysen
0057260-8	Supt W Olivier
0425495-3	Capt SJ Smith
0410381-5	Capt N Eva
0426991-8	Capt Lockem
0066633-5	Capt JJE Van Tonder
0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0615350-0	Insp MW Thabethe
0450710-0	Insp Tango
0464815-3	Insp BA Magwaza
0429170-1	Insp E Nel
0638209-6	Insp Mdlalose
0413171-1	Insp A Stolz
0603646-5	Insp M Panday
0173585-3	Insp PW George
0523900-1	Insp B Zondi
0608191-6	Insp RC Maharaj

G Sym

0492770-2	Sgt Mkhwanazi
0536844-8	Cst S Naidoo
0443522-2	Capt V Auerbach (Brighton Beach SAPS)

(21)

Each of the above candidates played a role in the successful apprehension of the suspects. Some of the candidates played a role in the apprehension of the suspects whilst others assisted at the scene.

2. **Summary of events:**

On Wednesday 2008/08/27 at approximately 10H00, Supt Chonco was in the company of Insp Khanyile, they were attached to the Provincial Taxi Task Unit. The same day they were on route from SAPS Kranskop to KwaDukuza Court. Ahead of them was a marked police vehicle with two accused also on route to take the two accused to KwaDukuza Court.

Whilst Supt Chonco travelled along the R74, approximately 20 kilometers before KwaDukuza on a detour along the R74, he was led into an ambush and was accosted by armed males armed with AK47 and R4 – R5 rifles. He was fatally shot and killed behind the steering of the police vehicle whilst Insp Khanyile, who was in his company, also sustained gunshot wounds but miraculously managed to fight off the suspects, shooting the one about six meters from him. Insp Khanyile was later removed and taken to Umhlanga Hospital by helicopter.

The scene was attended by Supt Minaar, the Station Commissioner of Kranskop SAPS as well as other members of nearby police stations. The same day at 11H00, members of Organised Crime, Cato Manor, was summoned and tasked to the scene and took over from Supt Minaar. The scene was thoroughly secuted and a thorough investigation was done at the scene with extensive enquiries made by the members on the scene. Statements were obtained from the local community and other persons nearby.

The same day 2008/08/27, the investigation team which at this stage consisted of Supt W Olivier, Capt S Smith, Capt N Eva, Capt Van Tonder, Insp Mostert, Mdlalose, Zondi, Makhanya; P George, Thabethe, Panday, Stolz and Sgt Mkhwanazi, concluded their investigation at the scene. At the time the deceased, who was shot at the scene by Insp Khanyile, was removed and possession was taken of his cell phone. Capt Eva, Insp Mostert and Cst Naidoo extracted vital information from the phone. It was during this time that Insp Mostert contacted Crime Intelligence and requested immediate assistance. Supt Olivier, Capt Eva, Van Tonder, Stolz and Panday returned to the office whilst Insp Mostert, Mdlalose, Makhanya, Zondi and Mkhwanazi remained at the scene to conduct further enquiries. Later the members departed to Kranskop and Greytown areas and the same day at 23H00 the investigation team still consisting of the above members met at Greytown. From Greytown the above investigation team proceeded to the area called Matimatolo near Maphumulo, however it proved to be a fruitless exercise. The team then returned to the office.

During this time all avenues were utilized to gather the intelligence that was analysed and on 2008/09/03 the first breakthrough was made by the investigation team with the assistance from Crime Intelligence. The investigation team now consisting of Supt Olivier,

Capt Eva, Smith, Van Tonder, Lockem, Insp Mostert, Panday, Nel, Makhanya, Mdlalose, Magwaza, RC Maharaj, Zondi, Sgt Mkhwanazi and Cst Naidoo as well as Capt V Auerbach of SAPS Brighton Beach, proceeded to the KwaDukuza area. The informer pointed the house out to the investigation team which was situated next to the R74 at 59 Rose Avenue, KwaDukuza. The same evening at 23H30, the same investigation team proceeded to 59 Rose Ave. The following members penetrated the house:

0084512-4	Insp F Mostert
0621413-4	Insp Makhanya
0536844-8	Cst S Naidoo
0443522-2	Capt V Auerbach (Brighton Beach SAPS)

whilst the remaining members took guard outside the house. As the above members entered the house a gun fight ensued and the first suspect, Lindani Buthelezi, was fatally shot and found next to him was a 9mm pistol with the serial number erased. The case is being investigated by KwaDukuza SAPS vide CAS 150/08/08. The investigation team then returned to the office.

Insp Mostert continued to gather information with the assistance of Crime Intelligence.

3. **The Apprehension of two more suspects**

Details of candidates:

0070031-2	Dir JW Booysen
0426991-8	Capt Lockern
0066633-5	Capt JJE Van Tonder
0410381-5	Capt N Eva
0084512-4	Insp F Mostert
0621413-4	Insp Makhanya
0429170-1	Insp E Nel

Summary of events:

On Monday 2008/09/15, Dir Booysen, the Provincial Commander, contacted Insp Mostert and informed Insp Mostert that he had information pertaining to the suspect that had organized the hit on Supt Chonco. He was hiding in Virginia in the Orange Free State and was on route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time the informer remained in contact with Dir Booysen who continued to relay the information over to the investigation team.

On Tuesday 2008/09/16 at 06H20, Dir Booysen contacted Insp Mostert again re the movement of the suspect who was near the Pietermaritzburg area in a Hyundai Tuscon 4X4 with registration NRB3904 and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.

The same day at 08H30, the investigation team still consisting of the above same members who were in the Pietermaritzburg area, continued to receive further information from Dir Booysen and at 10H10 information was received that the above vehicle was on route on the N3 towards the Orange Free State. The vehicle was spotted near the Cedara turn off by the

G Smith

investigation team, the occupants being two persons, a driver and a passenger seated on the back seat of the vehicle. The investigation team, which at this stage consisted of Insp Mostert, Nel and Makhanya in one vehicle while Capt Van Tonder, Lockem and Eva whom followed in a separate vehicle. Insp Mostert managed to catch up to the vehicle and in an attempt to get the suspects to pull over, the official blue light and siren was used. A shootout then took place between the passenger of the suspects' vehicle and the investigation team resulting in the driver of the vehicle being injured in the process which resulted in the vehicle stopping. The passenger in the suspects' vehicle, during the shootout, made an attempt to flee from the moving vehicle which resulted in him being flung out of the moving vehicle. Both the suspects were fatally injured in the shootout. The driver was positively identified as Timson Magojela Ndimande and was the main brain behind the assassination of Supt Chonco, the other suspect was his body guard. The following firearms were found in the vehicle; one AK47 Rifle with loaded magazine, one Ruger Mini 14 Automatic Rifle and two magazines as well as two 9mm Norinco Pistols, both with loaded magazines.

The following cases were opened:
Howick CAS 106/08/08: Attempted Murder and possession of unlicensed firearms
Howick CAS 107/08/08: Inquest

The above members returned to the office and continued to gather further information.

4. Apprehension of two more suspects

Details of candidates:

0426991-8	Capt Lockem
0410381-5	Capt N Eva
0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0638209-6	Insp Mdlalose
0413171-1	Insp A Stolz
0523900-1	Insp B Zondi
0492770-2	Sgt Mkhwanazi
0536844-8	Cst S Naidoo

Summary of events:

On 2008/09/18 at 13H00, Insp Mostert received information about the hideout of two more suspects in the Mandini area. The investigation team consisting of the above members proceeded to Mandini where the house was pointed out by the informer to Insp Mostert. Insp Mostert returned and briefed the members and at 15H10 the investigation team proceeded to 4 Oribi Place, Mandini. The following members entered the house:

0084512-4	Insp P Mostert
0413171-1	Insp A Stolz
0536844-8	Cst S Naidoo

whilst the remaining members stood guard outside the house. At the door, Insp Mostert found a black male and while in the process of identifying himself to this person, this male ran into the house. Insp Mostert, Stolz and Cst Naidoo then entered the house and

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systematically proceeded through the house starting in the lounge area and proceeding down the passage. Turning left into the next passage a young school child was found standing in the one doorway who pointed to a closed door and informed Insp Mostert that "they are hiding there". The child was asked to depart from the house for his own safety. Once the investigation team reached the closed door, they found it to be locked and proceeded to announce themselves stating "It is the police, open up". This was repeated several times but no response was received. The door was then kicked in by Insp Mostert and at the same time a shot was fired from the room towards the investigation team and the sound of glass breaking was heard. The team then entered the room and a shootout took place between the police and the suspects, fatally wounding two suspects. The two suspects were positively identified as Nathi Mthembu and Mdu Khopoloto Ntuli. Found in the room was one Z88 9mm Pistol loaded with the serial number erased and one CZ75 9mm Pistol also loaded with the serial number intact. Insp Mostert was in possession of a warrant of arrest for the suspect Mdu Khopoloto Ntuli vide Maphumulo CAS 2/02/05: Murder which was being investigated by Supt Chonco.

During the investigations it was clear that Supt Chonco was a thorn in the side of these criminals who did not hesitate to take the law into their own hands. Investigations also revealed that the following suspects were directly involved in the assassination of Supt Chonco:

Dumisani Ndlovu who was shot by Insp Khanyile, one of Supt Chonco crew
Lindani Buthelezi who was shot by the investigation team
Nathi Mthembu who was shot by the investigation team
Mdu Khopoloto Ntuli who was shot by the investigation team and who was also wanted on Maphumulo CAS 02/02/2005: Murder (Attached, find J50 Warrant of arrest)
Timson Magojela Ndimande and his body guard, Sibusiso Tembe, who were shot by the investigation team and who orchestrated the hit on Supt Chonco.

Attached find newspaper clippings from the Daily Sun, The Natal Mercury and the Daily News as well as statements of members who were involved in the individual scenes.

As depicted in this report, it is clear that several members contributed and played an important role of which some members were continuously confronted with the dangers of the apprehensions of the suspects whilst other members played their individual roles which contributed to the success. These members should receive a benefit.

Comments: Recommended that members receive a certificate of commendation by the national Commissioner and a mentor of R10,000.

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PROV. HEAD: DET. SERVICE IN KWAZULU-NATAL
PROVINCIAL COMMANDER: ORGANIZED CRIME
ASST. COMM. P.T. BROWN
DIRECTOR J.W. BOOYSEN

Provincial Head Detective Service KZN

5. Award Options:

5.1 Monetary Awards

5.1.1 South African Police Service Gold Cross for Bravery
R35 000.00 (plus applicable tax)

5.1.2 South African Police Service Silver Cross for Bravery
R30 000.00 (plus applicable tax)

5.1.3 South African Police Service Commendation Medal
R25 000.00 (plus applicable tax)

5.1.4 Certificate of Commendation by the Minister for Safety and Security
R15 000.00 (plus applicable tax)

5.1.5 Certificate of Appreciation from the Minister for Safety and Security
R15 000.00 (plus applicable tax)

5.1.6 Certificate of Commendation by the National Commissioner
R10 000.00 (plus applicable tax)

5.1.7 Certificate of Appreciation from the National Commissioner
R10 000.00 (members of the public : tax not applicable)

5.2 Non-Monetary awards

5.2.1 Commendation by the Divisional Commissioner or Provincial Commissioner

5.2.2 Certificate of Appreciation from the Divisional/Provincial Commissioner

Durban Central Cas 185/02/2009 Mexcr 890/

Bhekinkosi Mthiyani "Dlondlo"
States under oath in English

1

I am an adult male with I.D. no 8006156029083, 32 years old
Residing at no. 4734 Melville
Stanger with cellphone 0823988165
I am fenci owner at Stanger
fenci association.

2.

Sometime year 2007 Vella mkhize
was killed at Kwamakhuta cemetery.
Vella mkhize was killed by Sanele
Zondi and Nkosi Zondi was also
present during the killing of
Vella mkhize. Plan of killing of
Vella happened in this way. Nkosi
Zondi went to Vella mkhize pretende
ng to buy venture from Vella
mkhize. On his arrival he told
Vella that he had only R20000
and Vella was asking R25000.
Nkosi Zondi promise to bring R5000
Vella was promised to meet them
at certain spot to be paid the
whole amount of R25000.

3

At the spot they agreed, Vella
was kidnapped by people who
introduced themselves as police
officers. Vella was later on
hand cuffs to Kwamakhuta
cemetery and Sanele Zondi and

GSM

* Rmthiyani

Durban Central as 25/02/2009

A923/
CMS

IN THE HIGH COURT OF SOUTH AFRICA
DURBAN AND COAST LOCAL DIVISION

CASE NO. 13759/2008

In the matter between :

BONGANI ELPHAS MKHIZE	Applicant
and	
MINISTER OF SAFETY & SECURITY: SOUTH AFRICA	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL: KZN COMMUNITY SAFETY & LIAISON	Second Respondent
SAPS PROVINCIAL COMMISSIONER: KZN	Third Respondent
COMMISSIONER J. BOOYSEN: HEAD OF THE ORGANISED CRIME UNIT – SAPS: KZN	Fourth Respondent

---

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

JOHAN WESSEL BOOYSEN,

do hereby make oath and state :-

1.

I am an adult male, a member of the South African Police Service, and am also the Provincial Commander: Organised Crime for the Province of KwaZulu-Natal.

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Durban Central Cas 185/02/2009

A92(B)

2.

The facts stated herein are, unless where indicated to the contrary, within my personal knowledge and belief, alternatively have been obtained by me from files and documents under or in the control of the South African Police Service. I am the Fourth Respondent in these proceedings.

3.

All of the Respondents oppose this application. It is convenient that I depose to the principal Opposing Affidavit with the other Respondents providing Confirmatory Affidavits and/or additional Affidavits as they might see fit.

4.

I have read the Notice of Motion herein, the Founding Affidavit of the Applicant and the other documents and Affidavits annexed thereto.

5.

Before responding to the Applicant's Affidavit it is pertinent for me to point out that the relief sought by the Applicant in paragraphs (b) (ii), (iii) and (iv) is not warranted by the matters disclosed in the founding papers but, more importantly, constitutes an unwarranted and unjustified limitation of the powers, rights, obligations and duties vested in and imposed upon the South African Police Service in terms of the Constitution and more specifically in terms of the Criminal Procedure Act, 51 of 1977. As such that relief constitutes an improper interference with the duties of the Police to investigate and combat crime.

G.S.M

Durban Central CAS 188/12/2009

A 92/13

6.

Apart from that the relief sought in paragraph (b) (i) constitutes nothing more than mere lip service couched in interdictory language enjoining the Police to do exactly that which is their duty to perform.

7.

In seeking that relief, and as a general statement, the Applicant relies on nothing more than innuendo, hearsay, unconfirmed rumour and generalized unconfirmed reports made in the popular press.

8.

I turn now to deal with the specific allegations made in the Applicant's Affidavit.

9.

AD PARAGRAPH 1

I admit the identity of the Applicant and that he is an adult male taxi owner. I have no knowledge as to his place of residence.

10.

AD PARAGRAPH 2

Having regard to that set out in this Affidavit I dispute the contents of paragraph 2.

GSM

Durban Central Cas 188/02/2009

A923

11.

AD PARAGRAPH 3

I admit these allegations.

12.

AD PARAGRAPH 4

I admit the identity of the Second Respondent. However, the Second Respondent is responsible for the portfolio of community safety and liaison. I refer further to his Affidavit filed evenly herewith.

13.

AD PARAGRAPH 5

I admit these allegations.

14.

AD PARAGRAPH 6

Save to state that I am the Provincial Commander: Organised Crime for the Province of KwaZulu-Natal I admit these allegations.

15.

AD PARAGRAPHS 7 AND 8

I note what the Applicant intends to do as described in these paragraphs. The manner in which the Police are authorized to carry out their functions and duties is set out with precise clarity in the Criminal Procedure Act. 51 of 1977

Durban Central CAS 188/02/2009

A 92(P)

("the Act"). In my respectful submission this Court is enjoined to ensure that the Police comply with their duties and obligations as set out in the Act. It is imperative that right at the outset I make it abundantly clear that as matters presently stand a Warrant of Arrest has not been sought or issued with regard to the Applicant and, at present, he has no reason absolutely to fear arrest. However, as the investigation into the matters generally described in the Founding Affidavit progresses further I am unable to state with any certainty whether that position will change. If it does and there indeed arises a situation where it becomes necessary to either question or detain or arrest the Applicant, those functions will be carried out strictly in accordance with the law. If and when that happens, the Applicant has available to him all of his constitutional and other rights which the Police are obliged to respect and observe.

16.

AD PARAGRAPHS 9, 10, 11, 12 AND 13

I have no knowledge of the allegations contained in these paragraphs, question their relevance to this application and, to the extent that the Applicant contends that they are indeed relevant, put him to the proof thereof.

17.

AD PARAGRAPH 14

While there has certainly been tension between the two associations mentioned by the Applicant, the violence in the taxi industry is not limited to those two alone. Violence in the taxi industry is endemic, rife and spreads

G S M

Durban Central Cas 185/02/2009

A:92/5

across all associations. There have been members from all associations that have been killed but at present I am unable to say how many and from which particular association such people have emanated.

18.

AD PARAGRAPH 15

The Police are investigating violence whenever and wherever it occurs. This includes all the associations that are involved and not just the two referred to by the Applicant.

19.

AD PARAGRAPH 16

I admit that at a point in time Superintendent CHONCO was the Station Commissioner at Kraanskop Police Station. However he was assigned to deal with all taxi conflicts as a co-ordinator of that investigation in the Province of KwaZulu-Natal. He was not the head of any unit and there is no particular unit as described by the Applicant. I have no knowledge as to whether or not the Applicant did indeed meet with CHONCO.

20.

AD PARAGRAPH 17

I admit that CHONCO was murdered on 27 August 2008. On that day he and another member of the South African Police, one KHANYILE, were in a motor vehicle when they were set upon. In the exchange of gun fire CHONCO was killed, KHANYILE was injured and one of the assailants was shot dead at the

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Durban Centre | Ces 18/12/2009

A 92

scene. This assailant was found in possession of an AK47 rifle.

21.

AD PARAGRAPH 18

Although I am aware of the fact that the services of a security company were retained by the association, I am not aware of the remaining allegations contained in this paragraph. To the extent that the Applicant contends that they are relevant I put him to the proof thereof.

22.

AD PARAGRAPH 19

I dispute the allegations contained in paragraph 19. The forensic investigation into the firearms of the security company was only done much later under different circumstances. I deal with those later in this Affidavit.

23.

AD PARAGRAPH 20

I deny the allegations contained in paragraph 20. To the extent that the Applicant seeks to rely on rumour and the unsubstantiated evidence of an unknown person who claims to be a policeman, I cannot deal with same.

24.

AD PARAGRAPH 21

I admit that a person was detained and questioned. I deny that that person was in any way assaulted. In any event these allegations constituted hearsay and ought to be struck out.

GS

Durban Central Cas 188/02/2009

A92

25.

AD PARAGRAPH 22

I note the contents of the document purporting to be an Affidavit by MOSES DLAMINI. It is improper for that Affidavit to be put up by the Applicant unless and until MOSES DLAMINI puts up an Affidavit in this matter. That Affidavit was not designed for the purposes for which the Applicant intends to employ it and is therefore, in the context of this application, hearsay, and ought to be struck out. In any event, MOSES DLAMINI was never assaulted and I refer to the Affidavits of PANDAY and MAHARAJ filed evenly herewith.

26.

AD PARAGRAPH 23

The information received from MOSES DLAMINI is hearsay and ought to be struck out. In any event I deny the existence of any list that is referred to by the Applicant and deny that DLAMINI was assaulted.

27.

AD PARAGRAPG 24

I admit that MOSES DLAMINI was released. Any information received by the Applicant from MOSES DLAMINI as referred to in the Founding Affidavit is hearsay and ought to be struck out. I have no knowledge as to why the Applicant became concerned for his wellbeing and deny that he had any reason to be so afraid. The letter, annexure "B" needs to be placed in

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Durban Central | Cas 188/02/2009

A92.15

context. On 05 September 2008 Hlapane Attorneys addressed, *inter alia*, the Provincial Commissioner. A copy of that letter is annexed hereto marked "JWB1". That was responded to on 11 September 2008, a copy of which is annexed hereto marked "JWB2". Annexure "B" to the founding affidavit was then received. In any event, in the absence of an affidavit from the author of the letter the contents thereof are hearsay.

28.

AD PARAGRAPH 25

I deny the allegations contained in this paragraph. It is not the intention of the Police to kill anyone. It is certainly the intention of the Police to properly investigate all crime and to bring the persons responsible therefor to book.

29.

AD PARAGRAPH 26

I deny the allegations contained in this paragraph. It is not the intention of the Police to falsely implicate anyone in any of the crimes concerned. Again the unsubstantiated hearsay referred to in this paragraph is not a basis for the grant of the interdicts sought and ought to be struck out.

30.

AD PARAGRAPH 27

No list existed and therefore there was no list that could have been supplied to the Second Respondent. In this regard I refer to the Affidavit of the Second

G.M

Durban Central Cas 185/02/2009

A92

Respondent filed evenly herewith.

31.

AD PARAGRAPH 28

NDIMANDE and TEMBE were arrested and questioned. They were subsequently released. On 16 September 2008 information was received which necessitated NDIMANDE and TEMBE to be questioned again. Information was also received that the two individuals were in the process of fleeing the Province of KwaZulu-Natal, making their way to the Free State. On the busy N3 freeway between Pietermaritzburg and Merrivale an attempt was made to apprehend them. Police vehicles employing their sirens and appropriate flashing lights attempted to stop them. They resisted and shot at the Police. The Police returned fire and they were killed. Two hand guns, a Lugar assault rifle and an AK47 assault rifle were recovered by the Police. To the extent that the information contained in paragraph 28 is at odds with what I say here, I deny same. I also deny the contents of the press report from The Daily Sun to the extent that it is at odds with what I say. TEMBE was an employee of the security company referred to by the applicant in paragraphs 18 and 19 of the founding affidavit. As a consequence of this incident, and when he was discovered in possession of assault weapons, and because he was involved in an incident where he was party to the Police being fired upon, the forensic investigation into the firearms referred to in paragraph 19 of the founding affidavit was commenced.

G Smith

Durban Central Cas 185/02/2009

A922

32.

AD PARAGRAPH 29

There is simply no basis for what the Applicant contends is "widely believed". I have no knowledge of what services the Applicant has engaged and who or what the "various entities" are. I have already explained that NDIMANDE and TEMBE were again sought as a result of new information received. There is nothing untoward about that. In any event, why the Applicant refers to the N3 highway as a "quite (sic) back-road" escapes me unless it is nothing more than a thinly veiled attempt to colour the information (whether true or not) placed before this Court.

33.

AD PARAGRAPHS 30 AND 31

I have already said that there was no list in existence. On 3 September 2008 an attempt was made to arrest BUTHELEZI. He resisted arrest and attempted to shoot at the members of the South African Police Services who returned fire in self-defence. BUTHELEZI was killed in that exchange of fire. His firearm, a CZ 7.65 automatic was recovered at the scene. Whether or not BUTHELEZI was a prominent member of the Applicant's association is unknown to me. I accordingly deny the allegations contained in paragraphs 30 and 31 to the extent that theirs are at odds with what I say here. The Affidavit put up from SOKHULU is hearsay and must be struck out. It was not obtained or put up for the purposes of this application and she has not confirmed those facts for the purposes of this application. In any event I deny

GSM

Durban Central Cas 185/02/2009 A92B

the allegations contained in that Affidavit to the extent that they are at odds with what I say herein. BUTHELEZI was killed while he resisted arrest and shot at the Police.

34.

AD PARAGRAPH 32

Information was received that implicated NTULI and MTHEMBU in taxi violence related incidents. On 18 September 2008, as a result of that information, members of the South African Police Service attempted to arrest NTULI and MTHEMBU. The Police were fired upon and had to return fire. As a result both NTULI and MTHEMBU were killed. Their firearms, a Z88 and a CZ 75 were recovered from the scene. I accordingly deny the allegations contained in paragraph 32 to the extent that it differs from what I say herein.

35.

AD PARAGRAPH 33

MKHIZE was arrested on 18 October 2008 in Pietermaritzburg. He was attending a funeral at the time. He was transported to Scottburgh for questioning. After questioning, during which he had agreed to effect a pointing-out, he was again transported for that purpose. Whilst in the vehicle he attempted to overcome the driver and was shot in the process. This was in self-defence. I accordingly deny the allegations contained in paragraph 33 where they are at odds with what I say herein.

GSM

Durban Central Cas 185/02/2009

A 92(5)

36.

AD PARAGRAPH 34

I am surprised to note that the Applicant identifies himself with the unnamed person referred to in the unsubstantiated newspapers article. How the Applicant concludes that the report suggests that he is intending to flee the country is a mystery. I accordingly deny the allegations contained in paragraph 34 to the extent that they are relevant to this application.

37.

AD PARAGRAPH 35

I have repeatedly said that the list referred to is simply a figment of the Applicant's imagination. The Applicant is not a suspect at present and neither has a warrant of arrest been contemplated or sought with regard to him. However it is interesting to note that the Applicant has a "source" within the Police services. Why he would need such a "source" is food for interesting speculation. There is no plan to kill the Applicant. I accordingly deny the allegations contained in paragraph 35.

38.

AD PARAGRAPH 36

I deny these allegations:

GSM

Durban Central | Cas 188/02/2009

A425

39.

AD PARAGRAPH 37

This application has been engineered to ensure that the Applicant approach the Court without any response from the Respondents being placed before the Court. If regard is had to annexure "G" it will be noted that it called for a response by 11H00. The absence of a response was coupled with an assumption that there was indeed no response that would be forthcoming. However, if regard is had to the telefax transmission slip annexed to that letter it would be seen that it was only telefaxed at 11H21 that morning. By that stage the response time has past considerably. I have no doubt that that discrepancy was not brought to the attention of the learned Judge who heard this matter in the urgent circumstances engineered by the Applicant. In any event, it came to my attention shortly after noon that day that the third respondent had received an identically worded letter, but which instead called for a response by 12h00 that same day. I was informed that the third respondent's office was preparing a response. The third respondent's reply is annexed hereto marked "JWB3". It is also to be noted that very little of the relief claimed in the Notice of Motion is foreshadowed in the letter, annexure "G". I accordingly deny the allegations contained in paragraph 37.

40.

AD PARAGRAPH 38

The Applicant's belief is wholly unfounded. I otherwise deny the allegations

G S M

Durban Central Cas 185/02/2009

A 925/

contained in paragraph 38.

41.

AD PARAGRAPH 39

I note the allegations contained in paragraph 39.

42.

AD PARAGRAPH 40

I note that the Applicant states that he has no information whatsoever that could assist the South African Police Service in its ongoing investigation into the issues of taxi violence. If that is indeed the Applicant's position then he has nothing to fear. Even if the Police conclude otherwise and determine, at some point in the future, that the Applicant might well be a suspect and liable to detention, the Applicant is well within his rights to refuse to respond to any questions put to him. He is also well within his rights, at that point in time, to demand that he has his legal representative present when being questioned. All those rights the Police Services are obliged to respect and will respect. I also note that the Applicant's stated intention is never to make any confession before a Magistrate or anyone else relating to the investigation into taxi violence. I accordingly deny the allegations contained in paragraph 40.

43.

AD PARAGRAPH 41

I have already said that no warrant for the arrest of the Applicant has been

GSM

Durban Central Cas 185/02/2009

A92B

contemplated or sought. The investigation is ongoing and is nowhere near completion at this stage. The Applicant's averments are simply no basis for the relief sought. I deny the allegations in paragraph 41.

44.

AD PARAGRAPH 42

I note these allegations.

45.

AD PARAGRAPH 43

There is simply no basis for the alleged urgency and the matters dealt with are entirely of the Applicant's own making, based on untested rumour, innuendo and hearsay. There is simply no evidence whatsoever to support the Applicant's alleged "fears and contentions". It is a well known fact that the taxi industry is beset with the corruption and violence as the competing associations and competing members seek to protect their respective interests. The mere fact that people being investigated have sought to turn on the Police and are killed in circumstances where the Police are forced to defend themselves cannot and must not be construed to mean that the Police is conducting a campaign against them.

46.

AD PARAGRAPH 44

There was no need to bring this application. I acknowledge that the Applicant

GSM

Durban Central Cas 185/02/2009

A 92B

has indeed been corresponding with the Police Services. However, and with specific reference to annexure "H", it is disingenuous for the Applicant to put up the response from me without putting up his letter of 29 August 2008. This is yet another indication of why I say the Applicant has crafted together this application to suit his own purposes because the Applicant does not see fit to put up his letter, obviously considering it to be relevant, I will refrain from doing so.

47.

AD PARAGRAPH 45

The references contained in this paragraph are scurrilous and inflammatory. This paragraph and the newspaper articles referred to have no bearing whatsoever on the matter at hand and ought to be struck out.

48.

AD PARAGRAPHS 46, 47 AND 48

I deny the allegations contained in these paragraphs.

WHEREFORE I pray that it may please this Honourable Court to dismiss the application with costs.

G Sm

Durban Central Cas 188/02/2009

A92(3)

DEPONENT

The terms of Regulation R.1258 published in Government Gazette No. 3619 of the 21st July, 1972, as amended, having been complied with, I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this Affidavit, which was signed and sworn to at on this day of 2008.

MARGARET-ANN MARAIS
64 SELATI STREET
ALPHEN PARK, PRETORIA
COMMISSIONER OF OATHS EX OFF-
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA

COMMISSIONER OF OATHS

(Full names)

(Bus. Address)

Capacity:

Area:

Minister Mkhize AnsAff

GSM

GM6

669

ANNEXURE "B"

G P-8. 01/02

P. 21 (81/143198)

BHEKINKOSI MTHIYANI "DLONDLO" states under oath in English

1

I am an adult male with I.D. No 8006156029083, 32 years old residing at no. 4734 Melville Stanger with cellphone 0823988165. I am taxi owner at Stanger taxi association.

2.

Sometime year 2007 Vella mkhize was killed at Kwamathutha Cemetery. Vella mkhize was killed by Sanele Zondi and Nkosi Zondi was also present during the killing of Vella mkhize. Plan of killing of Vella happened in this way. Nkosi Zondi went to Vella mkhize pretending to buy venture from Vella mkhize. On his arrival he told Vella that he had only R20000 and Vella was asking R25000. Nkosi Zondi promise to bring R5000. Vella was promised to meet them at certain spot to be paid the whole amount of R25000.

At the spot they agreed, Vella was kidnapped by people who introduced themselves as police officers. Vella was taken on hand cuffs to Kwamathutha Cemetery and Sanele Zondi and

* Bmthiyani

GSM

670

G.P.-S. 01/02

R. 21 (81/143198)

Nicos Zondi was met there. Sanele first hit Vella with open hand. Sanele then took out gun and fired shot at Vella who was on hand cuff. Vella was found in Durban Ethekwini and taken to the cemetery.

4

I would also like to state that after the death of well known provincial commander or fasci violent crime Mr Chonco, I was one of the trustee at stanger fasci association. I was a chairman of disciplinary department within the association. I know every secrety that the members do not have to know.

5

I always have a secrety meeting with the following members in the association Mr Khanyile who was the chairman, Mr Ngcobo who was the vice chairman and also the treasurer, Bongizwe Mthongo who was a P.R.O and Sanele Zondi who was an additional member.

6

Bmthenjane

GSM

2012 Aug 01 8:27AM HP Fa page 2

Our meeting was so sensentive even to discuss the people who must be killed. Bongizwe was a close friend of Mr Ntondo. Mr Ntondo would always make fallour to the bitman of stanger in order to arrest Mawamaphumulo fasci association. If there was something against stanger fasci association Bongizwe would organised payment to Mr Ntondo.

7

The cause of Mr Ntondo's death he was investigating and arrested Maphumulo fasci association members. Mr Ntondo was killed by Maphumulo fasci association. Nkosi Zondi was a policeman working for Cato manor unit. Information was taken to Nkosi Zondi and Nkosi Zondi arranged with his unit Cato manor and also Booysens his commander.

8

The first member of Maphumulo fasci association to be assassinated was Lindelani Buthelezi. Lindelani Buthelezi was killed by Cato manor unit. As one of the trustee was there when the money was arranged to pay Cato manor for well job done. It was a lot of money. Sanele and Bongizwe

Bmthiyane

GSM

672

G.P.-S. 01/08 21 (81/143198)

were send to see Nkosi Zondi and paid him the money. We were told feed back that Nkosi Zondi was paid the money. I cannot recall how much it was

9

The second people to be killed by Cato manor unit was Mpopolota Ntuli and Nathi Mthembu nickname mangombatwane TWO were killed at mandeni Both were killed inside the same house. FIVE of us been Mr Khanyile, Mr Ngcobo, Sanele, Bongizwe and I took out. I cannot remember how much it was but it was a lot of cash. Sanele and Bongizwe were tasked to go and pay Cato manor. I heard that Cato manor unit was met at Tongaat toll plaza and paid money, also for job well done.

10

The third person was Mdu Mkhize. Mdu Mkhize was killed by the police and money paid to those police officers.

11

The fourth incident was the killing of Mr Ndimande. Mr Ndimande was killed in Howick area.

Bmthiyane

GSM

2012 Aug 01 8:30AM Hp Fax

673

D.R.B. 01/02

R. 21 (81/143198)

Mr Ndimande was killed by Cato manor unit. All three of us sat down and had a secretly meeting to arrange payment to Cato manor unit. An amount of R750 000 was raised. money was given to Sanele Zondi and Bongizwe to go and pay Cato manor. Always when Sanele and Bongizwe left with money, they would tell us that the money was going to be given to the Boss referring to Mr Booysens and they would say, we have connection and we pay Booysens at least

12.

The last person to be killed on Mapheumuo taxi association was Bongani mthize. Bongani mthize was the chairperson. Bongani mthize was killed by Cato manor unit. more than R1 million was raised and given to Sanele and Bongizwe to pay Cato manor. Sanele told us that R1 million would be paid to Booysens by boss of Cato manor unit.

Bmthiyane

GSM

674

G.F.-8. 01/92 P. 21 (81/143195)

Always when payment was done Sarele would say he was going to pay Cato manor Big boss / Mr Booysens. Sarele was a registered informer of Booyens. I was a registered informer of Mr Mosfet. Mosfet used to pasted me and in return I would give him information

13

That is all for now and what I would recall I would call the police.

14

I know and understand the content of this statement. I have no objection in taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience

X Bmthizyane

I certify that the deponent has acknowledge that he knows and understand the content of this statement. This statement is sworn before me and the deponent signature was placed thereon in my presence at Richardsbay air port on 2012-07-31 at 21:54

Bmthizyane

GSM

675

G.R.-S. 01/02

P. 21 (81/143198)

Bmthijane

Warrant for Law Commission of Offence Richard Ramulifadzi Lodge Street Plugendaap Pretoria

GSM

SEQ 29/2021-361

Durban Central / CAS 185/12/2009 Annexure LA 89

G.P.-S. 01/02 P. 21 (81/143196)

CM7

Bongani MANDLA MKHIZE states under oath in English

1

I am an adult male with I.D 7603165717087, 35 years old. Residing at Mon Kos Roadfort Road Durban contact number 0763932264. I am presently unemployed.

2

During year 2008 I was working at Glow body guard. The company was giving protection to members of Sfange taxi association. There was a conflict between this Sfange taxi association and Maphumulo taxi association. My company gave protection to Sfange taxi association.

3.

During the time of the conflict one police officer was killed and information was that Maphumulo taxi association was responsible for his killing. Even if the owners of Sfange killed somebody they were given or supplied your names to Cato manor unit that you were responsible for Chonco's death.

GSM

Durban Central Cas 185/02/2009 A 89

G.P.-S. 01/02 P. 21 (611/143198)

One victim on the list were Kopolofa and Mthembu. I was always giving protection to one called Bongizwe Mthengo. I was close to him. Bongizwe Mthengo was a P.R.O of Sfangesi association.

5

Cato manor unit had opportunity to kill Kopolofa and Mthembu. I remember that day, I was with Bongizwe, Bongizwe received photos on his cell phone. And according to him Bongizwe told me that, Mosbert from Cato manor unit sent those photos on his cell phone to Bongizwe's cell phone. Bongizwe Mthengo was happy with other members of the same association.

6

Bongizwe then said, he will delete those photos because it was crime and he does not want people to find him with those photos.

7

After he showed us photos on his cell phone, he said to his chairman Mr Khanyile and VICE chairman Mr Ngobo

GSM

Durban Central Cas 185/02/2009 A89

G.P.-S. 01/02 P. 21 (E1/145198)

he (Borgiewe) was going to the the capo major members that send photos on his cell. Those photos were dipicted two deceased been /coposie and mthembu.

8

I was a body guard and we got into the car and drove towards Tongaat toll plaza.

9

Upon arrival at Tongaat toll plaza we found two white man. I recognised Mr Mosfet. Mr Mosfet was sitted behind the steering wheel. Mosfet was a driver travelling in a silver Bmw. It was a big Bmw sedan and Mosfet used to come to Sanger land association offices driving the same Bmw.

10

Borgiwe Mthongo got out and open his car's boot. Borgiwe took out plastic and I could see that, it was money on notes and plastic was transparent. It was a lot of money.

11

GSM

Durban Central CAS 185/02/2009 A89

G.F.-S. 01/02 P. 21 (BTA143186)

Bongiwe Mthengo got into Mosfet's Bow and sitted behind the passenger and the left rear back seat. Mosfet was together with another white male unknown to me.

12.

Bongiwe remain seated to Mosfet and his colleque for almost five minutes. Bongiwe got out without that plastic with money. Bongiwe left it inside the Mosfet's car.

13

While we were driving back Bongiwe uttered some words that those police officer can sought the people, car hit and are sharp.

14

We went back to the first rank & then proceeded with my job to guard them at the rank.

15

That is all I can say for now

16

I know and understand the content of this statement I have no objection in facing

Mdlala G.S.M

G.P.-S. 01/02 Durban Central / Cas 185/02/2009 A89 P. 21 (R1245/98)

the prescribed oath
consider the prescribed oath
to be binding on my conscience

Rule 16

I certify that the deponent has acknowledge that he knows and understand the content of this statement. This statement is sworn before me and the deponent signature was placed here on in my presence at Bellville on 2012-08-01 at 18:25

Commissioner of OATH
RICHARD RAM UCOS
1 OCKERSE STREET
KRUGERSDORP
27-1 colore

ANNEXURE H2

485

GMS

AFFIDAVIT

I, the undersigned

NKOSINATHI HOPEWELL SHOZI

Further to my affidavit deposed to on the 3 August 2012 I wish to add the following:-

1.

That the reason the KwaMaphumulo Taxi Association instructed me to assist was because they had tried to get help from the Police Authorities without success and to generally represent them in the event they were arrested.

2.

The person who contacted me is the late Mr Bongani Mkhize (Chairman) and late Mr Bhengu (Treasurer).

3.

I confirm that I arranged the meeting between the then MEC Bheki Cele and the Taxi Association officials but I did not participate in the meeting.

4.

I was never told by the police that my clients were sought by them. It was members of the Association who had heard that some of their members were being mentioned as

GSM

being on the wanted list by the police. This list was in the possession of those interrogated by them. The people who informed them (Association) were suspects who would hear this during interrogation by police.

5.

These suspects were Swayo Mkhize, Moses Dlamini and Nzuzo Mkhize who had been taken in for interrogation by the police in respect of Suptendant Chonco's murder case.

6.

My intervention in the whole thing was essentially to write to several police institutions and bring this to the attention of those who could prevent further killings and / or bring to book the culprits.

DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn and signed before me at Durban on this 15 Day of March 2013 the Registrations contained in the government Gazette Notice 1258 as at 21st July 1972 Amended by Government notice No. 1648 dated 19th August 1977, having been compiled with.

COMMISSIONER OF OATHS

RICHARD RAMKILLI
10 CLEVE STREET
[illegible]
GSM

সেপ্ট।

Photo1

GSM

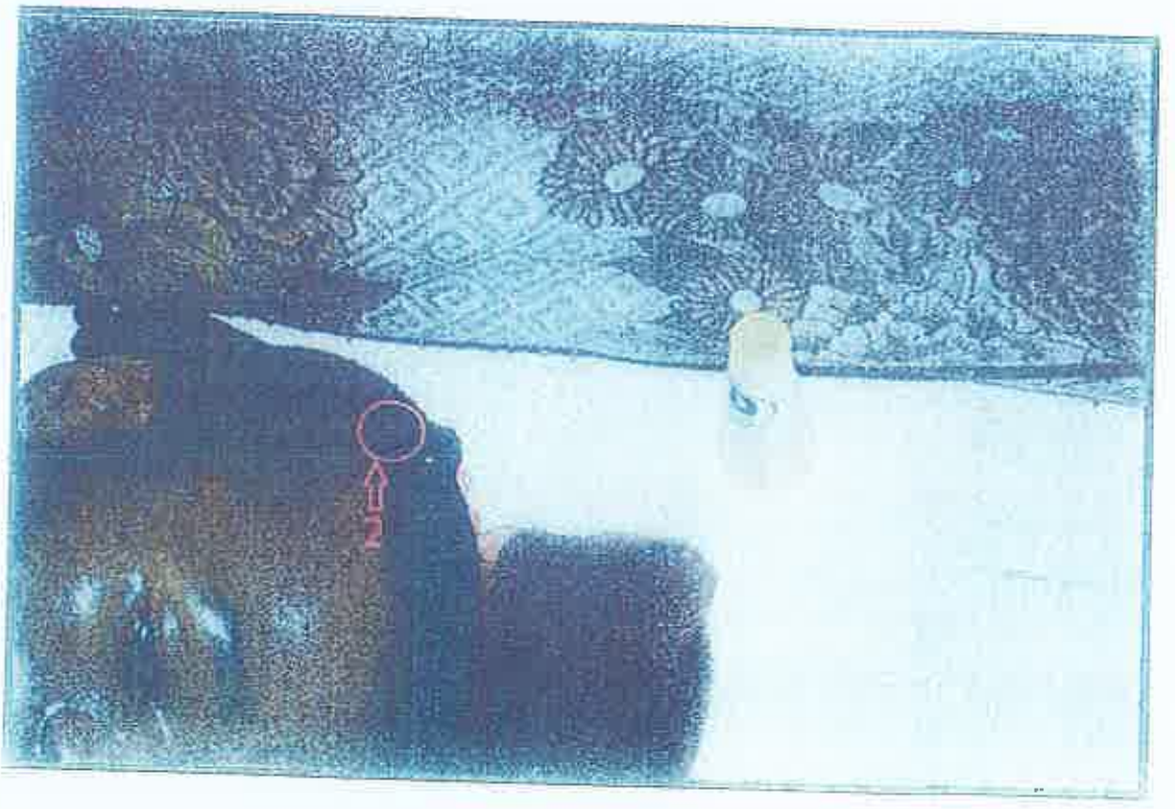
LAB 259560/2012
KWADUKURA CAS 39/08/2005

Photo 2

Photo 3

Photo 4

Photo 5



CM43

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LAB 269880/2012
KWADU/0124 GAS 30/09/2008

Photo 6

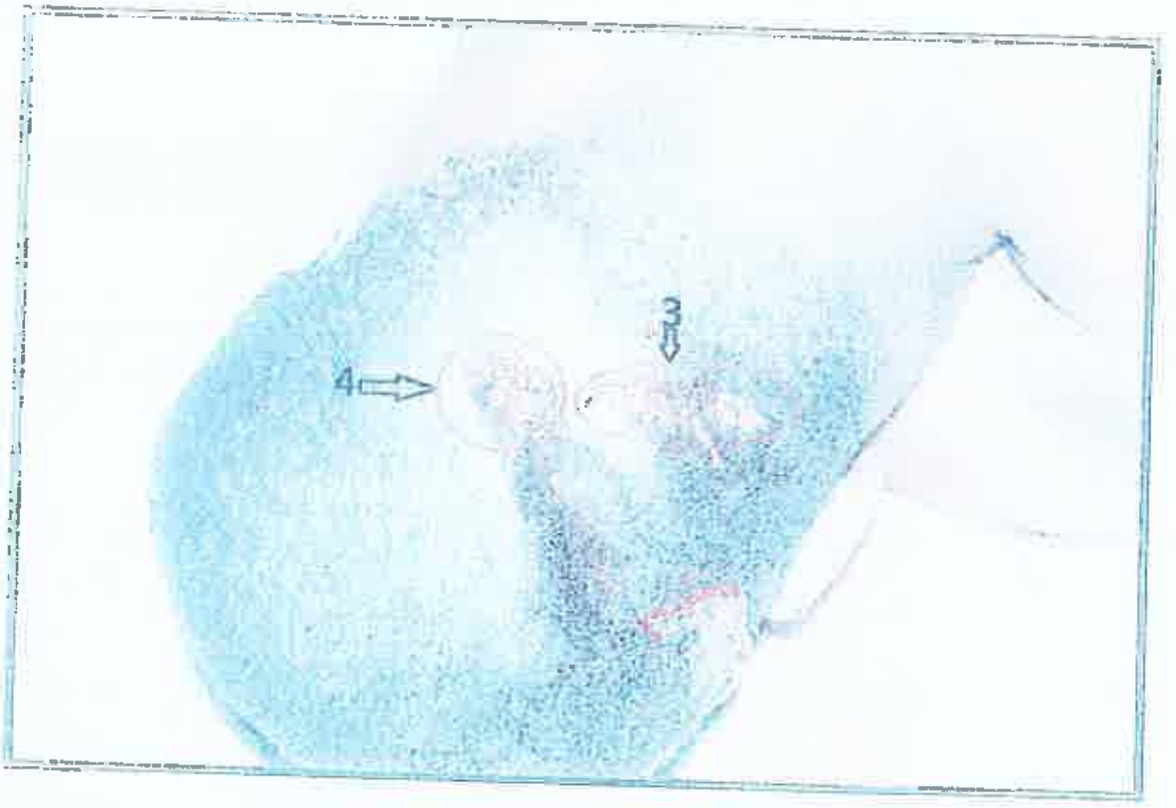
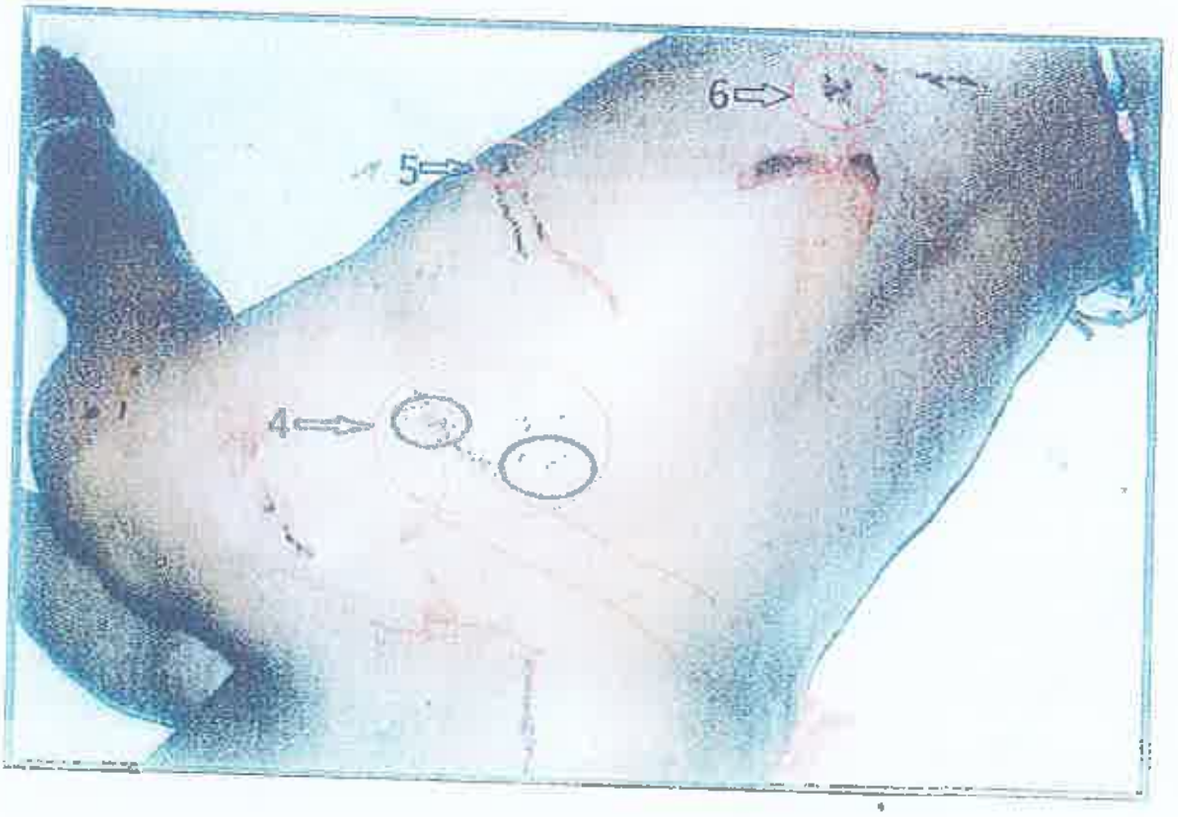


Photo 7



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LAB 288380/2012
KIVADUKUKA CAS 38/08/2008

Photo 8

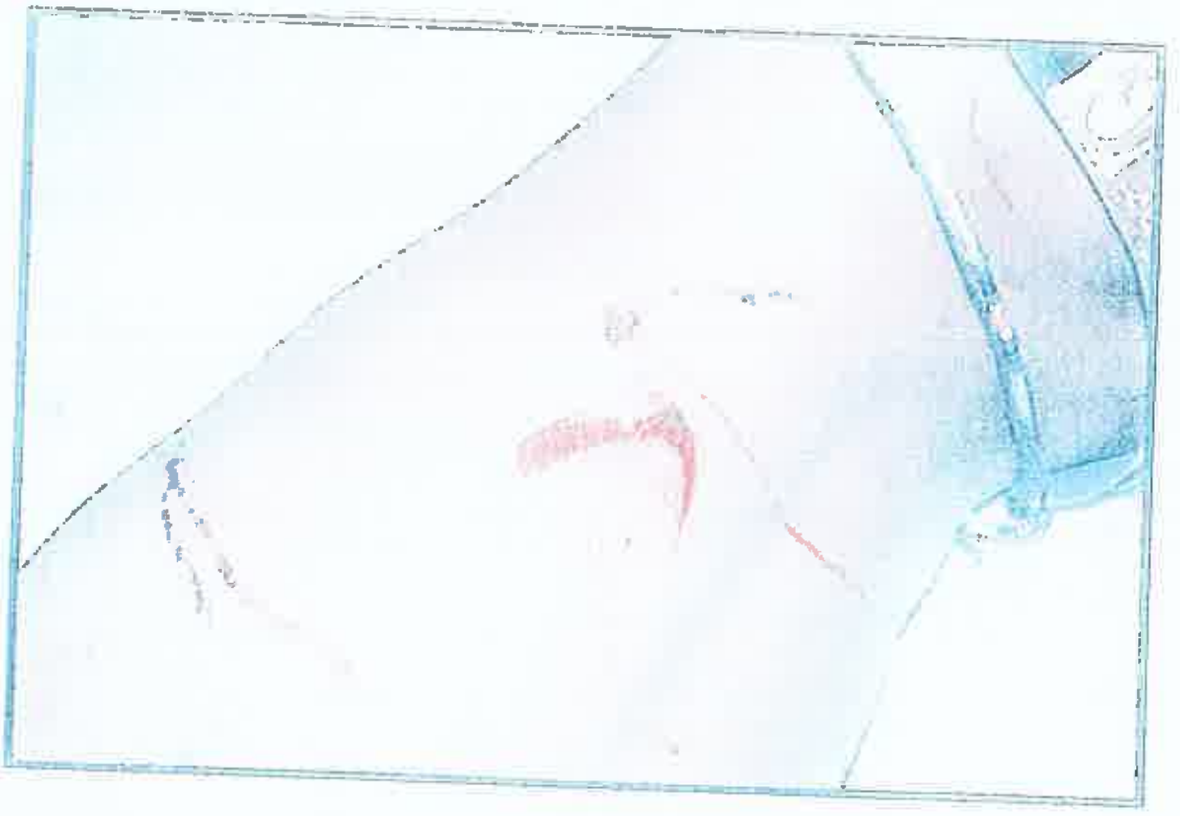


Photo 9

5bw)

G5m

Photo 10

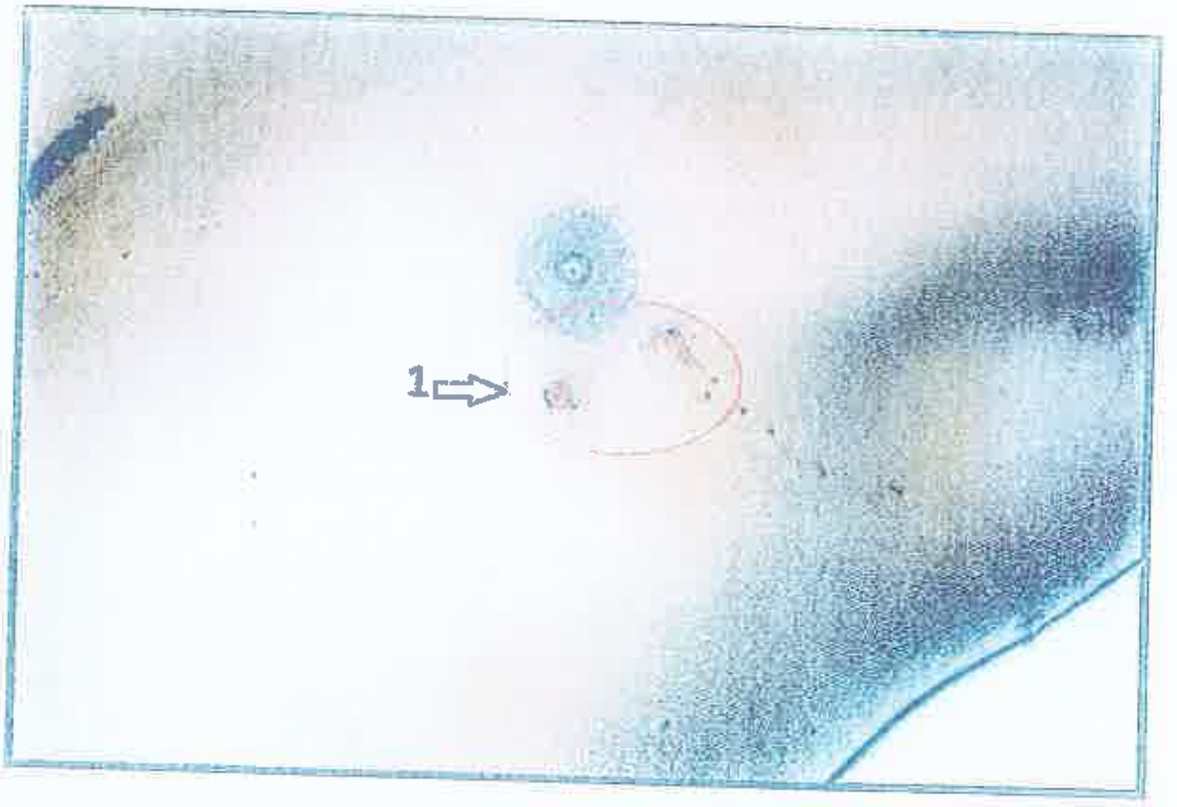
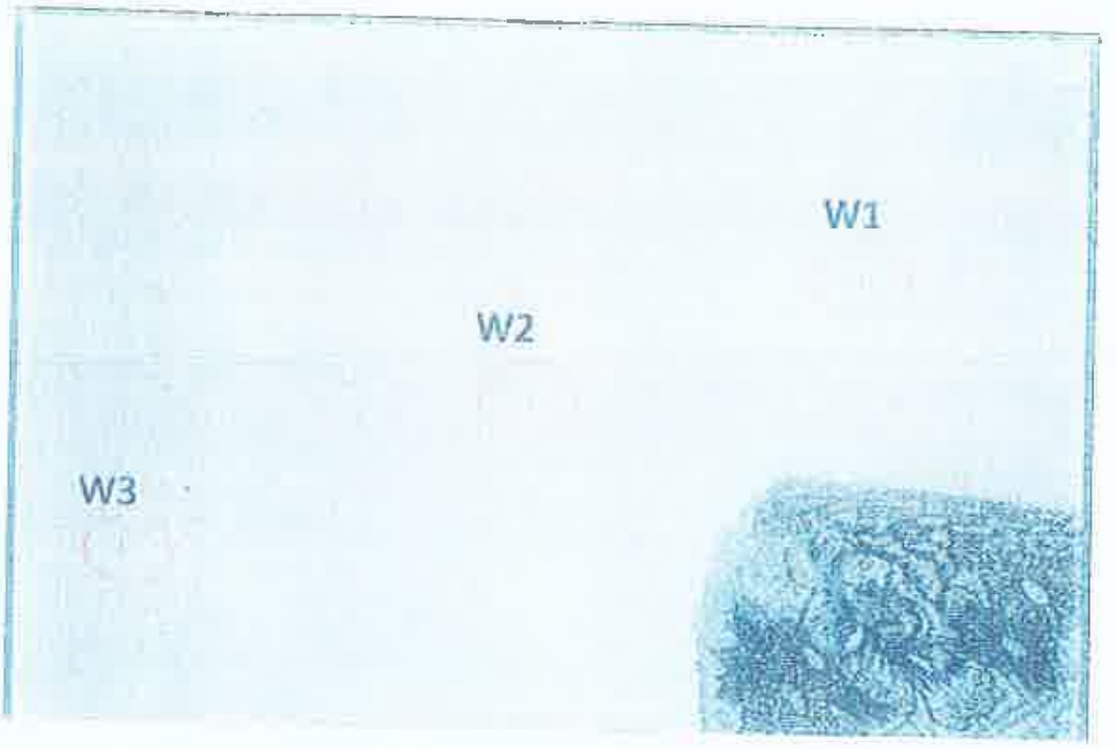


Photo 11

Cmg6

GSM

Photo 12



CM9.

GSM

CM10.1

GSM

Howick Cas 106/09/2008

CSM

CM10.2

SEQ 29/2021-376

SEQ 29/2021-377

Gm10

G5m

CM106

GSM

SEQ 29/2021-379

CM10.5

G5m

A43
CM11.1

DEPARTMENT: INDEPENDENT COMPLAINTS DIRECTORATE
REPUBLIC OF SOUTH AFRICA

STATEMENT FORM

STATION Hanover CAS 106/09/2008 CN: 20080906 02

I WARREN CHRIS JULIE

STATES UNDER OATH IN ENGLISH THAT:

HOME ADDRESS: 78 ALFRED ROAD - NEW GRANSVILLE

TEL/CELL NO: 0829233382 DATE OF BIRTH:

GENDER: MALE AGE: 45 ID: 6703185163089

WORK ADDRESS: SAME AS ABOVE - Self-employed

TEL NO.: SAME

2

On Tuesday 2008/09/16 I was at my place of employment when I was called by WO Mostert who to my at me and say you will come now to 123 Hanover Freeway to come and see what we have done to your man.

I then drove to the scene together with Sean and on our arrival the freeway

GSM

SIGNATURE OF DEPONENT

was completely blocked by Metro police, SAPS and the SUV. Cars were also there. I only talked to Mosiori and we were not allowed to get inside the scene and see what had happened. I wanted to see my security. We waited there for about 1 hour and half and I drove back.

(11) I am the owner of the security company where Tembe was working for. We were protecting Magnificent taxi association members. So Tembe was with the client when he was killed. We gave Tembe to escort Mr Magojela on request of the taxi association. He was issued with a 9mm pistol and Mini Ruger 14 fire arms. There were no any other fire arm that was issued to him only the two fire arm mentioned were issued to him.

GSM

SIGNATURE OF DEPONENT

The deceased Tembe was screened before he join the Security Company and he was a church going person and he was not involved in any criminal activities.

When I talked to MPO Mosteri he said to me the deceased was shooting at them but I can't see the reason why the deceased can shoot at the police.

GSM

SIGNATURE OF DEPONENT

I know and understand the contents of this declaration
I have no objection in taking the prescribed oath
I consider the oath to be binding on my conscience

SIGNATURE OF DEPONENT

I certify that the above declaration was taken by me and that the deponent knows and understand the contents of this declaration. This statement was sworn to before me and the deponent's signature was placed here under in my presence at _____ (Place) on 03/05/2012 (Day) at 11:25 (Time)

COMMISSIONER OF OATH

FULL NAME AND SURNAME:

RANK

ICD:

GSM

A41
Cm11.2

DEPARTMENT: INDEPENDENT COMPLAINTS DIRECTORATE
REPUBLIC OF SOUTH AFRICA

STATEMENT FORM

STATION Howick CAS 10.09.2008 CCN: 2008 0904 02

HERMANUS AGAMEMNON HART.

STATES UNDER OATH IN ENGLISH THAT:

HOME ADDRESS: 8 Lagos Crescent - Pietermaritzburg 3610

TEL/CELL NO: 071 541 7571 DATE OF BIRTH: 1969-01-17.

GENDER: Male AGE: 45 ID: 6901175248080

WORK ADDRESS: 8 Lagos Crescent - Pietermaritzburg - 3610

TEL NO.: (031) 702 1621

2

On 11/05/2008 one of my security guy namely Mthokozane Penze phoned me and told me that he was together with our Client Magojela Nsimande and that they were followed, chased and arrested around Mthunzini area. They were taken to Mthunzini Police Station (SAPS) where they were interrogated. They were handed over to Organised Crime police officer namely W.O. Van Ponder, Paul

SIGNATURE OF DEPONENT

EGSM

P Mosses, Mokhanya and they were tortured, kicked and beaten during the interrogation. I told him that he must always be truthful when he is questioned

He told me that they were later released because they were not connected to any case. The security guard Tembe was placed to protect Mr Magojela Nkunamane after the chairperson of Mapthumulo taxi association Mr Mbhize requested for protection of Mapthumulo taxi officials by our security company. Our security company was protecting many taxi owners for or of Mapthumulo taxi association. It is our co-business to protect owners who needed protection.

When Tembe was placed to protect Magojela Nkunamane was issued with 9mm Manico pistol and Mini Ruger 14 and he had relevant permit with

SIGNATURE OF DEPONENT

GSM

him to make sure he is safe
also had his pocket book and
his I.D Card with him. He did
not had any other weapon
beside the one mentioned.
Mr Magojela Mthunzi was
also a Taxi owner of Mathumulo
Taxi Association and we were
approached because his life
was in danger to protect him.

On 16/09/2018 Mr Praven Judge
Judge who is a Security Company
owner was phoned by Mr
Masters who told him to
come immediately at Hamilton
freeway where there was a
shooting incident. He told
him that our Client Magojela
Mthunzi and our Security
Guy Thokozane Tembe were shot
and killed by them organise
crime SAPS unit. We left
immediately from Pinetown
to Hamilton.

On my arrival I notice
a Mahwaxy vehicle (bakkie)

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The Mortuary personel were busy loading the bodies in the vehicle. I then went to the Mortuary bakkie and asked the personel that I want to see and check the body of the security guy Tembe. When I checked it I realise that when the body was pulled out of the bakkie I touched his neck and realise that his neck was broken. I also notice that he had deep marks all over his body. He also had bullet ~~hol~~ shots wounds on his body.

The police left the scene and the bodys were removed by the Mortuary personels. The Hyundai Tucson was left at the scene because the breakdown vehicle was supposed to remove the vehicle from the scene to Honick SAPS.

After the Police left I went

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Close to the car in which our security guard and our client Magoje was travelling with. I inspected the vehicle and noticed that driver side was having a lot of bullet holes and it showed that this vehicle was fired from outside and there were no bullet holes that showed that it was fired from inside. There were bullets holes on the drivers seat. It clearly showed that shots were fired into the vehicle which caught the driver and killed him.

I also noticed that the body of the security guard was dragged from behind the vehicle from a distance and clearly showed that it was the body of Teube that was dragged. I can say he must have tried to get out of the vehicle and his foot was stuck behind and his body got underneath the vehicle which was in motion and

SIGNATURE OF DEPONENT

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he got dragged by a motor vehicle and broke his neck. He was dragged by this motor vehicle up until it stopped.

There were no evidence that the body guard (security personal) shot at the police from inside their moving car which the two deceased were travelling with. There were no bullets holes on the rear window which could indicate that there were shots which were fired from inside. The security guard (body guard) should not shoot at the police because he felt under the vehicle and broke his neck. He was dead when dragged by the vehicle. I have no doubt that he has never shot at the Police

but noticed that there was no any police car which had a bullets holes on it. I then spoke to the people who

SIGNATURE OF DEPONENT

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were walking closer to the road and asked them what happened but they said when they started to hear gunshots they hide themselves but they heard gunshots and the Tucson Hyundai vehicle stopped and the police started shooting again and they hided again up until there were no gunshots. Further that police helicopter landed at the scene and a tall white police officer got out of the helicopter and had spoke to the policeman on the scene who were just there immediately after the shooting stopped. The said police helicopter just left after we arrived at the scene.

I started to do investigation together with Mr Steyl and handed some photos to him which I took with my cellphone.

I know Mr Steyl because he was requested by Mr Mthuze the Chairperson of Mathumulo Taxi

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~~Application to make the investigation~~
~~about the killing of Mapumulo~~
~~taxi owner. That is why I~~
~~call him and handed the photos~~
~~to him. I also assisted him~~
~~during his investigations on~~
~~Thandile Mathon's movement~~
~~to the Mortuary to and inspected~~
~~Mr Pembe (security body guard)~~
~~body.~~

~~I gave all the photos to~~
~~Mr Steyl which I took~~
~~from the scene with my~~
~~cellphone for him to compile~~
~~a detailed report for his~~
~~investigation.~~

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G S M

SIGNATURE OF DEPONENT

I know and understand the contents of this declaration
I have no objection in taking the prescribed oath
I consider the oath to be binding on my conscience

SIGNATURE OF DEPONENT

I certify that the above declaration was taken by me and that the deponent knows and understand the contents of this declaration. This statement was sworn to before me and the deponent's signature was placed here under in my presence at Gaston Paulin Mah (Place) on 30/09/2012 (Day) at _____ (Time)

COMMISSIONER OF OATH

FULL NAME AND SURNAME:

RANK/

ICD:

A37

CM12

EDUCATION & TRAINING

I, Jacobus Steyl, state:

1

I was a member of the South African Police Service from 1984: from 1985 I was a member of the fingerprint section whilst from 1986 I became a member of the ballistic section of the Forensic Science Laboratory. In July 1993 I left the South African Police Service holding the rank of Lieutenant in order to practise as a private ballistic specialist.

2

I completed the internal three (3)-year training at the unit successfully in the theoretical and practical application of Ballistic Science. The training can be divided into the following headings:

2.1 **Microscopic Identification:**

- Microscopic individualisation of firearms, ammunition, fired bullets and cartridge cases
- Microphotography (comparison microscope, stand as well as table models)
- The investigation of toolmarks, the marks that they transfer, and the comparison of disputed objects with tool equipment for example pliers, chisels and screwdrivers as well as footwear impressions, and tire imprint.
- Microscopic individualisation of tools and toolmarks
- Identification and development of ammunition
- Identification of hand and shoulder firearms
- The collection of changed numbers and marks on exhibits
- Restoration of obliterated numbers on metals through the etch process

2.2 **Internal Ballistics:**

- The examination and study of firearms mechanisms
- Reloading of fired ammunition
- Interactions of firearms and ammunition
- The transfer of marks on bullets and cartridge cases by firearms
- The interaction between ammunition and attended mechanical functioning of the firearm

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2.3 **Intermediate Ballistics:**

- The influence of partially burnt propellant and gasses on objects after the bullet left the firearms
- The determination of propellant and deposit range by firearms
- The study of secondary projectile forming during intermediate ballistics

2.4 **External Ballistics:**

- Trajectory determination of bullets and projectiles
- The study of bullet shapes in ballistic trajectories
- The determination of bullet velocity
- Bullet trajectory, distance and direction determination

2.5 **Terminal Ballistics:**

- Wound Ballistics (wounding effect on tissue)
- Determination of entrance and exit wounds
- Attendance of post-mortem examinations
- Translation of post-mortem records
- The capabilities of projectiles related to velocity, energy, penetration and impact
- Projectile properties during tissue wounding
- Influence of projectiles on various target materials
- Influence of target material on projectiles
- The study of the interactions between internal, external and terminal ballistics
- X-ray photo analysis.
- Interpretation of bloodstain evidence and patterns at crime scenes

3

ADDITIONAL TRAINING &CERTIFICATIONS

Land Surveying Course
18 month full time course Pretoria, *South Africa, 1980*
Formal training received from the Dept. of Environmental Affairs
Covered surveying equipment use and measuring of contour intervals & mapping, precise levelling, and beacon triangulation
Pretoria, South Africa

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South African Defence Force Military Training Course
Pretoria, South Africa, 1983 & 1984

Certification in Classification and Identification of Fingerprints
Jan. 1985- July 1985
South African Police Services – Fingerprint Division
Pretoria, South Africa

Police Officer's Training & Certification – 6 months –
Pretoria, South Africa, 1985
Covered: Firearm Training, Riot Control & Crowd Management
(Use of Teargas)
Criminal Procedure Act, Collection of Evidence at Crime Scenes,
Crime Scene Management & Collection of Trace Evidence

Forensic Field Workers Course
South African Forensic Ballistic Laboratory, Pretoria 1989
Covered: laboratory procedures, handling of exhibits, primer residue collection, trace evidence collection, preservation of crime scenes, documentation and labelling of exhibits, protection of integrity of exhibits, & preservation of chain of custody

Advanced Officer's Management Course -Paarl, South Africa, 1992
Covered: team building, change management, strategic thinking, decision making, delegation, effective communication, management of resources, functional management, financial and logistical management

Ballistics Identification Workshop (How sure are you a match is a match?)
B. Bachrach, PhD., Intelligent Automation Inc. AFTE Conference, 2000

Restoration of Obliterated Serial Numbers Workshop
BATF Forensic Science Lab-4 Credit Hours AFTE Conference, 2000

POSLEC-SETA Verifiers Course -2005
To conduct verifications of accredited firearm training programs
Receive training on the writing and implementation of policy & procedure

Mathematics & Physics for Bloodstain Pattern Analysis Course – USA
Jan. 2010
Presented by the Miami Dade Public Safety Training Institute, Miami, Florida
Five day / 40 hour course
Covered: Mathematical theory behind the formulae used to determine the origin of blood sources and the scientific principles that dictate the motion of blood. Learned to analyze, interpret, and testify more effectively in cases where bloodstain pattern analysis performed. Hands-on exercises utilized to reinforce principles learned in the classroom and included instruction in the use of the Backtrack® computer program for bloodstain pattern analysis.

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Detection, Recovery & Examination of Footwear Impressions – USA
May 2011
Presented by Bill Bodziak author of "Footwear Impression Evidence: Detection, Recovery & Examination in Ft. Collins Colorado USA
Five day / 40 hour course
The course provides instruction and hands on experience in key areas, including the recovery methods of photography, casting and lifting from the examiner's perspective; enhancement of bloody impressions; the evaluation of class and identifying characteristics; footwear sizing issues and the examination and reporting process. Attendees work approximately 30-35 exercises, including approximately 20 comparative examinations.

4

PROFESSIONAL EXPERIENCE

4.1 I have 24 years' experience in the forensic ballistic investigation of crime scenes, scene reconstruction, documentation of investigations and compiling of opinions, results, and findings. This includes scene photography, developing and printing of photos and compiling albums thereof.

4.2 In addition to forensic ballistic experience privately and with the SAPS, I have an additional (2) two years' service with the SAPS whereupon I investigated a wide range of crime scenes and general grievances. I also underwent a further (2) year's compulsory military service.

4.3 I am a recognised member of A.F.T.E. (Association of Firearm and Toolmark Examiners) an International organisation based in the United States. Qualified experts throughout the world belong to this organisation. I also receive quarterly A.F.T.E journals, which highlight the most up to date material available in this profession.

4.4 I visited the F.B.I and Virginia Commonwealth Laboratories in the USA in June 1993 and during February 1995 the Washington Metropolitan Police Firearm Section and Virginia Commonwealth Laboratories. In July 2000 I attended the A.F.T.E. firearm and toolmark conference at St. Louis, Missouri and visited the F.D.L.E. Laboratories in Tampa and Orlando. During my visit to the laboratories I studied the newest technological progress in the forensic ballistic field which is

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used by these well-accredited laboratories. I also had the opportunity to visit several firearm factories where I studied the manufacturing processes of firearms and firearm parts and the interaction between the mechanics and the cartridge case in the firing process. I was able to acquire valuable information used in the microscopic identification process. In February, 2008 I visited the Georgia Bureau of Investigation (GBI) Forensic Laboratory in Columbus, Georgia, USA. During this visit I studied the handling of exhibits, report writing as well as lab accreditation processes. I also learned about their paperless documentation and security system.

4.5 I was trained in the selected measure of crime scenes with regards to the vertical and horizontal angles with Theodolite (GTS 4) measuring equipment. I also received training in measuring of contour intervals with the Theodolite, and the documentation of information on a topographical map. I was exclusively responsible for the training of the ballistic members in the set-up and working and application of the Theodolite GTS 4.

4.6 I am actively involved in a current and on going study of all the latest technologies in the forensic ballistic field using reference materials available through subscriptions to international firearm magazines, internationally recognised reference books and articles written by other experts listed on the internet.

4.7 I have to date investigated more than 8000 ballistic related cases.

4.8 During the past 24 twenty-four years I have investigated forensic / ballistic cases and have given evidence in High Courts and Magistrates Courts throughout South Africa, and neighbouring countries.

4.9 <u>INDEPENDENT SHOOTING RANGE ASSESSOR</u>

From May 2004 – December 2005

Owner/ Assessor: Range Assessments cc.

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When the Compulsory Specification for Small Arms Shooting Ranges was introduced in May 2004, the South African Bureau of Standards (SABS) requested my ballistic expertise to put together a standardized ISO 17202 company which would implement and conduct the assessment of shooting ranges thought the country. Detailed knowledge of the specifications was attained and applied whereby we assisted many ranges with an entirely new design in order to comply.

Having assessed over 300 ranges in the initial years, the foundation was laid for the SABS to continue annual assessments of ranges for their yearly certification.

4.10 COMPUTER RELATED EXPERIENCE

In 1992 I began working with computer hardware and the building of personal computers. Over the last 19 years I have furthered my computer knowledge by self study in also working with and becoming acquainted with various software (how they work and interrelate with hardware and other software), internet solutions, networking and database construction, design and management. I further work with computerized photograph, video and sound editing software.

I am highly efficient in the use of all Microsoft Office products including: MS Word, MS Outlook, MS PowerPoint, MS Publisher, Windows Media. I am beginning self study into animation software for court presentation purposes of crime reconstructions.

4.11 TRAINING

I have been appointed by the Legal Aid Board to present courses to their members on ballistics. To date I have presented lectures in Kwazulu-Natal, the Free State and Gauteng, the Northern Cape, the Western Cape and the Eastern Cape. I have also launched a series of ballistic seminars designed for private advocates and attorneys specialising in criminal law. I have been appointed by the State Attorney's office in KwaZulu Natal to present this course as well.

Ezemvelo Wildlife/ Parks Board has used my services to present a course on Footwear Impressions: Recording and Casting which teaches Park members how to approach a scene in a standardized manner and how to photograph, cast &

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record footwear impressions for court presentation. This course requires completion and a positive result on a final written examination including photographic and cast specimens from each attendee.

5

STATEMENT

BACKGROUND

On 22 September, 2008 I received instructions from Hlapane Attorneys, Durban. I had a consultation with Mr. Nathi Shozi and Ms. Gabi of 4 Oribi Road, Mandeni where it was brought to my attention that a shooting incident occurred in her home where her boyfriend and another friend were killed in her main bedroom. I was instructed by Mr. Shozi to attend a scene investigation into the matter.

6

SCENE INVESTIGATION

On the 23rd September, 2008 I visited 4 Oribi Road, Mandeni where Ms. Gabi pointed out the main bedroom where the incident occurred. I inspected the scene and noted the following:

1. The incident occurred in the main bedroom. The layout of the scene is: Upon entering the door in the corner of the room, there is a built in cupboard to the left. The bed is located against the opposite wall under the window. There is a vanity with a mirror in front along the right wall and a free standing cupboard is located along the left wall near the bed. (*See Sketch Plan*)

2. The wooden bedroom door leading to the main bedroom had a single bullet hole from the inside to outside through the door. Upon examining the hole, it appears to be consistent with a 9mm bullet fired from the inside toward the outside of the bedroom. The trajectory is slightly downward from the inside toward the outside. The measurements are consistent with a 9mm bullet. This bullet impacted on the adjacent toilet wall. Upon determining the trajectory I found

G Sm

that the door was in the closed position when the shot was fired. *See sketch plan: trajectory 1 and photographs below.*

3. There was a blood stain visible on the carpet at the left foot corner of the bed. In the vicinity of the blood stained area, I observed a bullet impact mark in the carpet. Upon further examination I also found a bullet embedded in the under felt of the carpet. I cut the carpet open, took photographs of the bullet in the embedded position and determined the most probable angle of the impact. The bullet retrieved was a full jacketed 9mm bullet. *See Sketch Plan: Impact Mark A* and photographs below.

4. In the blood stained vicinity I found a further bullet impact mark on the carpet. I cut the mark open and found that bullet had fragmented and had exited the impact site.

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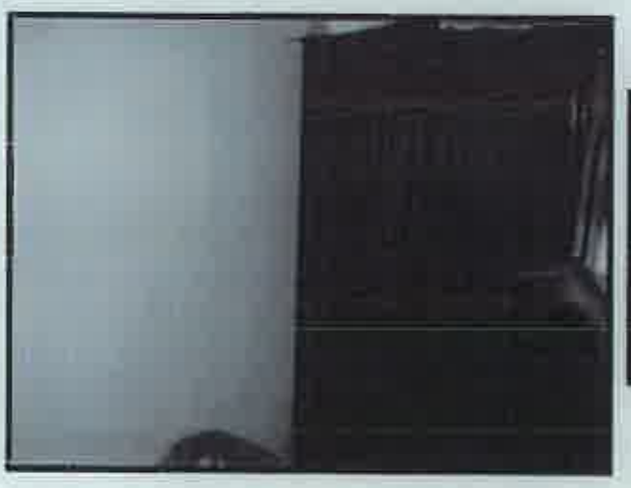
5. Ms. Gabi handed me a fragmented bullet that she retrieved from the carpet during the cleaning process. The bullet fragment is a 5,56 calibre bullet which was damaged on the base section and could have created some shrapnel leaving the site of impact. *See Sketch Plan: Impact Mark B and photographs below.*

6. The free standing cupboard had an unstable bullet entrance hole visible which impacted sideways into the cupboard. Ms. Gabi handed me a bullet that she had retrieved from the inside of the cupboard during the cleaning process. It was a slightly damaged 9mm bullet. *See Sketch Plan: Trajectory 2 and photographs below*



7. There were two 5mm diameter holes in the curtain behind the bed at 1.9 and 2 meters from the ground which is consistent with 5,56 calibre fired bullets. These two gunshots broke the window and exited the room. (*see sketch plan: trajectories 3 & 4*)

G S M

8. There is a shrapnel impact mark on the left wall before the free standing cupboard 85cm from the floor which is consistent with shrapnel ricochet from the carpet. (*see sketch plan: S1*) There is a further associated shrapnel mark/ indentation on the free standing cupboard 51cm from the floor. *See Sketch Plan: S1 & S2 and photographs below.*

9. I instructed Ms. Gabi to carefully move all the furniture and unpack all the cupboards to see if there are any other exhibits still embedded in the room.

Subsequently I received a phone call from her and was notified that she had retrieved a cartridge and one further bullet under the bed. These items have been collected from her.

7

ADDITIONAL INFORMATION & INSTRUCTION FEBRUARY 2012

On the 8th of February 2012 I received instructions from Mr. Khuba of the Independent Complaints Directorate, whereby I was given a case file which containing various statements, affidavits and reports as well as color copies of scene photographs taken by the Local Criminal Records Centre, Richard's Bay.

SCENE SKETCH PLAN

Attached to this report is a scene sketch plan which indicates the bullet trajectories and exhibits retrieved from this scene. There are three windows behind the bed all of which have burglar bars on the section that opens. There were four bullet trajectories indicated:

G S M

- Trajectory 1 caused by a 9mm calibre type bullet
- Trajectory 2 caused by a 9mmP type calibre projectile found inside the cupboard
- Trajectories 3 & 4 caused by a 5,56 type calibre projectile exiting the window

There were two bullet impact marks on the carpet (A & B) where 'A' was a 9mmP calibre bullet retrieved from the carpet and 'B' was a 5,56 type fragmented projectile found by the owner.

There were two secondary/shrapnel/ fragmented projectiles creating the damage marked as 'S1 & S2.'

The two 9mmP calibre bullets and one 5,56 fragmented projectile were handed over to the ICD.

8

POST-MORTEM REPORTS

Deceased, Mzamani Johannes Ntuli, death register 347/2008 - post-mortem was conducted by Dr. N Z Khumalo in Eshowe. The deceased sustained multiple gunshot wounds and is the same individual as shown in the LCRC photo album as the deceased with a striped orange shirt.

The deceased sustained an entrance wound on the right back of the head with an associated exit wound above the left ear. This wound track is upwards and right to left. There is a further entrance wound on the left upper back. This wound track appears to be forward and toward the right. There appears to be multiple exit wounds on the left front upper chest. There also appears to be an entrance wound in the left front upper chest. It seems the deceased sustained at least three gunshot wounds. There is no description of the appearance of the wounds. There is a tremendous lack of information concerning the wound tracks and individual connections between entrance and exit wounds.

Deceased, Wilson Nkosinathi Mthembu, death register 348/2008 - post-mortem was conducted by Dr. N Z Khumalo in Eshowe. The deceased sustained multiple gunshot wounds and is the same individual as shown in the LCRC photo album as the deceased with white vest and a beige flannel jacket.

G S M

The deceased sustained two entrance wounds to the right upper chest. It appears that one had an upward trajectory and exited on the back behind the neck. The second one exited on the right flank.

There are further three entrance wounds underneath the right arm whereby one exited on the left flank area. Two deformed metal copper jacket bullets were retrieved from the armpit and the left upper arm whereby the general trajectory is horizontal from right to left.

9

SCENE PHOTOGRAPHS

LCRC 299/09/2008 – compiled by Sgt. JF Ndletshe consists of 32 pictures and a sketch plan. On the 21st of February 2012 I visited the LCRC in Richards Bay to obtain the original digital disk containing ALL the photos taken at the scene; however we could not obtain any original photographs except for the color copies which we were already in possession of.

Upon examining the color copies of photographs taken at the scene I generally observed a bedroom with two deceased lying on the carpet in front of a double bed. After observing the positioning of the deceased (especially the position of the deceased with the orange striped shirt Mzamani Johannes Ntuli) it was clear that the position of this deceased's head coincided with the bullet damage marks in the carpet previously found during my investigation. (See photograph below)

PHOTO 06

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During my scene investigation I retrieved a 9mmP bullet which had impacted into the carpet directly underneath the position of the head of the deceased. This coincides with the head wound found in the post-mortem. A further 5,56 calibre fragmented projectile was retrieved from the carpet in the vicinity of the waist of the deceased.

The only blood spatter and pooling found in the room was on the carpet beneath the deceased. There are further other bullet trajectories found which can be observed in the attached sketch plan.

The LCRC sketch plan's layout is incorrect and does not indicate the impact damage to the adjacent toilet as indicated on my sketch plan as trajectory '1.'

10

BALLISTIC STATEMENT

The ballistic statement in this case is not complete as none of the shottists' firearms were connected with the cartridge cases and exhibits at the scene, however, in summary, it appears that two 9mm pistols, one a LEW Z88 pistol with erased serial number and one CZ 75 pistol with serial number G2921, were retrieved from the scene. This is also depicted on the scene photographs indicating the pistols on the carpet in the vicinity of the deceased. One of these pistols fired two shots.

However, there were two 9mm short (9x17mm) calibre cartridge cases retrieved from the scene where there was no firearm on the scene that could have fired these cartridges. It is also unclear if these two cartridge cases come from one pistol or two different pistols.

Further there is no mention of the exhibits which I retrieved from the scene and handed over to the Independent Complaints Directorate.

Once the complete ballistic statement is received I will add or alter this section of the statement.

11

CONCLUSION

Based on the information available to me at this time, it is my opinion that:

- Deceased, Mzamani Johannes Ntuli, death register 347/2008 sustained multiple gunshot wounds. There was an entrance and exit gunshot wound to the head

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which is consistent with the deceased in a lying position as depicted in the (LCRC) photographs (with the orange striped shirt).

- I retrieved a 9mmP bullet which had impacted into the carpet directly underneath the position of the head of the deceased (with the orange shirt). The exit wound on his head is consistent with the bullet impact mark in the carpet underneath his head (Impact Mark 'A').
- A further 5,56 calibre fragmented projectile was retrieved from the carpet in the vicinity of the waist of the same deceased as above.
- There was no blood found in the room except on the carpet beneath both deceased.
- The ballistic statement is incomplete as it does not refer to the shottists' firearms or the exhibits I handed over to the ICD.
- Two 9mm short (9x17mm) calibre cartridge cases were retrieved from the scene with no corresponding firearms retrieved. It also appears that these cartridge cases could be from two different pistols.
- There was one shot fired from a closed bedroom door from the inside to the outside of the room. The calibre was most probably a 9mm.
- There were a total of at least three 5,56 shots fired inside the bedroom. The two on the curtain did not create any injuries to the deceased. The one fired directly into the carpet most probably created injury to the deceased.
- Apart from the bullet hole through the bedroom door, there were at least another three 9mm shots discharged inside the bedroom where the one in the carpet and the one found inside the free standing cupboard could have created injuries to the deceased.
- The two shots inside the carpet (9mm & 5,56) in the vicinity of the blood stain in the carpet indicate a sharp downward trajectory (70-75 degrees).
- Deceased, Wilson Nkosinathi Mthembu, death register 348/2008 sustained multiple gunshot wounds and is the same individual as shown in the LCRC photo album as the deceased with white vest and a beige flannel jacket.

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SEQ 29/2021-408

- The deceased sustained two entrance wounds to the right upper chest and a further three entrance wounds underneath the right arm. These five bullet wound trajectories are up, down & horizontal. This indicates that the deceased could have sustained wounding in a standing AND in a lying position.

Jacobus Steyl
10 March, 2012

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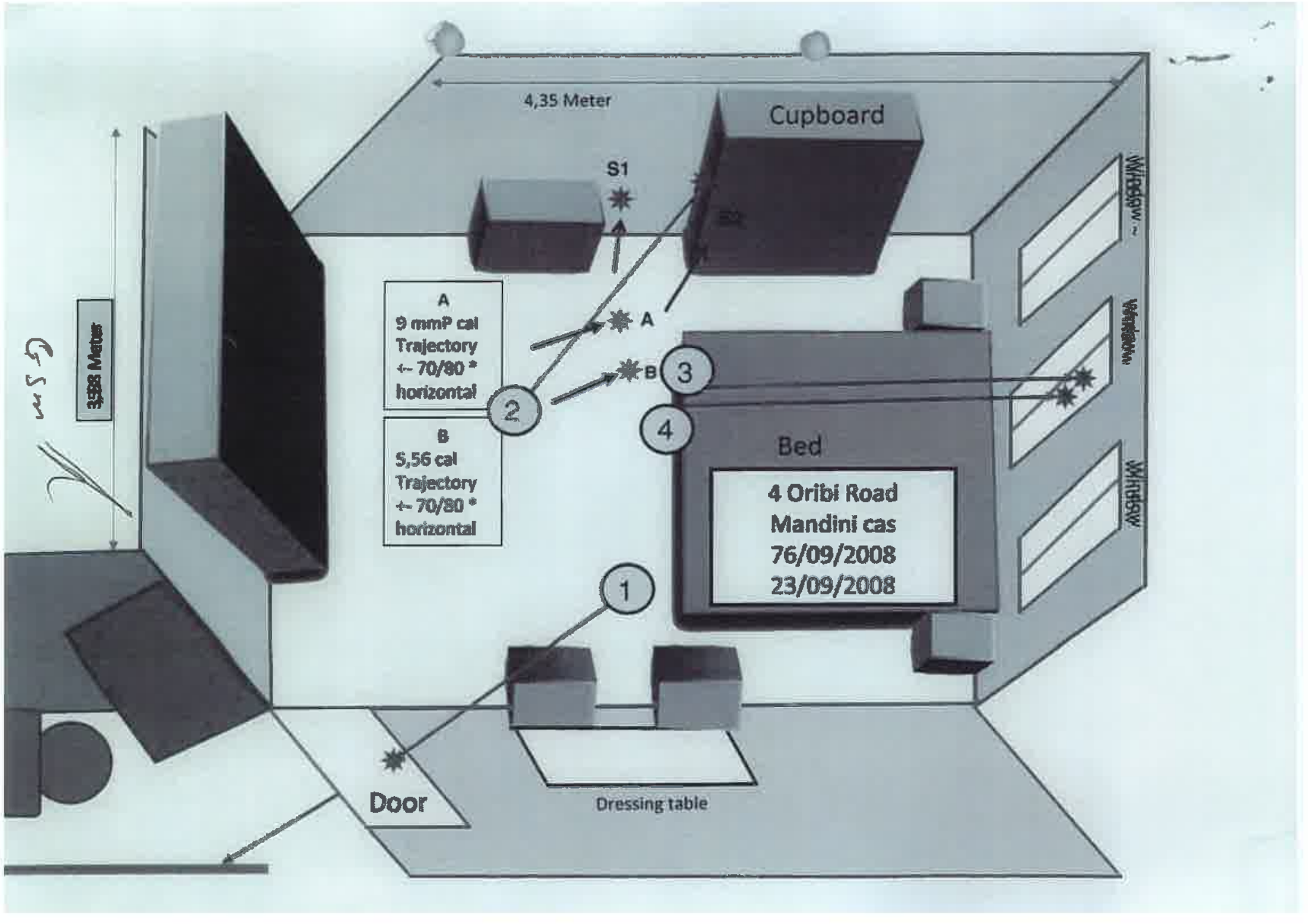

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DURBAN CENTRAL CAS 185/02/09
CM14

AFFIDAVIT IN TERMS OF SECTION 212 OF THE CRIMINAL PROCEDURES ACT 51 OF 1977

PADMINI TILAKDHAREE declares under oath and in terms of Section 212 subsections (4) (a) and 212 (8) (a) of Act 51 of 1977 as follows:

1.

I **0543281-2** am a **SERGEANT** in the South African Police Service and in service of the State. I am presently employed as an **ASSISTANT FORENSIC ANALYST.**

2.

I have been attached to the Ballistic Unit of the Forensic Science Laboratory since 2002 as an examiner of Forensic Ballistic related cases. I have to date examined the excess of 3000 cases. I examine Ballistic related cases as part of my daily task and testify on a regular basis in the Courts of South Africa. I have successfully completed a three(3) year in-service training course at the Ballistic Unit in the theoretical and practical application of the Forensic Ballistic Science

2.1 **I have received in-service training in the following aspects of the Forensic Ballistic Science:**

2.1.1 Identification of ammunition, fired bullets and fired cartridge cases.

2.1.2 The use of microscopic equipment.

2.1.3 Microscopic individualization of ammunition, fired bullets and fired cartridge cases.

2.1.4 Acquisition of fired cartridge case and fired bullet data on Integrated Ballistics Identification System (IBIS).

2.1.5 Microscopic individualization of tools and toolmarks.

2.1.6 Physical matching.

2.1.7 Micro photography.

2.1.8 Identification of firearm.

2.1.9 The examination of firearm mechanisms.

2.1.10 The examination of home-made devices.

2.1.11 Techniques associated with recovering and restoration process of obliterated alpha numeric figures on metals.

2.1.12 The reloading of ammunition and the manufacturing processes of ammunition.

2.1.13 Shot range determination.

2.1.14 Crime scene investigation and recording techniques.

2.1.15 Documentation of examination results.

G.S.M

2.2 **INTERNAL FORENSIC BALLISTICS**

2.2.1 Functioning of firearm mechanisms during the firing process.

2.2.2 Burning rates of propellant powder and gas pressure.

2.2.3 The transfer of marks by the firearm to cartridges, fired cartridge cases and fired bullets.

2.3 **INTERMEDIATE FORENSIC BALLISTICS:**

2.3.1 The effect that hot gasses, propellant powder and partially burnt propellant powder has on an intermediate target, before and after the exit of a bullet from the muzzle.

2.3.2 The forming and effect of secondary missiles caused by intermediate targets.

2.4 **EXTERNAL FORENSIC BALLISTICS:**

2.4.1 The trajectory of the bullet from the muzzle of the firearm to the final point of impact.

2.5 **TERMINAL FORENSIC BALLISTICS:**

2.5.1 The wounding effect that the bullet has on tissue (Wound Ballistics).

2.5.2 The effect that the bullet has on the target.

2.5.3 The effect that the target has on the bullet.

2.6 I successfully completed a test that is provided in co-operation with the **ILLINOIS STATE POLICE (ISP)** Forensic command, the **INDIANAPOLIS-MARION COUNTY** forensic services agency **(IMCFSA)**, and **WINCHESTER** ammunition-a division of **OLIN CO-OPERATION,** which is designed to determine the examiners ability to correctly identify known bullets fired from ten (10) consecutively rifled barrels.

2.7 I have a Bachelor of Arts degree from the University of Durban Westville, majoring in Criminology and English. I also have an Honours degree in Criminology from the University of Durban Westville, specialising in Criminal Investigations. I have attended a Medico-Legal workshop on Medical Law and Forensic Pathology at the University of Durban-Westville.

3.

On **2009/02/06 and 2009/02/09** during the performance of my official duties, I was requested by **INSP. S. Williams** of the **ICD** to ballistically examine the body of **Mr. B.E. Mkhize (PM 233/09)** and also to ballistically examine the vehicle the deceased was lying in, to determine the direction from which the deceased was shot from.

GSM

4.

UPON ARRIVAL AT THE GALE STREET MORTUARY THE FOLLOWING WERE OBSERVED AND NOTED BY ME:

4.1 NINE(9) POSSIBLE ENTRY WOUNDS OF WHICH THE FOLLOWING CAN BE STATED:

4.1.1 FIVE(5) ENTRY WOUNDS WHICH CORRESPONDS TO FIVE(5) EXIT WOUNDS.

4.1.2 TWO(2) 9mm CALIBRE FIRED BULLETS FOUND IN THE BODY OF THE DECEASED RESULTING FROM TWO(2) ENTRY WOUNDS.

4.1.3 ONE(1) ENTRY WOUND ON THE RIGHT BUTTOCKS WITH NO EXIT WOUND.

4.1.4 ONE(1) ENTRY WOUND ON THE LEFT ELBOW WITH NO EXIT WOUND.

4.2 THE DIRECTION OF THE NINE(9) POSSIBLE ENTRY WOUNDS ARE AS FOLLOWS:

4.2.1 SIX (6) WERE FIRED FROM THE RIGHT SIDE OF THE DECEASED.

4.2.2 TWO(2) WERE FIRED FROM THE REAR OF THE DECEASED.

4.2.3 ONE(1) WAS FIRED FROM MIDDLE TO LEFT OF THE DECEASED.

4.3 THREE(3) POSSIBLE SHRAPNEL LACERATIONS ON THE RIGHT SIDE OF THE DECEASED WITH NO CORRESPONDING EXIT WOUNDS.

4.4 ONE(1) POSSIBLE SHRAPNEL LACERATION ON THE RIGHT ARM WITH A CORRESPONDING EXIT WOUND ON THE RIGHT ELBOW.

4.5 ONE(1) SUPERFICIAL WOUND ON THE LEFT UPPER BACK AND LEFT SIDE OF THE NECK.

5.

UPON ARRIVAL AT THE ISIPINGO POLICE POUND THE FOLLOWING WERE OBSERVED AND NOTED BY ME:

5.1 ONE(1) BLACK LEXUS VEHICLE WITH REGISTRATION NUMBER ND 148-765.

5.2 DRIVERS SIDE WINDOWS AND PASSENGERS SIDE WINDOWS WERE SHATTERED.

5.3 REAR WINDSCREEN WAS SHATTERED.

5.4 THREE(3) BULLET IMPACT MARKS ON FRONT WINDSCREEN.

5.5 DRIVERS SIDE TYRES AND REAR PASSENGERS SIDE TYRES WERE PUNCTURED.

GSM

5.6 THE PRESENCE OF LEAD VAPORISING WAS ALSO PRESENT ON VARIOUS PLACES OF THE VEHICLE.

5.7 THIRTY-TWO (32) POSSIBLE BULLET HOLES ON VEHICLE WHICH I MARKED AS FOLLOWS:

5.7.1 D1-D9 - SHOTS TOWARD DRIVERS SIDE OF THE VEHICLE.

5.7.2 D10-D27 - SHOTS FROM THE REAR TOWARDS DRIVERS SIDE OF THE VEHICLE.

5.7.3 P1-P2 - SHOTS FROM THE REAR TOWARDS THE PASSENGER SIDE OF THE VEHICLE.

5.7.4 W1-W3 - SHOTS FROM THE REAR TOWARDS THE VEHICLE.

6.

TAKING THE ABOVE POINTS, OBSERVATIONS AND DOCUMENTATION INTO CONSIDERATION, THE FOLLOWING CAN BE CONCLUDED:

6.1 SHOTS WERE FIRED FROM TWO(2) DIFFERENT DIRECTIONS/ ANGLE OR WHILST VEHICLE WAS MOVING.

6.2 THE WOUNDS OF THE DECEASED AS WELL AS THE DAMAGE TO THE VEHICLE IS TYPICAL OF A HIGH VELOCITY BULLET (5,56mm) AS WELL AS A LOW VELOCITY BULLET (9mm).

6.3 IT CAN ALSO BE STATED THAT ALL POSSIBLE SHOTS FIRED WERE FROM THE OUTSIDE, TOWARDS THE VEHICLE.

7.

The abovementioned conclusions were arrived at by means of an examination and processes which require a knowledge and skill in Ballistics.

8.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

SERGEANT

0543281-2

.....

P. TILAKDHAREE

LAB 18592/09
DURBAN CENTRAL CAS 185/02/09

I certify that the deponent has acknowledge that she knows and understands the contents of this declaration which was sworn before me and the deponent's signature was placed thereon in my presence at **AMANZIMTOTI** on 2009/11/19.

..... 0843277-4 .....

COMMISSIONER OF OATH

VERENDRA TILAKDHAREE

Ballistics Unit
Kings Crest Building
Kingsway 415
AMANZIMTOTI 4126

INSP : **South African Police Service**

/pn

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LAB18592/2009(4) CM15

DURBAN CENTRAL CAS 185/02/2009

AFFIDAVIT IN TERMS OF SECTION 212 OF THE CRIMINAL PROCEDURE ACT. 1977 (ACT 51 OF 1977)

CHRISTIAAN MANGENA declares under oath and in terms of Section 212(4)(a) and 212(8)(a) of Act 51 of 1977 that:

1.

I number **0471799-6** am a **CAPTAIN** in the South African Police Service, and in service of the State. I am attached to the Ballistic Section of the Forensic Science Laboratory.

2.

I have been attached to the Ballistic Unit since 1995 as an examiner of Forensic Ballistic related cases. I have to date examined an excess of 5254 cases. I examine Ballistic related cases as part of my daily task and testify on a regular basis in the courts of South Africa. I have successfully completed a three (3) year in-service training course at the Ballistic Section in the theoretical and practical application of the Forensic Ballistic Science.

2.1 **I have received in-service training in the following aspects of Forensic Ballistic Science:**

2.1.1 Identification of ammunition, fired bullets and fired cartridge cases.

2.1.2 The use of microscopic equipment.

2.1.3 Microscopic individualization of firearms, ammunition, fired bullets and cartridge cases.

2.1.4 Microphotography.

2.1.5 Identification of firearms.

2.1.6 The examination of firearm mechanisms.

2.1.7 The different manufacturing processes of firearms and firearm components.

2.1.8 The examination of home-made devices.

2.1.9 Techniques associated with the recovering and restoration processes of obliterated alpha-numeric figures on metals.

2.1.10 The reloading of ammunition and the manufacturing processes of ammunition.

2.1.11 Shot range determination.

2.1.12 Crime scene investigation and examination techniques.

GSM

2.1.13 The taking of photographs and the documentation of the results during an investigation.

2.1.14 Microscopic individualization of tools and toolmarks.

2.1.15 Physical matching.

2.2 **INTERNAL FORENSIC BALLISTICS**

2.2.1 Functioning of firearm mechanisms during the firing process.

2.2.2 Burning rates of propellant powder and gas pressure.

2.2.3 The transfer of marks by the firearm to cartridges, fired cartridge cases and fired bullets.

2.3 **INTERMEDIATE FORENSIC BALLISTICS:**

2.3.1 The effect that hot gasses, propellant powder and partially burnt propellant powder has on an intermediate target, before and after the exit of a bullet from the muzzle.

2.3.2 The forming and effect of secondary missiles caused by intermediate targets.

2.4 **EXTERNAL FORENSIC BALLISTICS:**

2.4.1 The trajectory of the bullet from the muzzle of the firearm to the final point of impact.

2.5 **TERMINAL FORENSIC BALLISTICS:**

2.5.1 The wounding effect that the bullet has on tissue (Wound Ballistics).

2.5.2 The effect that the bullet has on the target.

2.5.3 The effect that the target has on the bullet.

2.6. I visited the following firearm and ammunition manufacturers to ascertain for myself which processes are used in the manufacturing of firearms and ammunition:

Local

2.6.1 Lyttelton Engineering Works (LEW).

2.6.2 Truvello.

2.6.3 New Generation ammunition (NGA)

2.6.4 Somchem.

2.6.5 Swartklip.

Foreign Country

2.6.6 Norinco in China

GSM

2.7 During August - September 2002 I attended a course presented by the Federal Bureau of Investigation (FBI) of the United States of America which comprised of the following:

2.7.1 **Bullet Trajectory Reconstruction.**

2.7.2 **Techniques in Firearms Identification.**

2.7.3 **Gunpowder and Gunshot Residue.**

2.8 During November 2010 I attended a course presented by the Ross M Gardner of Bevel, Gardner & Associates from the United States of America which comprised of the following:

2.8.1 **Bloodstain Pattern Analysis Level I**

2.8.2 **Bloodstain Pattern Analysis Level II**

2.8.3 **Crime Scene Reconstruction Level I**

3.

On 30th January 2012 during the performance of my official duties I received a number of LCRC case files from Commander of LCRC Durban Colonel Boltman. The case files included the **DURBAN CENTRAL CAS 185/02/2009 (LCRC 232/02/2009).** This case file contained:

3.1 Crime scene photos on a disc.

3.2 Crime scene sketch plan.

3.3 Affidavit by Constable Simphiwe Charles Mkhize

4.

On 6th March 2012 during the performance of my official duties I received a copy of a Police case Docket with reference **DURBAN CENTRAL CAS 185/02/2009** from Lieutenant-Colonel Mano of the Task Team. Amongst other documents in the docket I found the following documents which were to be utilized in crime scene reconstructions:

4.1 Post mortem report marked DURBAN PM 233/2009 compiled by Dr Christa Hattingh and signed on the 13th February 2009. Post mortem was conducted on the 6th February 2009.

4.2 Post mortem report marked DURBAN PM 233/2009 compiled by Dr G Perumal and was not signed.

4.3 Ballistic Reports (affidavits in terms of Section 212 of criminal Procedures act 51 of 1977) compiled by Sergeant Padmini Tilakdharee marked LAB 18592/09 1ST, 2ND and 3rd entries.

G Sm

4.4 Statement by Inspector Felokwakhe Thomas Dlamuka.

4.5 Statement by Constable Stanley Sandile Mfene.

4.6 Statement by D/Inspector Padayachee.

4.7 Statement by Inspector Rakesh Chunderbhan Maharaj.

4.8 Statement by Inspector JF Stoltz.

4.9 Statement by Constable Raymond Lee.

5.

The intention and scope of this Forensic examination comprise the following:

5.1 Crime scene reconstruction.

5.2 Bullet trajectories determination.

5.3 Expert opinion concerning the case.

6.

I studied the two post mortem reports and noticed the following:

6.1 The wounds sustained by the deceased as described by both doctors are the same and consistent with the photos.

6.2 Both doctors' observations resulted to the conclusions that the cause of death was Low Velocity Gunshot Wound to the Neck. Both doctors are in agreement that the bullet perforated the neck and was from right to left.

7.

I observed the crime scene photos and noticed the following:

7.1 The position of the deceased's vehicle on the road.

7.2 The position of fired cartridge cases on the crime scene.

7.3 The bullet holes and damages on the vehicle.

7.4 The position of the deceased's body inside the vehicle.

7.5 The position of the firearm and fired cartridge cases inside the vehicle.

7.5 The positions and types of wounds sustained by the deceased. Not all the wounds sustained by the deceased and described by the doctors were visible on photos.

Photo 1 (Position of vehicle on the crime scene).

Photo 2 (Position of vehicle on the crime scene).

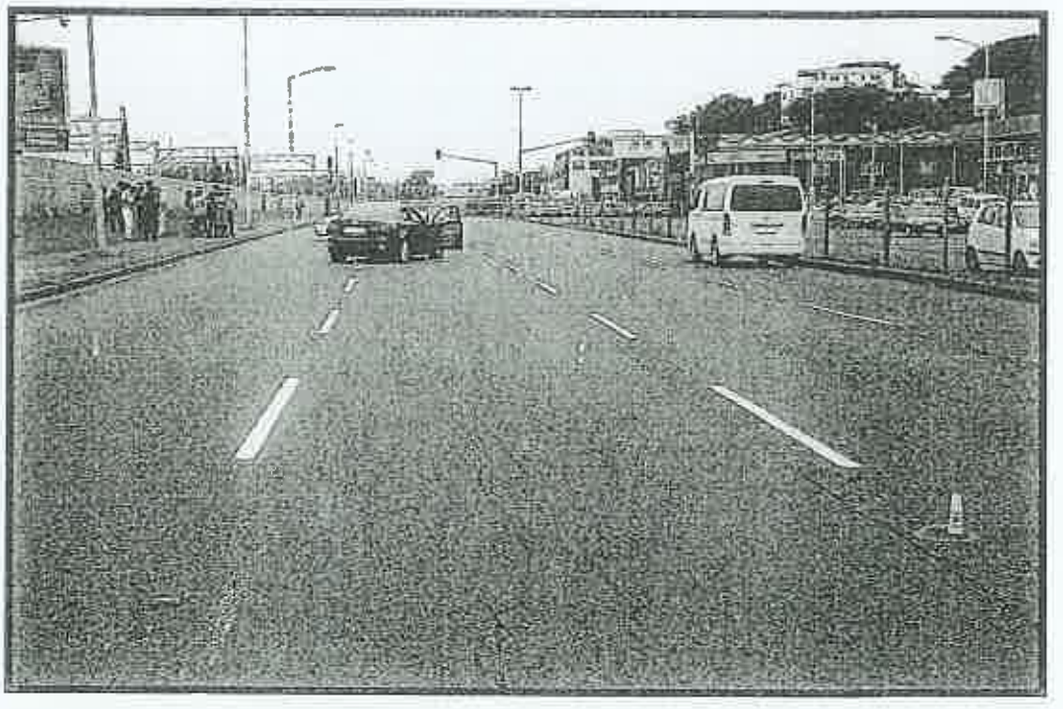

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Photo 3 (Position of fired cartridge cases at the crime scene).

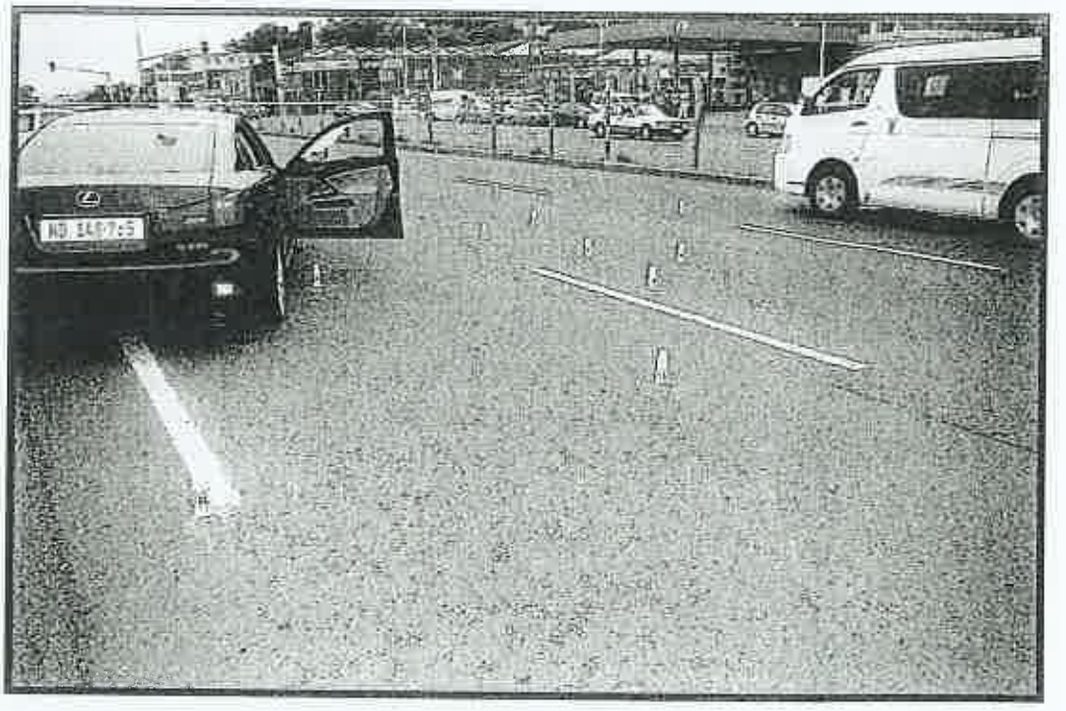

Photo 4 (Position of fired cartridge cases at the crime scene).

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Photo 5 (Bullet holes and damages on vehicle).

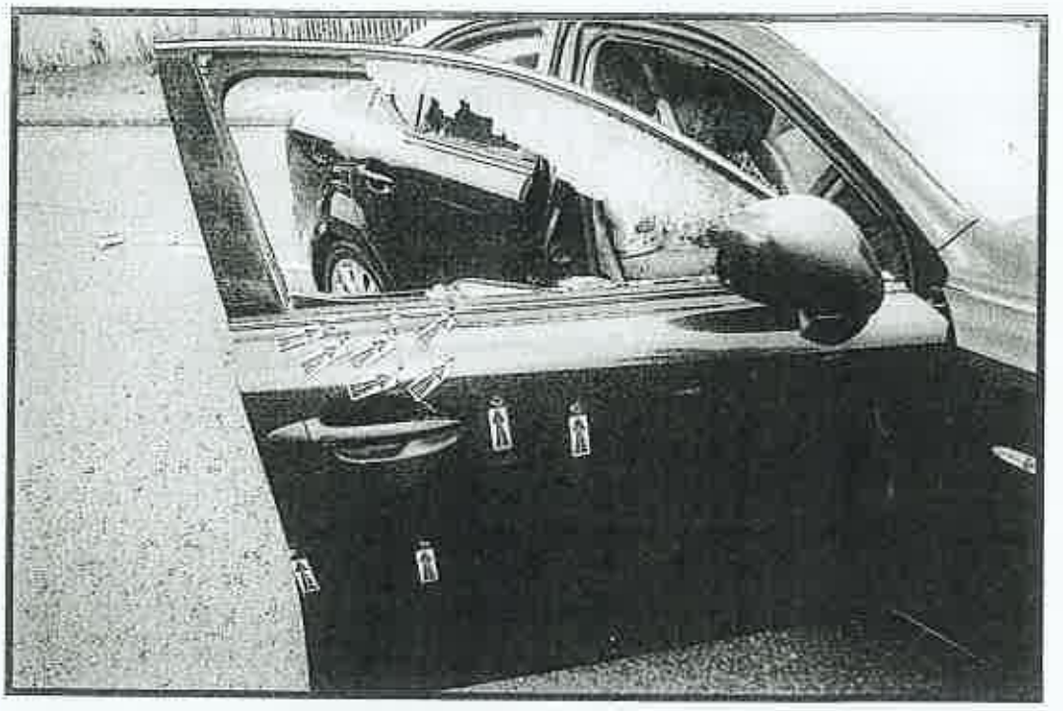

Photo 6 (Bullet holes and damages on vehicle).

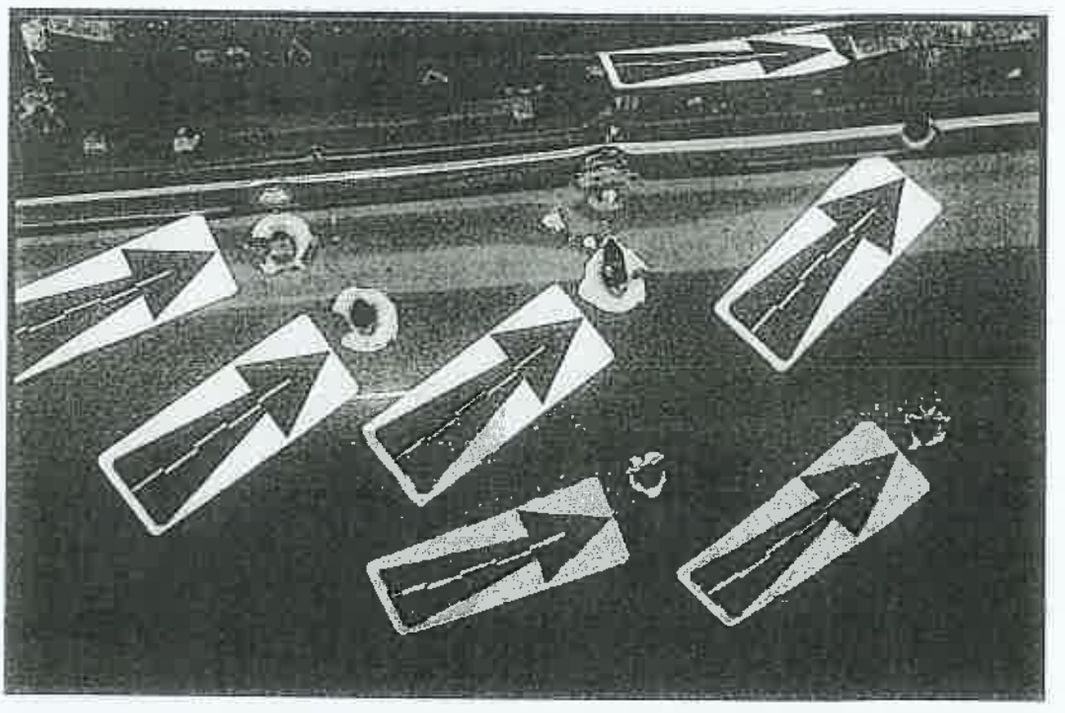

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Photo 7 (Bullet holes and damages on vehicle).

Photo 8 (Bullet holes and damages on vehicle).

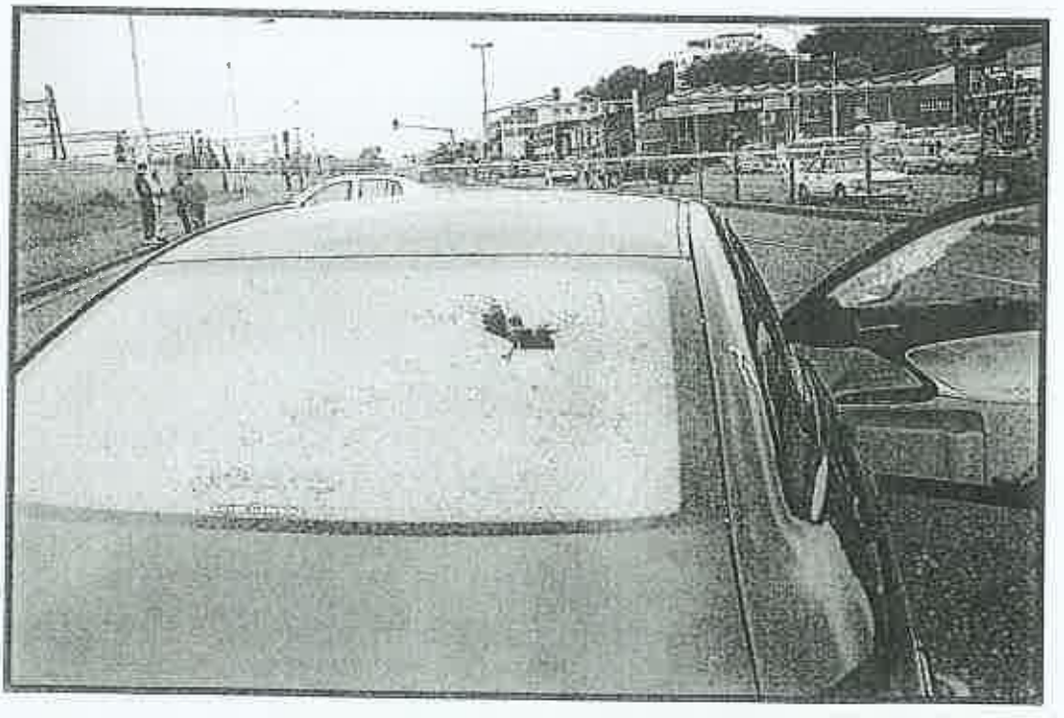

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Photo 9 (Bullet holes and damages on vehicle).

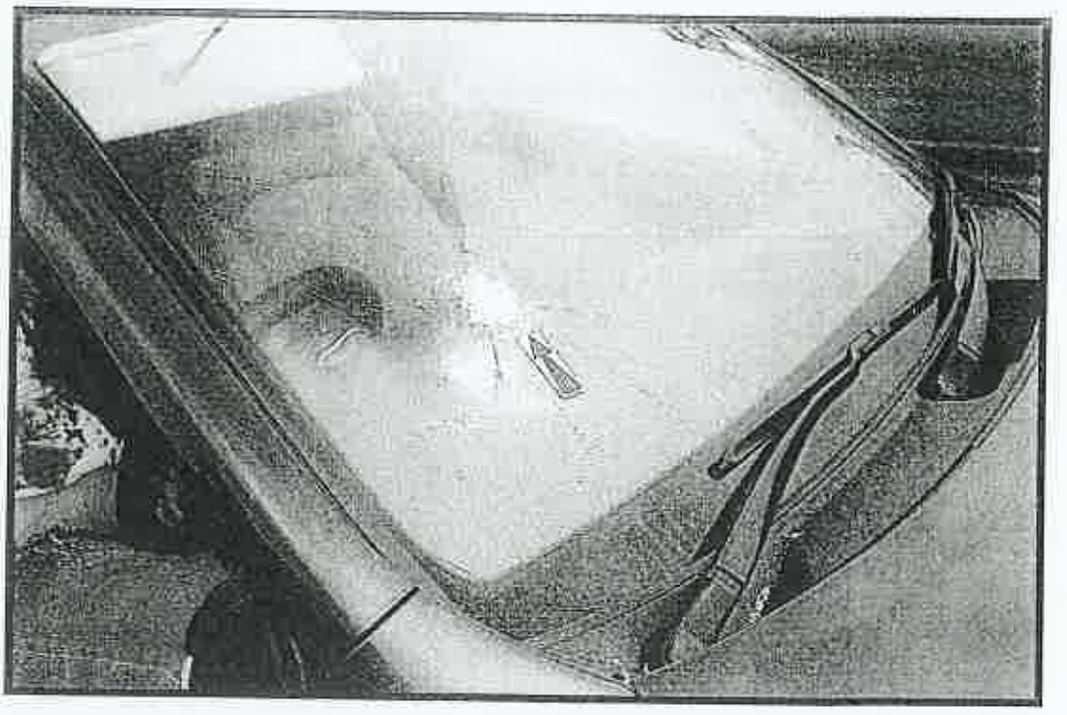

Photo 10 (Bullet holes and damages on vehicle).

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Photo 11 (Bullet holes and damages on vehicle).

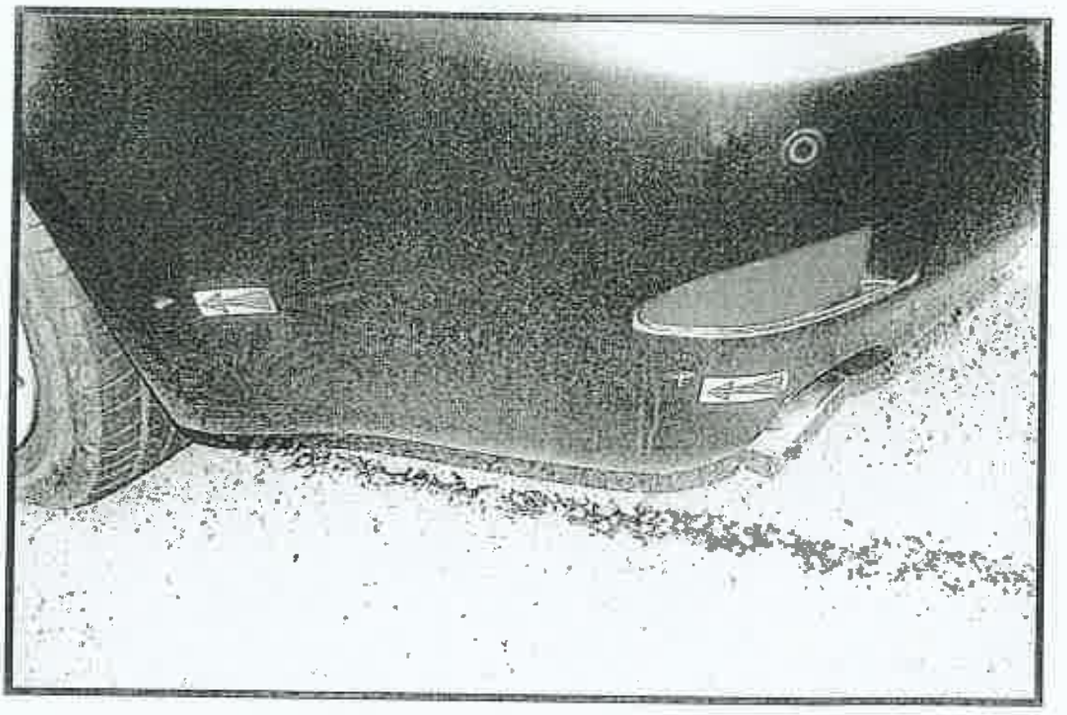

Photo 12 (Bullet holes and damages on vehicle).

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Photo 13 (Position of deceased in the vehicle).

Photo 14 (Position of deceased in the vehicle).

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Photo 15 (Position of firearm inside the vehicle).

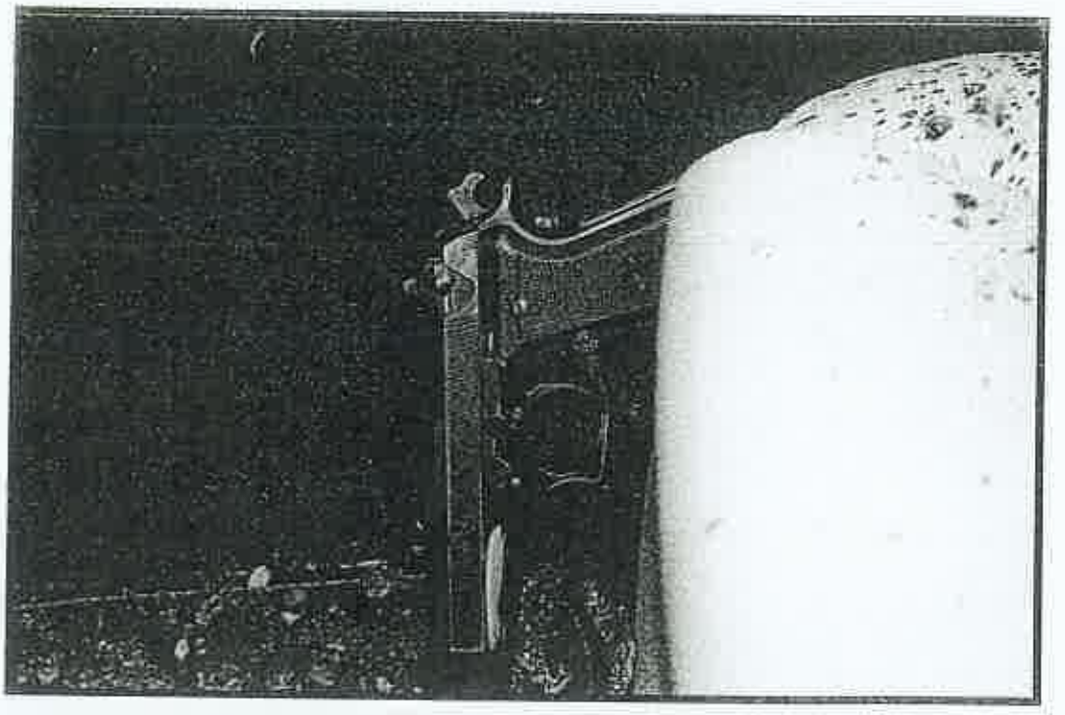

Photo 16 (Position of fired cartridge cases inside the vehicle).

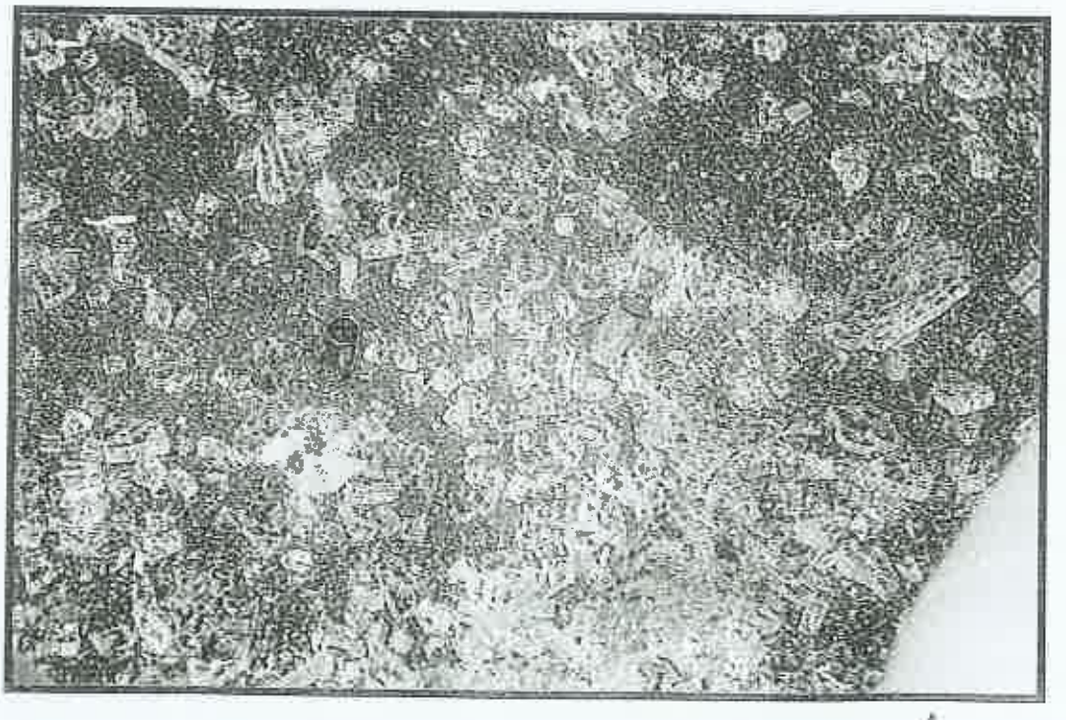

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Photo 17 (Wounds sustained by the deceased on the face).

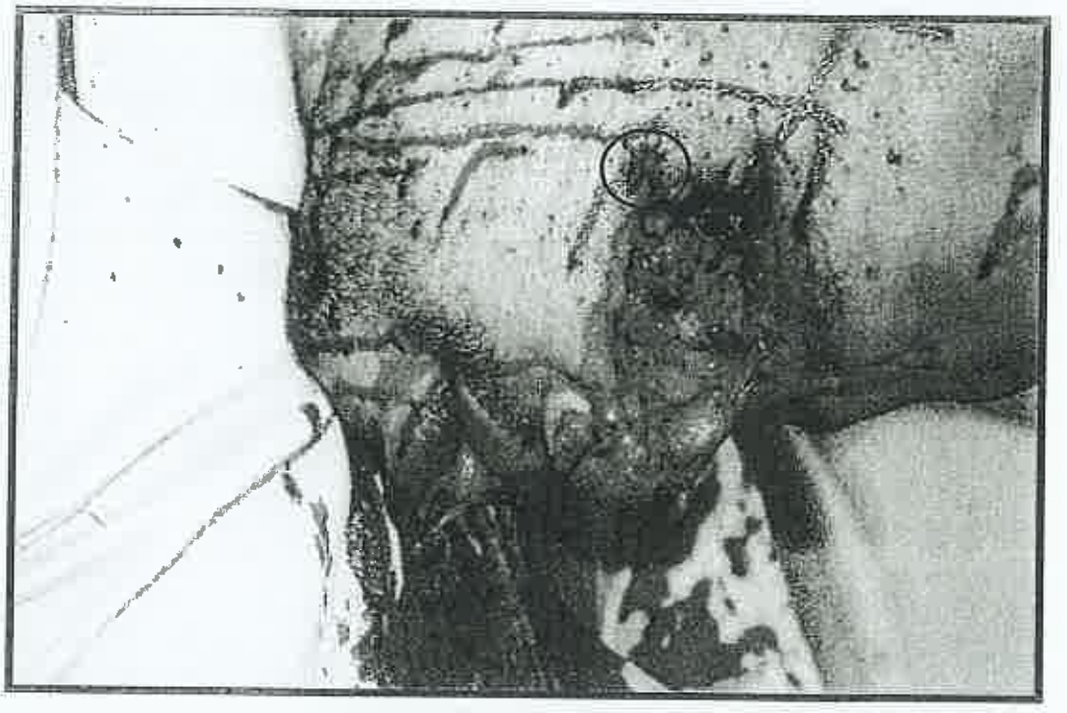

Photo 18 (Wounds sustained by the deceased on the face).

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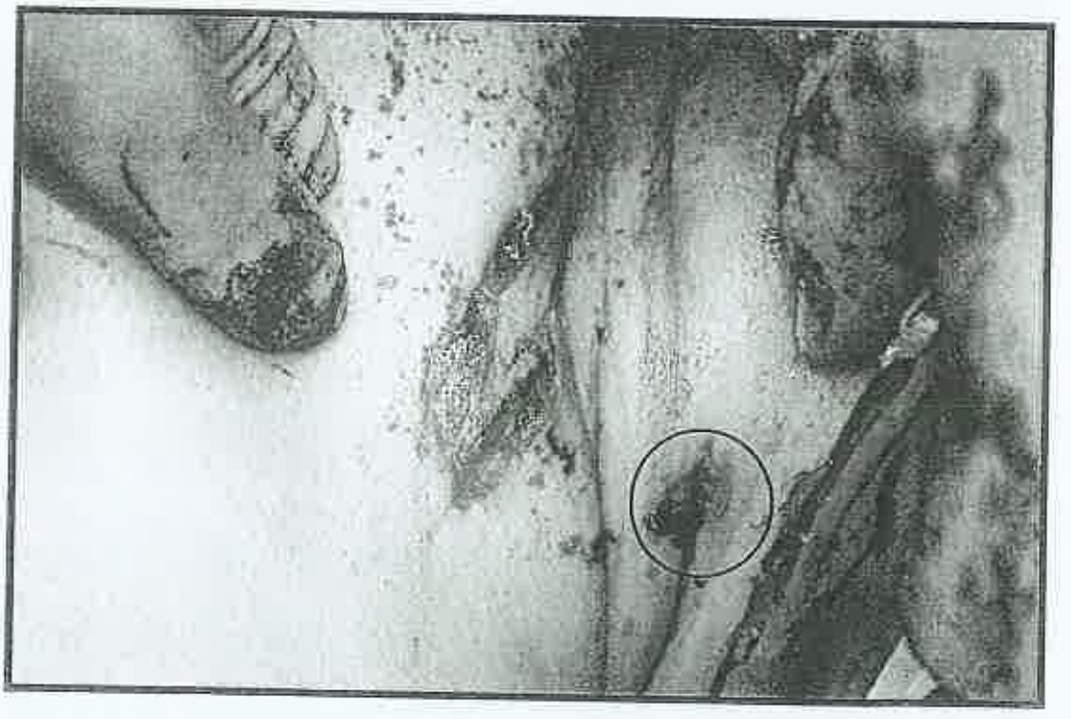
Photo 19 (Position of the wound sustained by the deceased on the neck).

Photo 20 (Wounds sustained by the deceased on the neck).



The wound on the right side at the bottom (wound circled) is the penetrating wound and the other two wounds on the left are described as superficial wounds (grazing wounds).

G Sm

Photo 21 (Wounds sustained by the deceased).

Photo 22 (Wounds sustained by the deceased).

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Photo 23 (Wounds sustained by the deceased on the right elbow).

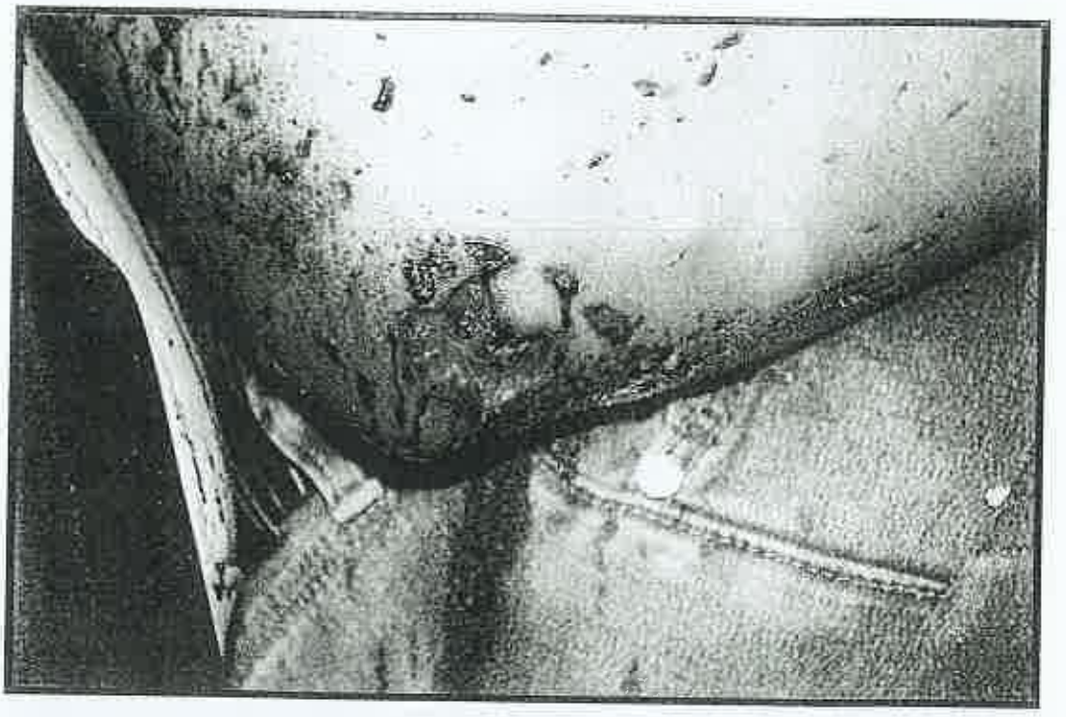


Photo 24 (Wound sustained by the deceased on the right upper leg).

G Sm

Photo 25 (Wound sustained by the deceased on the right upper leg).

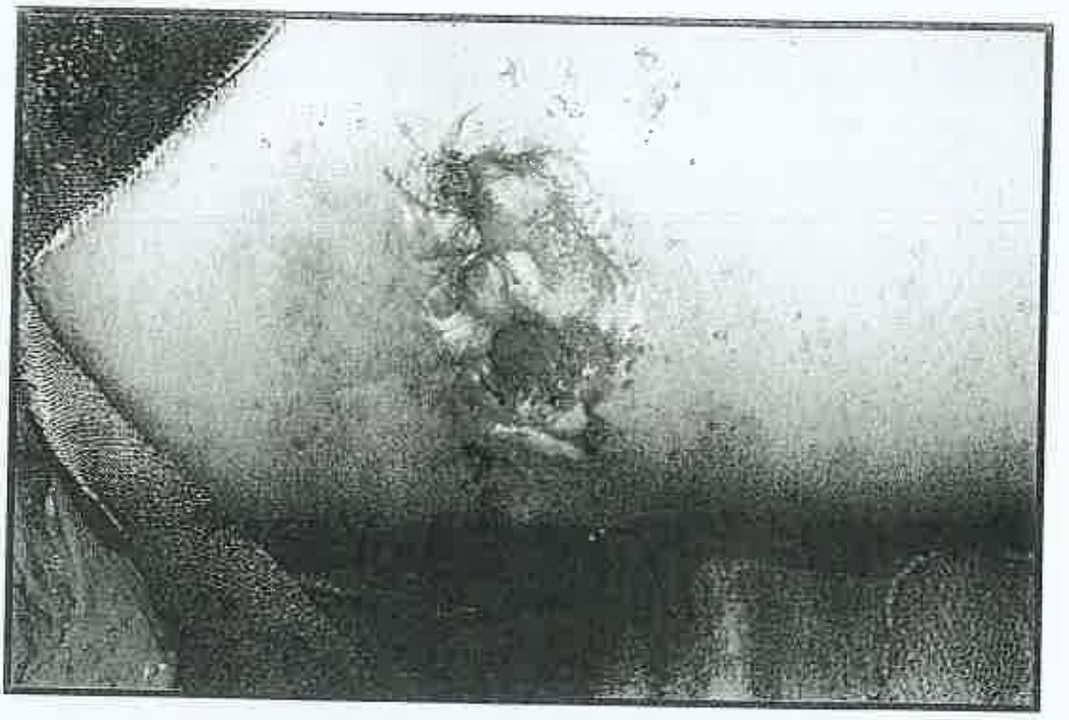
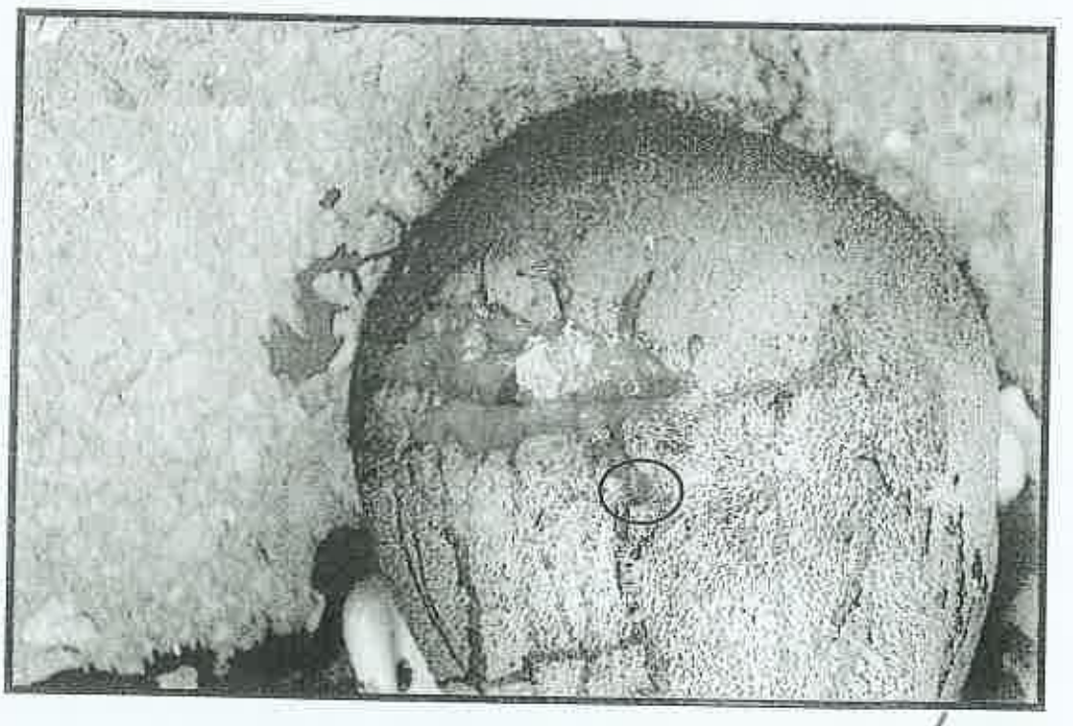


Photo 26 (Wound sustained by the deceased).



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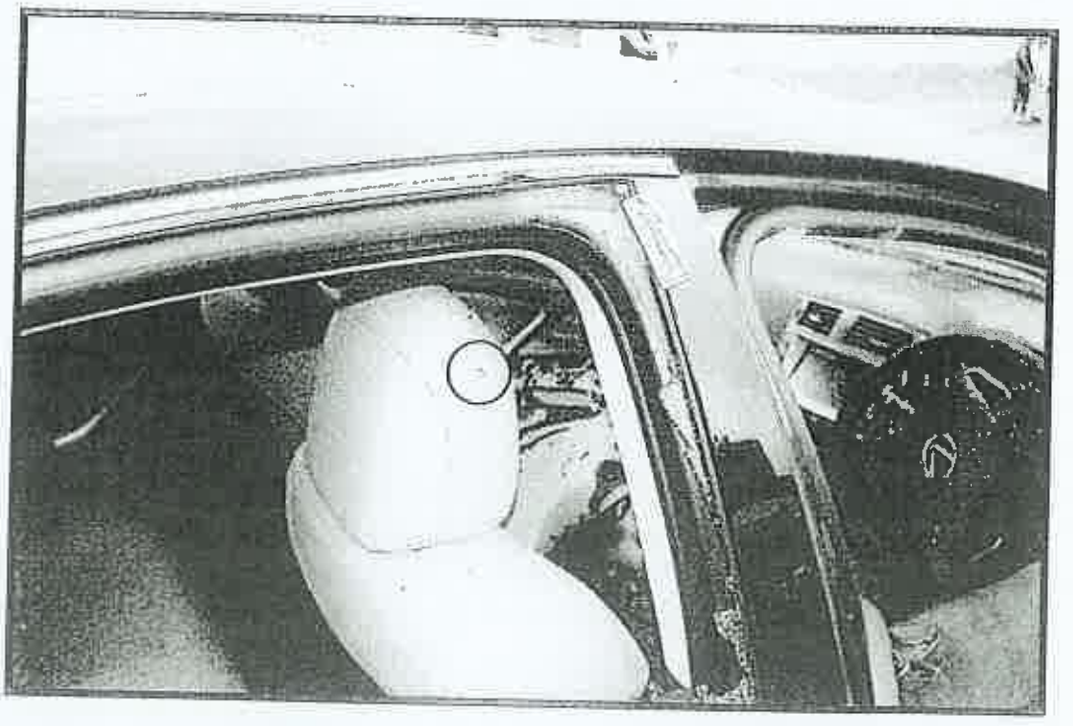
8.

Both doctors's observations resulted to the conclusions that the cause of death was a **Low Velocity Gunshot Wound to the Neck** and they are both in agreement that the **bullet that perforated the neck was from right to left and forward.** In determining the possible bullet trajectory of the fatal shot, I am of the opinion that this shot was fired through the right rear door's window and it was most probably the bullet that perforated the headrest of the driver's seat. This shot was fired from the right side towards the back of the vehicle.

Photo 27 (Position of bullet hole in the head rest)



9.

Taking into consideration the position of the bullet hole in the head rest of the driver's seat and the position of the fired cartridge cases on the crime scene, I am of the opinion that the shot was most probably fired from the area circled on the photo below.

Photo 28 (Possible position where shots were fired from).

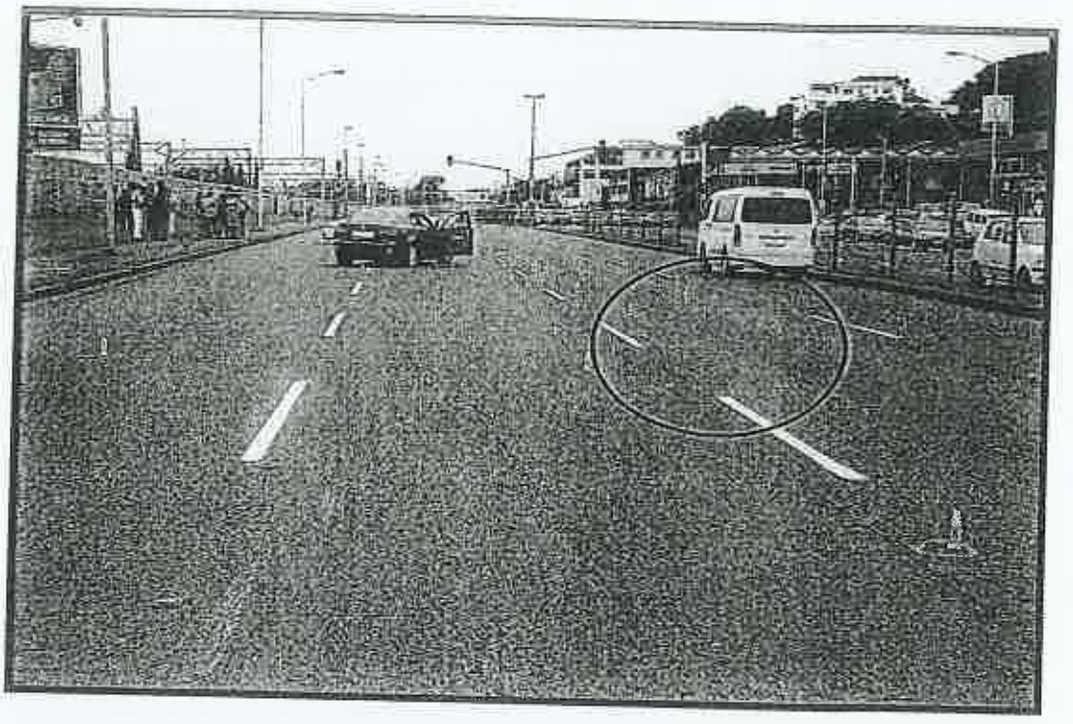


Photo 29 (Possible position where shots were fired from).

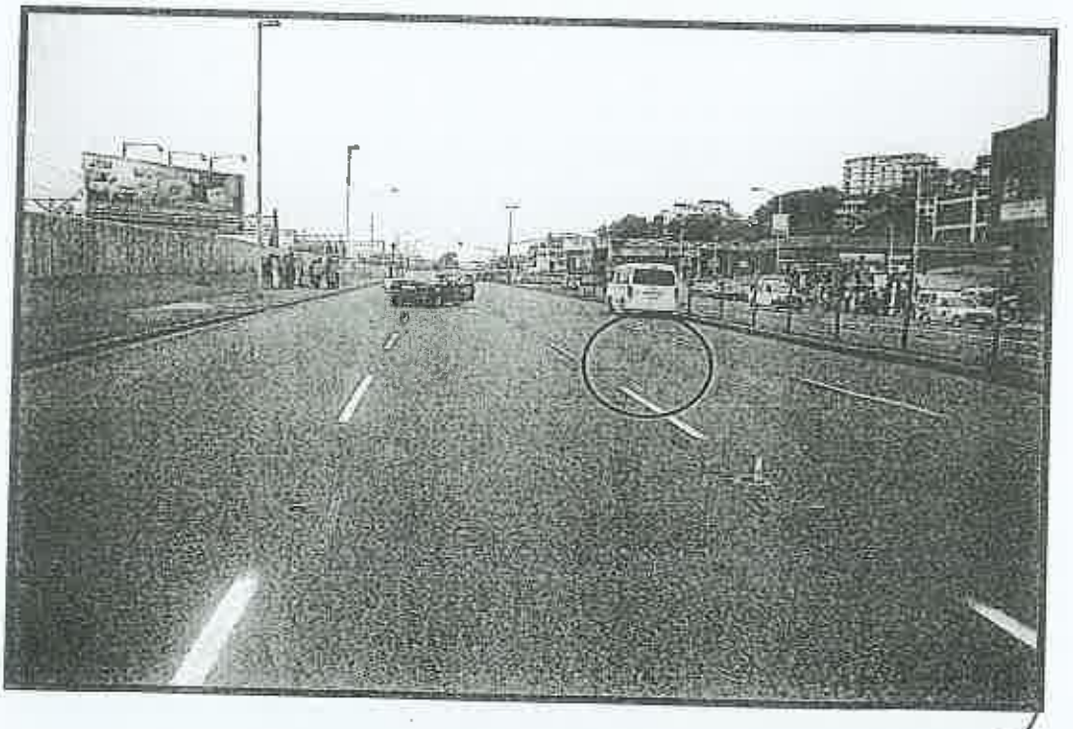


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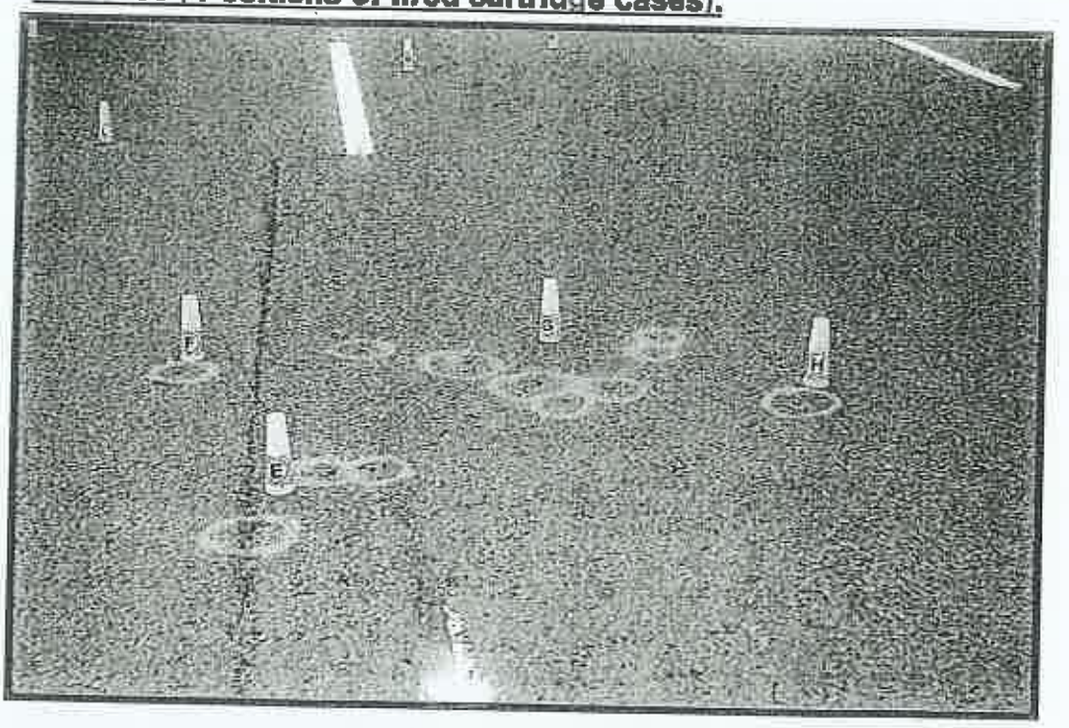
Photo 30 (Positions of fired cartridge cases).



10.

According to Ballistics report compiled by Sergeant Padmini Tilakdharee on dated 4th June 2009, cartridge cases marked E1--E3, F, G1-G7 and H (visible on photo above) were positively linked to the pistol with serial number H 86407 Z, and cartridge cases marked L, N and P were positively linked to the pistol with serial number H 74632 Z. These cartridge cases place the two shooters at the left back of the Toyota Quantum (right back of the deceased's vehicle).

11.

According to statements by Police officials, Inspector Felokwakhe Thomas Dlamuka, Constable Stanley Sandile Mfene, D/Inspector Padayachee, Inspector Rakesh Chunderbhan Maharaj and Inspector JF Stoltz, the deceased fired shots to the direction of the police and they returned shots fatally wounding the deceased. According to Ballistics report compiled by Sergeant Padmini Tilakdharee dated 4th June 2009, all cartridge cases collected from the crime scene (including the two found inside the vehicle of the deceased), were not linked to the firearm found in the vehicle of the deceased.

According to the same report compiled by Sergeant Padmini Tilakdharee dated 4th June 2009, all possible shots were fired from outside towards the vehicle of the deceased.

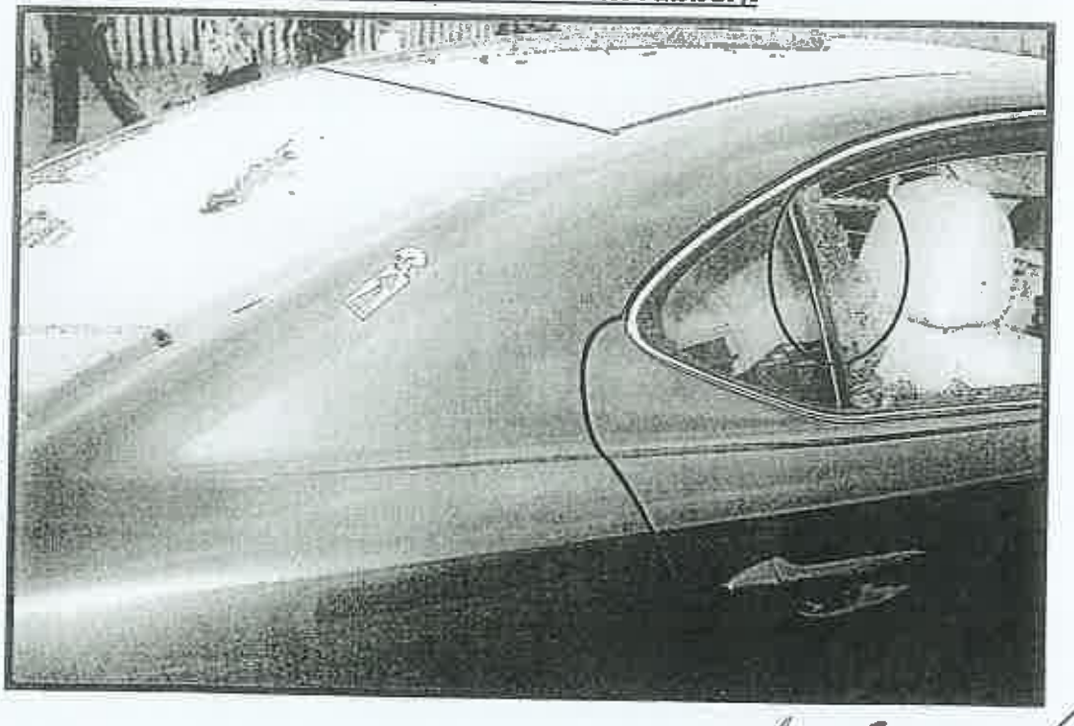
G Sm

12.

On observation of the vehicle on the photos I noticed that all the windows of the vehicle were shattered and there were glass particles embedded in the rubbers on the doors. This indicates that the windows were closed during the incident and limits the possibility of shots being fired from inside of the deceased's vehicle.

Photo 31 (Glass particles embedded in rubber).

Photo 32 (Glass particles embedded in rubber).



GSM

Photo 33 (Glass particles embedded in rubber).

13.

After observation of the crime scene photos, post mortem reports, Ballistics Reports and Statements by Police Officials, I could reach the following conclusions:

13.1 Two different calibres were used in shooting at the vehicle of the deceased (high velocity possibly 5,56 and low velocity possibly 9mm).

13.2 The person or persons who fired with high velocity calibre firearms to the door and window of the vehicle were directly opposite the deceased on the right side.

13.3 The smaller shrapnel laceration injuries sustained by the deceased on the right arm and right side of the face were most probably caused by glass particles and bullet fragments created by high velocity bullet impact on glass. This gives the impression that the driver's side window was shattered by bullets fired into the vehicle. The shrapnel laceration injuries sustained on the right arm give impression that the deceased's arm was stretched forward possibly holding the steering wheel.

13.4 The persons who fired shots with low velocity firearms were positioned on the right side towards the back.

13.5 The position of cartridge cases and glass particles at the crime scene gives the impression that the vehicle was stationary during the incident.

13.6 There was no sign of shots fired from inside the vehicle.

14.

The abovementioned conclusions were arrived at by means of an examination and process, which require knowledge and skill in Forensic Ballistics.

15.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

.....CAPTAIN

C. MANGENA

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn before me, and the deponent's signature was placed thereon in my presence at DURBAN ON...2017-09-28...

7055563 6000

.....

COMMISSIONER OF OATHS

.....

Forensic Science Laboratory

270 Pretoria Road

SILVERTON 0184

..... :SOUTH AFRICAN POLICE SERVICE

/cm

CM16.1

Photo 1

Durban Central Cas 185/02/2009

GSM

CM16.2

Photo 2

G SM

Cm16.3

Photo3

GSM

CM16.4

Photo 4

GSM

CM164.5

Photo 5

G sm

PINETOWN CAS 1000/05/2009

CM17.1

SEQ 29/2021-446

CM17.2

G-5m

SEQ 29/2021-448

CM17.3

GSM

Dlm CAS 668/05/2009 Cm18 A21

(1) Nokuphiwa Zanele Gqadaba.

(2) States under oath in English.

(3) I am an Adult female, ID 8604050795081 I stay at 98 Emerald Hill in Ashley Road New Germany Ph. 0917731370 and I am employed as a student human rights Elangeni College at Berea Hill Ph. 031-7771142

(4) On 2009/05/23 at about 02:00 I was asleep in my bedroom at the above address when I awoke with my fiance and my two children. Whilst I was asleep in the main bedroom with my baby that sleeps in the cot and my toddler that sleep with me in my bed, I heard a banging of someone breaking the front gate to the premises.

(5) I then got out of bed and I went to the other room to wake my husband up and I told him that someone was trying to break the gate. My husband then got up and went straight to the main bedroom. I then followed him to the main bedroom. I noticed that he was not wearing any clothes so I went to his bag to get a pair of pants for him. When I got back to his bedroom with the pants I noticed that my husband was walking back to the bedroom door from the window. My husband did not take anything and he

GSM

Thursday 6th/05/2009

A3

the pants from me and put it on. I then closed my bedroom door. My husband and myself then stood behind the bedroom door. My baby was still asleep in the cot and my younger child was still asleep in my bed. An unknown number of people started open the door. It was actually a few of people shouting open the door. My husband then told me to take up my baby and to give the baby to him. I then took my baby and handed the baby to him.

(6)

I then opened the bedroom door. My husband was standing behind the door with my baby. Before I opened the door my husband and myself shouted at the people outside the bedroom door that they must leave us alone as we had children. The people shouted at me to open the door. I then opened the door. The door was not locked. Once I opened the door I noticed three bright lights and guns being pointed at me. I then got a fright and stepped back into the room. My husband then came out from behind the door with my baby in his arms. He then said "please guys don't kill me, I have a small baby". At that time I was standing next to him.

(7)

All the people then said that my husband must give the baby to me. My husband then agreed to give the baby to me.

N.Z

Gsmt.

Phn CAS 06/05/2009

A3/

GP-8 01/02

P. 21 (81/143198)

An unknown Indian male then took the baby from my husband and threw the baby to me. I then caught the baby. The Indian male then told me to get out of the bedroom and I told him I have. Carrying child of the bedroom. An unknown female then told me to get the other child and get out of the room. I then took my baby and my other child and went out of the bedroom. I then started to walk down the passage as I wanted to get out of the house. I got in the lounge next to the serving hatch to the kitchen I rapid dial (emergency) behind me. I then ran out of the house holding my two children screaming "Please help me". I then ran to No 17 my neighbour and banged on the door screaming "Please help me please help me". Nobody came out answered. My door for help. I would like to state that what I was running to No 17 my neighbour I had two three females. I then ran up the steps to the parking area. I then stood in the parking area. I then noticed another unknown whitely in the parking area and I asked him what was wrong. He then said that they were police from Lenasia. He told me that they received a call that there was a criminal running in No 18 that they are looking for. Two officers that was inside my flat came up to the parking lot. One of them asked me what was the name and surname of

NZ*

GSM

PNG CRS 08/05/2009

A3(a)

GP-S 5102 R. 21 (01/143100)

my husband. I then said it is Sgt Ndlovu. He then said "No it is not Mkhize". I then said "Ngo". The same two then went back to my flat. The white male who took my bag from my husband then came to the window and asked me what I had done with my flat. I then said I had the keys and I rushed to my flat. I also locked my door. I then asked him for my cellphone. He called me when my cellphone was on. I said that it was under my pillow. He then went to the flat and brought all the stolen items to me except my cellphone. I then saw the police holding my cellphone and I asked him for my phone. He refused to give me my phone. He asked me who I wanted to call. I then said that I wanted to phone my husband's brother. He said he was not allowed to give me the cellphone. He then told me to switch on the cellphone. I then showed him the numbers on my phone. I then showed him the numbers and he walked away.

(8)

I then asked the supervisor of the flat to contact my sister. She came back to me and told me that the police does not want us to phone anyone. Suddenly a lady came to us and told us to climb into the car as it was cold. I then placed my elder child and all bags in the back seat. The white male said that the baby will get

PNJ CRS 08/05/2009. A3(3)

B.P.-B 8102 B.21 (81/143198)

Due from the cold and I went into the car I refused and I asked to be alone. They brought me a chair and I sat in the chair outside the cell with my back in now cell.

This is all I can say.

I have not understood the sentence of this night. I have no doubts in saying the prescribed death I consider the prescribed death be the harsh in my opinion.

Unknown.
08/05/09

16:30.

Unknown officer 16:32

Been the last hour
as odd thing to the
thing.

GSM

LAB 149818/2009(3)

RUSTENBURG CAS 1098/09/2009

CM19.1

Photo 1. (Crime scene).

Photo 2. (Crime scene).

G sm

Cm19.2

Photo 3. (Position of body and exhibits on the crime scene).

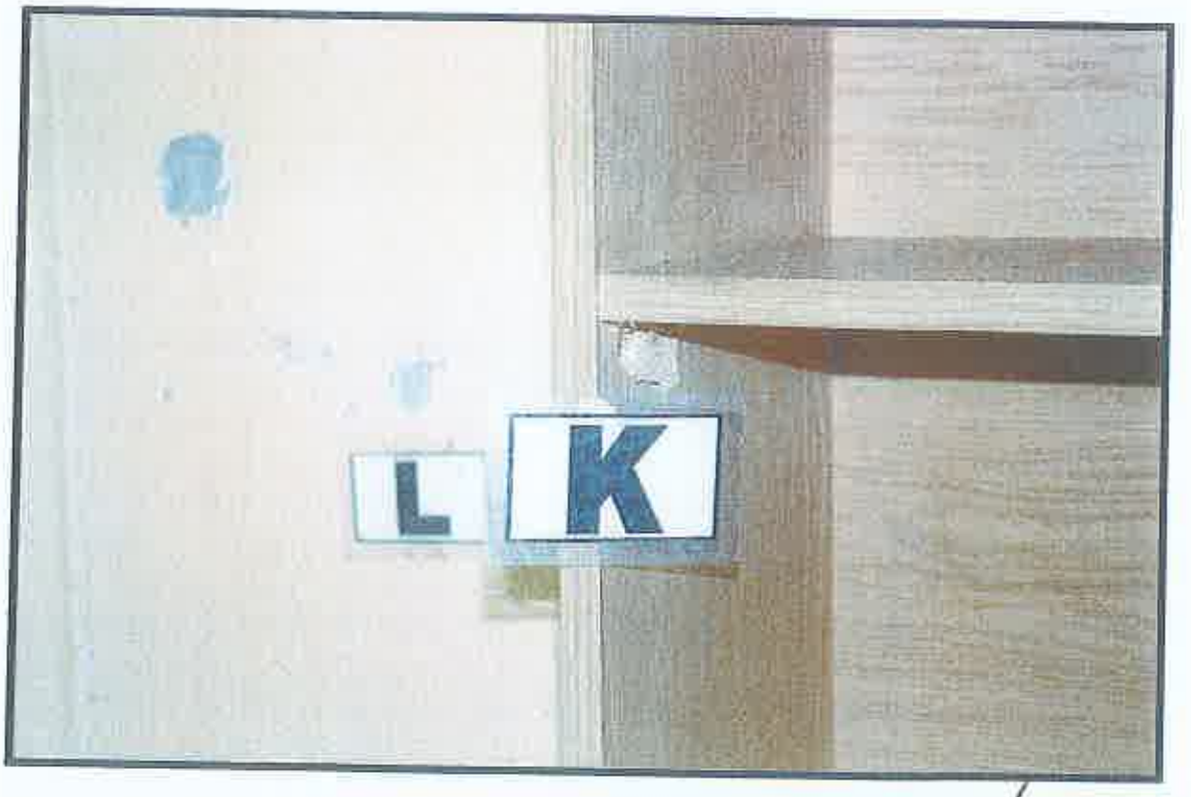
Photo 4. (Position of body and exhibits on the crime scene).

G sm

CM19.3

Photo 5. **(Position of holes marked K & L).**

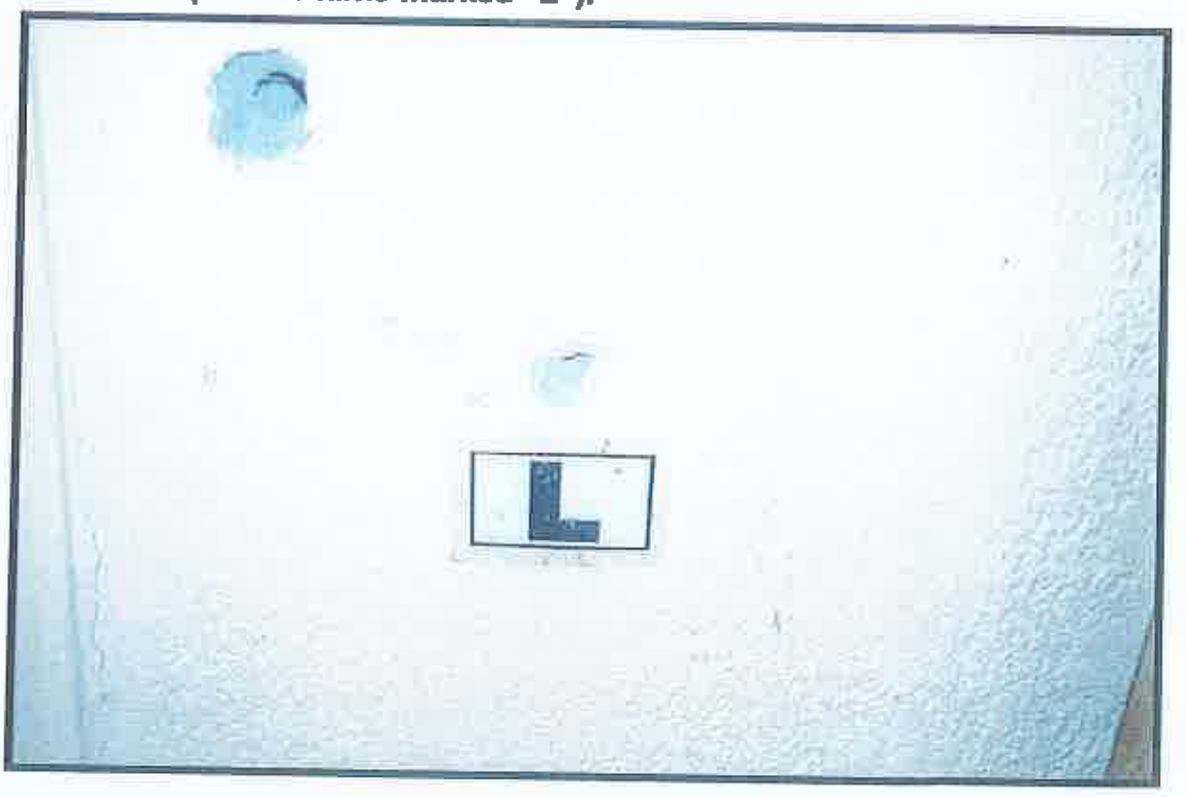
Photo 6. **(Position of holes marked K & L).**



G Smo

Photo 7. **(Bullet holes marked "K" in the TV stand).** CM19.4

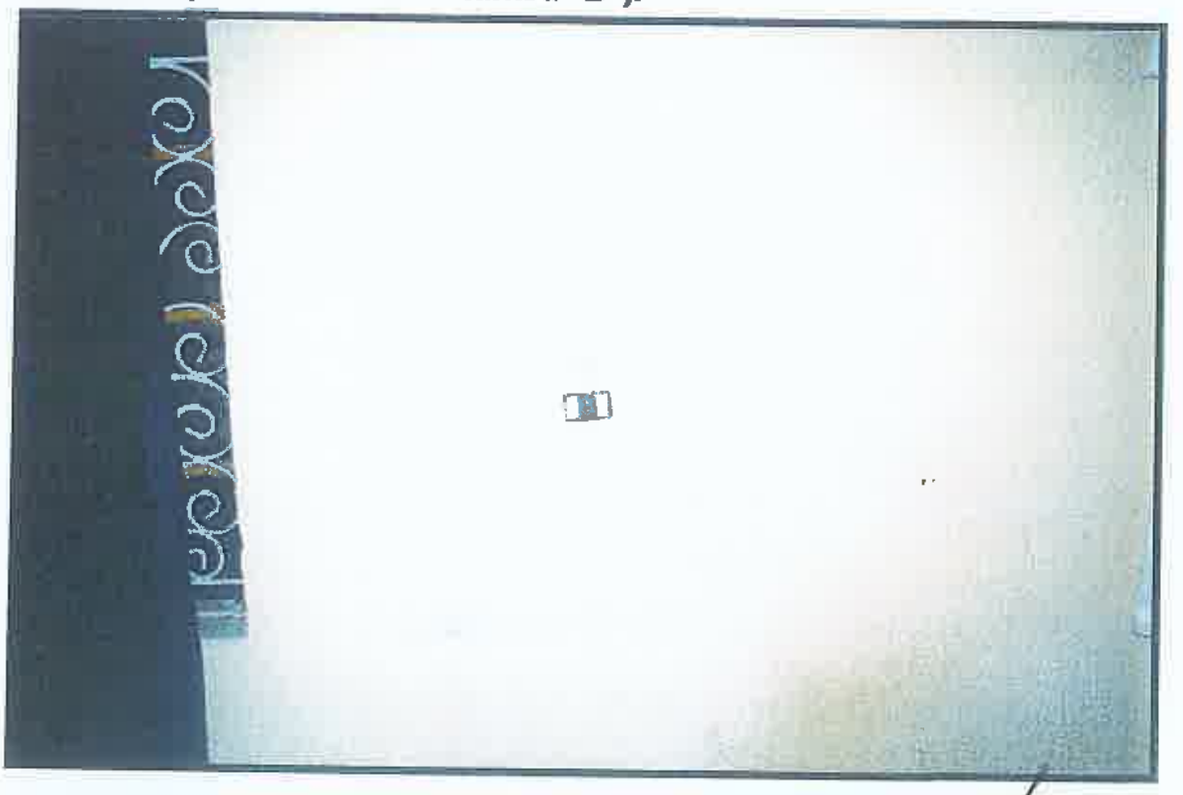
Photo 8. **(Bullet marks marked "L").**



G sm

Photo 9. **(Position of holes marked "A & B").** CM19.5

Photo 10. **(Position of hole marked "B").**



GSM

Photo 11. (Close photo of hole marked "B"). CM19.6

Photo 12. (Position of hole marked "A" in the sofa and on the wall).

G SM

CM19.7

Photo 13. **(Position of deceased on the floor).**

Photo 14. **(Only wound visible on photos, wound next to right eye).**

GSM

Berea Cas 288/05/2008

Cm 20.1

SEQ 29/2021-461

Cm 20.2

Gsm

SEQ 29/2021-463

CM20.3

GSM

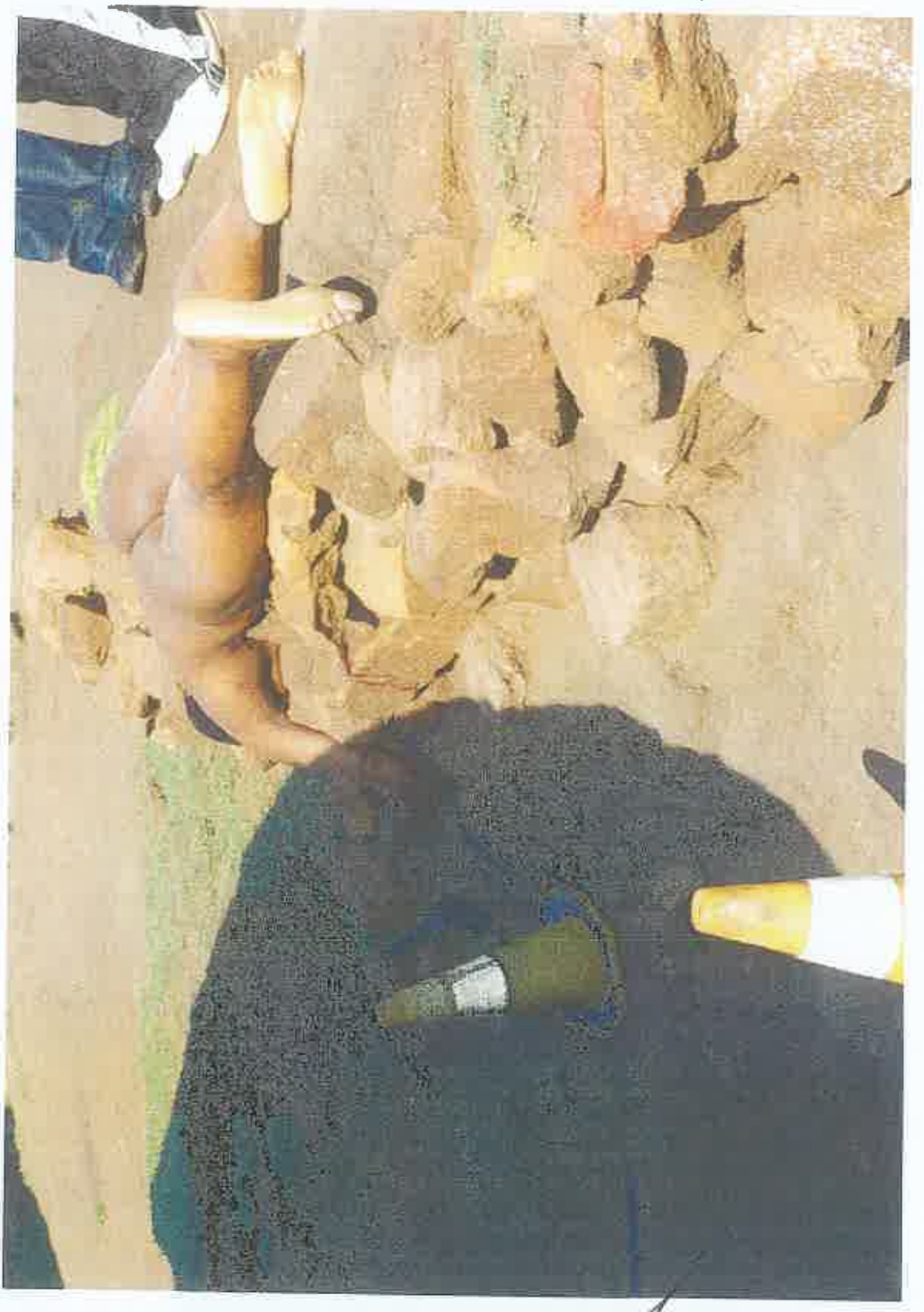
SEQ 29/2021-464

CM20.4

4 5m

Cm211

Photo 1



GSM

Melmoth Gas 142/11/2008

SEQ 29/2021-466

CM21.2

Photo 2

GSM

EM21.3

Photo 3

GSM

Cm21.4

Photo 4

GSM

SEQ 29/2021-469

CM21.5

Photo 5

GSM

Cm21.6

Photo 6

GSM

CM217

Photo 7

G sm

Cm21.8

Photo 8

Gsm

Cm21.9

Photo 9

GSM

CM21.10

Photo 10

GSM

SEQ 29/2021-475

Cmaa.1

Iside the police hit squads of KwaZulu-Natal

THE DEATH SQUADS

No lights, no warnings, just a barrage of rifle fire, and a taxi boss and his bodyguard were dead — at the hands of rogue cops

Special reports by STEPHAN HOFSTATTER, MZILIKAZI WA AFRIKA and ROB ROSE

Then one of the unknown cohort discharged a pistol into the bonnet, apparently to make it appear as if there had been a shoot-out. Another cop smashed the driver's window of the Hyundai with his rifle butt, evidently to make it look like shots had also been fired out of the vehicle, not just into it. 'There was no shoot-out. The cops pulled up alongside the Hyundai and just slaughtered them'

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PLEASE SEE CLASSIFIED ADS ON PAGE 13 OF SUNDAY TIMES

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GSM

SEQ 29/2021-476

Cm222

Sunday Times 11/12/2011 08:00:01 11/12/2011 EC 10/12/2011 08:13:07 PM

ST Midlands, 11-Dec-2011-Page 1, Cyan ST Midlands, 11-Dec-2011- Page 1, Magenta
ST Midlands, 11-Dec-2011- Page 1, Black

LOTTO RESULTS ON PAGE 2

BREAKING NEWS **HORROR SMASH CLAIMS 30 LIVES** | PAGE 11

Sunday Times
THE PAPER FOR THE PEOPLE

ZUMA: Heath is not my friend PAGE 2

SOCIAL SCENE
Who's da boss?
REVIEW

Brad and Angelina in SA PAGE 3

December 11 2011 | R8.00 inc. VAT | Botswana P8.00, Other NCD 15.00, Lesotho R8.00, Namibia N$17.00, Swaziland E8.00

INSIDE A SOUTH AFRICAN POLICE DEATH SQUAD

SHOOT TO KILL

Today the Sunday Times lifts the lid on killings committed by an elite police unit

MILNAH DUNE

Police who survived death cause photographs said they appeared to be executions

... AND HAVE A BEER WITH YOUR MATES AFTERWARDS

SPECIAL REPORT Pages 4 & 5

'The Cato Manor squad is the new Vlakplaas ... scrutiny the government should be very worried about'

Our greatest hit this summer.

R299

Let your Ayoba shine.

MTN

G.Sm

SEQ 29/2021-477

CM22.3

WHO KILL WITH A GRIN

Cop says bribe charge is bid to shut him up over KZN hit squads

Photographs seen by the Sunday Times show members of the Cats Unit posing with a bound other side of the shootings

WHO IS JOHAN BOOYSEN?

Gsm

SEQ 29/2021-478

MELMOTH CAS 142 / 11 / 2008

CM23

STATES UNDER OATH IN ENGLISH:

SURNAME BIYELA ID NO 8010220575

NAMES MAKHOSAZANE BONGOKUH

RACE AND GENDER AFRICAN FEMALE AGE

LANGUAGE ISIZULU OCCUPATION

RESIDENTIAL ADDRESS AEBE AREA MELMOTH

INDUNA / NEAREST STORE NEW SHOP MNQA

TOWN MELMOTH TEL 0724130144

WORK ADDRESS UNEMPLOYED

TOWN/FARM/PLOT/PLACE /

STREET NAME /

TOWN / TEL /

(1)

I am an adult female of the above mentioned particulars and am unemployed. I am the deceased Bongani Velabhi Biyela's wife. ~~I was my husband's wife. I lived above on 2008/11/~~

(2)

On Sunday 2008.11.23 at 02:00 was at my homestead being sleeping with my husband (deceased) in one and the same house which is a sandawe

house.

(3)

Whilst we were asleep from both we were awaken up by strange noise outside the homestead where as if somebody was shooting

(4)

My husband stood up and opened the door and he went out so as to see as what was happening. While the deceased was already gone out of the house some gun-shots were heard but I did not know as to who was being shot.

(5)

I stood up and tried to go out to see as to what was happening but immediately three males entered my house being pointing big fire-arms at me and the light was enough to torch lights was

the house and such thoughts
we being in possession of
those maps and it
also showed of injured them
it was two (2) Indians
and one black male. Those
males identified themselves
as Police men from Durban but
they were just wearing
Police Uniform.

(6)

They then ordered me to
sit down and I immediately
with their instructions.
Those males or Police men demanded
cell-phone as well as my husband. They also
demanded my husband's key car and I gave
them all those items.

(7)

Those Police men pulled me out of the
house and as I was outside they then
started assaulted me with their hands
on my face and kicking me too on my
buttocks.

me to hand over to them my husband's fire-arm but I denied the knowledge of any fire-arm. I further told them that the deceased did not have any fire-arm whatsoever.

(9)

After that they escorted me to a certain Police Cruiser where they locked me inside it. It is when I noticed many Police vehicles arriving my homestead and I saw a lot of Police men moving up and down at my homestead yard. At that stage, I had no knowledge as to what had happened to my husband deceased.

(10)

After some-times one of the Police men no well as one black Police man came to me

GSM

and ordered me to get up
I the Condor and they
reported to me that they
had already killed my husband
and they also told me that
I should go and see him
(deceased).

(11)

After having received such shocking
massage I went to the scene but
I did not reach the
scene so I became nervous and
I do not know as to what happened
to me as I found myself sitting
on other house together with
my family members. Later I was
informed by mother-in-
law that my husband was
shot dead. I also learnt that the
young man Khanyisani Dube
was also reported shot dead. I
did not see the both
Khanyisani and my husband after
being killed. But I later
made to understand that all
deceased were taken away by the

GSM

I do not know the [illegible] of the [illegible] attached. According to my knowledge my husband had no [illegible]. I did not see the person who shot the [illegible]

I KNOW AND UNDERSTAND THE CONTENT OF THIS DECLARATION
I HAVE NO OBJECTION TO TAKING THE PRESCRIBED OATH
I CONSIDER THE PRESCRIBED OATH TO BE BINDING ON MY CONSCIENCE.

Makhosazane Buzeka
SIGNATURE OF DEPONENT

I CERTIFIED THAT THE ABOVE STATEMENT WAS TAKEN BY ME THAT THE DEPONENT WAS ACKNOWLEDGED THAT HE/ SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT.
THIS STATEMENT WAS SWORN TO BEFORE ME AND THE DEPONENT'S SIGNATURE PLACED HEREON IN MY PRESENCE AT MELMOTH ON 2018.11.14 AT (TIME) 11h30

5778
COMMISSIONER OF OATH

Maanow
FULL NAME AND SURNAME
SOUTH AFRICAN POLICE SERVICE
BUSINESS ADDRESS
VICTORIA STREET
MELMOTH

RANK: Inspector SAPS VICTORIA STREET, MELMOTH

GSM

Cm241

KWA MASHU CAS 629/04/2009

GSM

Cm24.2

G 5m

CM243

GSM

Cm25
A10/1

STATION: KWAMASHU CAS ....629..... /...04.... /.....2009....CCN 2009040505

SIBONGILE PORTIA NJAPHA STATES UNDER OATH IN ENGLISH

HOME ADDRESS:HOUSE NO: G 1216 SANDLWANA ROAD-PREVIOUSLY NO 31 SANDLWANA ROAD KWAMASHU

TEL/CELL NO:0785095565 OR 0835137762 DATE OF BIRTH: 1973/07/31

GENDER: FEMALE AGE:38 ID: 7307310600087

1

I am residing and known by the above mentioned particulars

2

On Monday 2009-04-26 I was at home when Thokozani my husband phoned me from Johannesburg and told me that he will come home the following day.He later phoned again and told me that he will be coming home the same day.I then asked him why is he changing his mind and wanted to come home the same day because the following day is still fine.He told me that one of his friends known as Thembinkosi told him that he must come home the same day and he will collect him at Durban station.

3

At about 00h45 on 2009-04-27 my husband arrived home with Thembinkosi .I went outside to meet my husband and Thembinkosi inside his vehicle which is a Golf that was parked at the gate.My husband got inside the yard and went to the shack situated at the back of the house to talk to the ancestors' as he always do and later came inside the house and we started to have a talk.I then unpacked his bag and took out the dirty clothes for washing that I was going do to in the morning and put the clean clothes aside.There was no any other thing inside the bag like fire arm or explosives only the clothes that i took out of the bag I then left the bag next to the bed inside our bedroom .We then went to sleep and we only slept for about 30 minutes but when I started to hear a sound like there was somebody who was trying to open the door.I thought that it was my son Njabulo and I called him but there was no response.I called him three times but there was no answer,I started to realise that the bedroom was dark and I was surprised because there were lights outside , that also made Njabulo's room bright .

4

I heard a male voice saying open up police and a lot of noise started and they were forcing the door to open and the windows.I woke up and went to the door but these people were making a lot of noise.I opened the door and told them that i was looking for the burglar door key.I looked for the key and open up the burglar door.I was immediately grabbed by huge tall white police officer unknown to me and he pulled me outside.I was then told by one unknown white police officer to sit down and one unknown African male was instructed to to guard me.
Two police officers then went inside the house and they were followed by one African male police officer , I then heard the unknown African man shouting the

G sm

A10/2

word start that is when the police started the shooting from inside the house and the police officers who were outside the house also started firing shots .I was facing down during the shooting when I felt that there was something falling on top of me and when I looked around I realise that it was my two children and I just grabbed them and put my head down up until the shooting stopped .After the shooting stopped police started to put on globes that were outside it seems they took these globes out when they arrived .They started to move up and down inside the house and outside the house giving each other hands , it seems as if they were celebrating what they have done .I started to realise that there were many people who were standing on all the corners of the house who also came closer and I realise that they were also police officer though they were wearing private clothes but they were talking to the one they found inside the house and even those who were standing next to us .The time I opened the door I was grabbed by the unknown white male with big feet I saw his feet as he was wearing a short trouser ,the unknown white male officer with big feet was together with Nel at the door .Mostert told one police officer to guard me and they both got inside the house. They were then followed by one unknown African male police officer .This unknown African male police officer is the one who told other police officers to start and that is when the shooting started.The time the shooting started my son Njabulo was inside the house and i think they pushed him outside fearing that he saw what was happening because he felt on top of me holding his younger brother whiles shots were being fired.

5

When my husband arrived at home I am the one who unpacked his bag and there were clothes only inside his bag.There was no any fire arm or explosive inside the bag.I was surprised to see on the daily Sun newspaper that my husband was in possession of fire arm and explosives.My husband has never carried a fire arm or explosive and did not have a firearm.Mostert and Nel remained at my place and they even told my brother in law Mr Nathi and Mr Khubeka that they are the ones who shot and killed my husband because they asked them who shot and killed my husband.I remained outside up until 06h00 in the morning I then realise that these police officers took two cell phones Nokia 2011 and Nokia 3330 which belonged to my Husband , one of the two cell phones was not having Sim card the other one was having a Sim card with cell no : 0837683285 and R 9850-00 that was collected through a social club and some valuable properties inside the house ,Initial the police took my cell phone a Nokia 3310 but they returned it before they left the scene. The two cell phones belonging to my husband and the R9850-00 that was collected through a social club were not handed back to me until today.

6

Kwamashu police officers attended the scene while Mostert and Nel were still at my house.My husband was taken to the mortuary at about 08h00.One police officer from Kwamashu came and he said he attended several shootings where Cato Manor police officers were involved . He only checked the scene and left.

7

I know and understand the contents of this declaration
I have no objection in taking the prescribed oath
I consider the oath to be binding on my conscience

GSM

A 10/3

SIGNATURE OF DEPONENT

I certify that the above declaration was taken by me and that the deponent knows and understand the contents of this declaration. This statement was sworn to before me and the deponent's signature was placed here under in my presence at KWAMASHU
2012-01-07 at 12:30

COMMISSIONER OF OATH

FULL NAME AND SURNAME
RANK:Assistant Manager Investigations

ICD:North West

GSM

Cm26
A9/1

Paramedic CAS 6291041200?

NJABULO INNOCENT NJAPHA
STATE UNDER OATH IN ENGLISH

(1)

I AM AN AFRICAN MALE
WITH ID NO. 9407065757
086. RESIDING AT HOUSE NO.
9136 SANDLWANA ROAD
EWA MASHU LOCATION. I AM
ATTENDING SCHOOL AT
SIYANANDA FET COLLEGE.
WITH CELLPHONE NO. 0835137762

(2)

I AM THE OWNER OF THE
AFOREMENTIONED PARTICULARS
AND FURTHER STATE THAT
ON MONDAY 27 APRIL 2009
AT ABOUT 00:30 MY FATHER
THOBOZANI GLADWELL NJAPHA
ARRIVED AT HOME. DURING
THIS TIME I WAS ASLEEP
WITH MY YOUNGER BROTHER
OF THREE YEARS (OR) MONYAMELO
MY FATHER THOBOZANI GLADWELL
NJAPHA WOKE ME UP AND
GREETED ME AND THEN
WENT INTO THE OTHER
BEDROOM WHERE MY MOTHER
WAS SLEEPING.

(3)

I THEN WENT BACK TO MY
SLEEP AND WHILE STILL
SLEEPING AT AROUND 01:30

GSM

[illegible] 29/04/2021

NJABULO INNOCENT NJAPHA
STATE FURTHER UNDER OATH
IN ENGLISH

(3) CONTINUE

I HEARD A SOUND AT
THE GATE AS IF SOMEONE
WAS TRYING THE GATE TO
OPEN. I THEN SAW THROUGH
THE CURTAIN THAT THE
WERE A LOT OF PEOPLE
INSIDE THE YARD. I WAS
ABLE TO SEE THAT THERE
WERE LOT OF PEOPLE
INSIDE THE YARD AS THE
STREET LIGHT THAT IS
ABOUT 3 METERS FROM
OUR HOUSE WAS ON.

(4) NOISE FROM

I THEN HEARD BOTH
THE FRONT AND BACK DOOR
BOTH MY MOTHER SIBONGILE
PORTIA NJAPHA AND MY
FATHER THOBOZANI GLADWELL
NJAPHA WOKE UP MY
MOTHER WENT TO OPEN
THE BACK DOOR AND MY
FATHER CAME INTO
OUR BEDROOM AND SWITCHED
ON THE LIGHT. MY FATHER
THEN TOOK MONGAMELI
SIHAMANDLA NJAPHA AND
HOLD HIM AGAINST HIS

GSM

Kwanesum CAS 629/04/2009 NJ 3

NJABULO INNOCENT NJAPHA
STATE FURTHER UNDER OATH
IN ENGLISH

(4) CONTINUE
CHEST AND WENT BACK
TO HIS BEDROOM. I THEN
WOKE UP STAND AT THE
ENTRANCE OF MY BEDROOM
I THEN SAW A LOT OF
MALE PEOPLE INSIDE
OUR SITTING ROOM AND
KITCHEN, AMONGST THEM
WERE TWO UNKNOWN
AFRICAN MALE, AND
TWO UNKNOWN WHITE
MALES, TWO UNKNOWN
INDIANS.

(5)
TWO UNKNOWN WHITE MALE,
ONE UNKNOWN INDIAN AND
ONE UNKNOWN AFRICAN
MALE WERE TOWARDS
MY FATHERS BEDROOM AND
MY FATHER WAS STILL
STANDING IN HIS BEDROOM
HOLDING MONGAMELE
AGAINST HIS CHEST.
THE UNKNOWN AFRICAN GUY
THEN INSTRUCTED MY FATHER
TO PUT MONGAMELE DOWN
THE SAME AFRICAN MALE
THEN INSTRUCTED ME TO

N.I

GSM

Fumasa Cps 6/29/04/2009 A2

NJABULO INNOCENT NTAPA
STATE FURTHER UNDER OATH
IN ENGLISH

(5) CONTINUE.

COLLECT MONYAMELE
FROM MY FATHER I THEN
WENT TO COLLECT MONYA-
MELE MELE. THE TWO
UNKNOWN WHITE MALES
WHO WERE APPROACHING MY
FATHER WERE HANGING
RIFLES ON THEIR BODIES,
THE UNKNOWN AFRICAN
MALE WAS HAVING A
PISTOL ON HIS HAND, THE
UNKNOWN INDIAN MALE
WAS ALSO WEARING A
RIFLE.

(6)

AFTER COLLECTING MONYA-
MELE FROM MY FATHER
THE UNKNOWN AFRICAN
MALE PUSHED MY
FATHER AGAINST THE BED
AND MY FATHER SAT ON
THE BED. I IMMEDIATELY
AFTER LEAVING MY FATHER'S
BEDROOM WALKING TOWARDS
THE KITCHEN I HEARD
THREE (3) GUNSHOT FROM THE
BEDROOM.

(7) JNNS#PHA

GSM

Kwamashu CAS 629/04/2009 A4/5

NJABULO INNOCENT NJAPHA STATE FURTHER UNDER OATH IN ENGLISH

(7) CONTINUE

I THEN WENT OUTSIDE USING THE BACK DOOR WHERE POLICE ENTERED STILL HOLDING MONYAMENI DUMMY WERE MY MOTHER WAS SITTING. WHILE OUTSIDE THE HOUSE I THEN HEARD TWO(2) GUN SHOT FROM THE BEDROOM WHERE I LEFT MY FATHER WITH THE POLICE.

(8)

WHILE OUTSIDE I WAS APPROACHED BY THE UNKNOWN MAN WHO ASKED ME ABOUT MY FATHER'S OCCUPATION AND THE WHITE MAN FURTHER ASKED ME ~~THA~~ IF I KNOW THAT MY FATHER WAS HAVING EXPLOSIVES AND A FIREARM I REPLIED BY SAYING NO.

(9)

I SAW EVERYTHING THAT TOOK PLACE AT OUR YARD HOUSE NO. 9/B/16 ON MONDAY 27/04/2009 AT ABOUT 01H00

T. PLAUTIN

G sm

Kwamashu CAS 6 29/04/2009 A9/6

NJABULO INNOCENT NJAHA
STAT UNDER OATH I AM ENGA

(9) CONTINUE.

ALL THE LIGHTS INSIDE THE HOUSE WAS ON AND WHILE I COLLECTED MONEY FROM MY FATHER. MY FATHER WAS HOLDING MONYAMELA BY AGAINST HIS CHEST WITH HIS BOTH HANDS AND ONE OF HIS HANDS WAS HOLDING A FIREARM.

(10)

I DONT KNOW EXACTLY WHO SHOT MY FATHER AS I ONLY HEARD THREE GUN SHOTS WHILE WALKING TOWARDS THE KITCHEN AND LATER HEARD TWO (2) OTHER GUNSHOTS WHILE I WAS STANDING OUTSIDE NEXT TO MY MOTHER.

(11)

THAT IS ALL I CAN DECLARE

(12)

I KNOW AND UNDERSTAND THE CONTENT OF THIS STATEMENT.

I HAVE NO OBJECTION TO TAKING THE PRESCRIBED OATH.

GSM

Kwamashu CAS 6 29/04/2009 H9/A

(12) CONTINUE.

I CONSIDER THE PRESCRIBED OATH TO BE BINDING ON MY CONSCIENCE.

INTERPRETER

I CERTIFY THAT THE ABOVE STATEMENT WAS TAKEN BY ME AND THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTAND THE CONTENTS OF THE STATEMENT. THIS STATEMENT WAS SWORN TO/AFFIRMED BEFORE ME AND DEPONENT'S SIGNATURE WAS PLACED THEREON IN MY PRESENCE AT KWAMASHU ON 02/04/2012 AT 12H00

SIGNED
COMMISSIONER OF OATH
INDEPENDENT COMPLAINTS DIRECTORATE
DURBAN
PRINCIPAL INVESTIGATOR

G SM

Phoenix 377/08/2009

Exh

Exh 27.1

SEQ 29/2021-497

Cm27.2

G Smith

Cm27.3

GSM

SEQ 29/2021-500

CM27.4

Gsm

SEQ 29/2021-501

CM275

G sm

A1
Cm28

LAB 184900/09

KWA MASHU CAS 698/11/09

AFFIDAVIT IN TERMS OF SECTION 212 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

AVINTHA BEHARI declares under oath, in accordance with Section 212 subsections (4)(a) and (8)(a) of the Criminal Procedure Act, Act 51 of 1977, as follows:

1

I **0535869-8 am a SERGEANT** in the South African Police Service and in service of the State

2

I have been attached to the Ballistics Section since 2001 as an examiner of Forensic Ballistic related cases. I am attached to the Ballistics Unit of the Forensic Laboratory as a **ASSISTANT FORENSIC ANALYST**. I have to date examined in excess of 3678 cases. I examine Ballistic related cases as part of my daily task and testify on regular basis in the courts of South Africa. I have successfully completed a three (3) year in-service training course at the Ballistic Section in the theoretical and practical application of the Forensic Ballistic Science.

2.1 **I have received in-service training in the following aspects of Forensic Ballistic Science:**

2.1.1 Identification of ammunition, fired bullets and fired cartridge cases

2.1.2 The use of microscopic equipment

2.1.3 Microscopic individualization of ammunition, fired bullets and fired cartridge cases

2.1.4 Acquisition of fired cartridge case and fired bullet data on Integrated Ballistics Identification System (IBIS)

2.1.5 Microscopic individualization of tools and toolmarks

2.1.6 Physical matching

2.1.7 Micro photography

2.1.8 Identification of firearms

2.1.9 The examination of firearm mechanisms

2.1.10. The different manufacturing processes of firearms and firearm components

2.1.11 The examination of home-made devices

2.1.12 Techniques associated with the recovering and restoration processes of obliterated alpha-numeric figures on metals.

2.1.13 The reloading of ammunition and the manufacturing processes of ammunition

2.1.14 Shot range determination

GSM

2.1.15 **Crime scene examination and recording techniques**

2.1.16 Documentation of examination results

2.2 **INTERNAL FORENSIC BALLISTICS**

2.2.1 Functioning of firearm mechanisms during the firing process

2.2.2 Burning rates of propellant powder and gas pressure

2.2.3 The transfer of marks by the firearm to cartridges, fired cartridge cases and fired bullets

2.3 **INTERMEDIATE FORENSIC BALLISTICS:**

2.3.1 The effect that hot gasses, propellant powder and partially burnt propellant powder has on an intermediate target, before and after the exit of a bullet from the muzzle

2.3.2 **The forming and effect of secondary missiles caused by intermediate targets**

2.4 **EXTERNAL FORENSIC BALLISTICS:**

2.4.1 **The trajectory of the bullet from the muzzle of the firearm to the final point of impact**

2.5 **TERMINAL FORENSIC BALLISTICS:**

2.5.1 **The wounding effect that the bullet has on tissue (Wound Ballistics)**

2.5.2 **The effect that the bullet has on the target**

2.5.3 **The effect that the target has on the bullet**

2.6 **I have visited the following ammunition manufactures to ascertain which processes are used in the manufacturing of ammunition**

2.6.1 **SOMCHEM**

2.6.2 **SWARTKLIP AMMUNITION**

2.6.3 **NEW GENERATION AMMUNITION**

2.7 **I have visited the following firearm manufacturers to ascertain which processes are used in the manufacturing of firearms**

2.7.1 **REPUBLIC ARMS**

2.7.2 **TRUVELO**

2.8 **I have a Bachelor of Science degree from the University of Durban-Westville**

2.9 **I successfully completed a test that is provided in co-operation with the ILLINOIS STATE POLICE (ISP)** Forensic command, the **INDIANAPOLIS-MARION COUNTY** forensic services agency **(IMCFSA)**, and **WINCHESTER** ammunition-a division of **OLIN CO-OPERATION**, which is designed to determine the examiners ability to correctly identify known bullets fired from ten (10) consecutively rifled barrels

6

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3

On **2010-03-10** during the performance of my official **duties, I received a sealed EVIDENCE BAG** with number **FSC-1191739** from the Case Administration of the Ballistics Section, containing the following exhibits:

3.1 ONE (1) .38 SPL CALIBRE TAURUS REVOLVER, WITH SERIAL NUMBER OBLITERATED AND MARKED IT AS 184900/09 E.

3.2 FIVE (5) 5,56X45mm CALIBRE FIRED CARTRIDGE CASES AND MARKED THEM AS 184900/09 A; B; C1; C2 AND D RESPECTIVELY.

3.3 ONE (1) .38 SPL CALIBRE FIRED CARTRIDGE CASE AND MARKED IT AS 184900/09 E1.

3.4 FIVE (5) .38 SPL CALIBRE CARTRIDGES UNMARKED.

4

The intention and scope of this forensic examination comprise the following:

4.1 THE EXAMINATION AND IDENTIFICATION OF AMMUNITION AND FIRED CARTRIDGE CASES.

4.2 MICROSCOPIC INDIVIDUALIZATION OF FIRED CARTRIDGE CASES.

4.3 FIREARM MECHANISM EXAMINATION

4.4 TECHNIQUES ASSOCIATED WITH THE RECOVERING AND RESTORATION PROCESSES OF OBLITERATED ALPHA-NUMERIC FIGURES ON METALS.

5

I examined the revolver mentioned in 3.1 and found:

5.1 THE TRANSFER BAR OF THE REVOLVER MENTIONED IN 3.1 IS BROKEN AND BECAUSE OF THIS IT WAS NOT ABLE TO DISCHARGE AMMUNITION.

6

I examined the mechanism of the revolver mentioned in 3.1 and found:

6.1 THE DEVICE WAS MANUFACTURED OR DESIGNED TO DISCHARGE CENTRE-FIRE AMMUNITION.

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7.

I examined the fired cartridge cases mentioned in **3.2** and compared the individual and class characteristics markings on them using a comparison microscope and found that the cartridge cases mentioned in **3.2** were fired in different firearms as follows

7.1 **THE CARTRIDGE CASES MENTIONED IN 3.2 MARKED 184900/09 A; B; C1; C2 WERE FIRED IN THE FIRST FIREARM**

7.2 **THE CARTRIDGE CASE MENTIONED IN 3.2 MARKED 184900/09 D WAS FIRED IN THE SECOND FIREARM.**

8.

The cartridge cases mentioned in 3.2 and 3.3 marked 184900/09 A; D; E1 were acquired on IBIS

9.

AFTER APPLICATION OF THE ELECTRO-MAGNETIC PROCESS, I COULD NOT DETERMINE THE SERIAL NUMBER OF THE REVOLVER MENTIONED IN 3.1.

10.

The conclusions were arrived at by means of an examination and process **which require a knowledge and skill in Ballistics**

11.

The exhibits mentioned in 3.1 - 3.4 were disposed of as follows

11.1 **On 2010-03-12 the exhibits mentioned in 3.1 and 3.4 were sealed in an evidence bag with number FSD-341363 and handed over to Case-Administration of the Ballistic** Section

11.2 On **2010-03-15** the exhibits mentioned in **3.2 and 3.3** marked **184900/09 A; B; C1; C2; D; E1** were sealed in an evidence bag with number **FSCC-1303439** and filed in the case file with **LAB 184900/09.**

12.

During the performance of my official duties the exhibits mentioned were for the purposes of their examination kept in my custody, under lock and key, from **2010-03-10** until **2010-03-15.**

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LAB 184900/09

KWA MASHU CAS 698/11/09

13

I know and understand the contents of this declaration

I have no objection to taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

0535869-8

SERGEANT

.....

A BEHARI

14

I certify that the deponent has acknowledge that he knows and understands the contents of this declaration which was sworn before me and the deponent's signature was placed thereon in my presence at **AMANZIMTOTI** on 2010-03-26

.....

COMMISSIONER OF OATH

Varsha Mahesh.

Ballistics Unit

Kings Crest Building

Kingsway 415

AMANZIMTOTI 4126

Sgt(S) Xulu-3 : **South African Police Service**

/sss

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A26
Cm29

EDUCATION & TRAINING

I, Jacobus Steyl, state:

1

I was a member of the South African Police Service from 1984. from 1985 I was a member of the fingerprint section whilst from 1986 I became a member of the ballistic section of the Forensic Science Laboratory. In July 1993 I left the South African Police Service holding the rank of Lieutenant in order to practise as a private ballistic specialist.

2

I completed the internal three (3)-year training at the unit successfully in the theoretical and practical application of Ballistic Science. The training can be divided into the following headings:

2.1 **Microscopic Identification:**

- Microscopic individualisation of firearms, ammunition, fired bullets and cartridge cases
- Microphotography (comparison microscope, stand as well as table models)
- The investigation of toolmarks, the marks that they transfer, and the comparison of disputed objects with tool equipment for example pliers, chisels and screwdrivers as well as footwear impressions, and tire imprint
- Microscopic individualisation of tools and toolmarks
- Identification and development of ammunition
- Identification of hand and shoulder firearms
- The collection of changed numbers and marks on exhibits
- Restoration of obliterated numbers on metals through the etch process

2.2 **Internal Ballistics:**

- The examination and study of firearms mechanisms
- Reloading of fired ammunition
- Interactions of firearms and ammunition
- The transfer of marks on bullets and cartridge cases by firearms
- The interaction between ammunition and attended mechanical functioning of the firearm

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SEQ 29/2021-508

2.3 **Intermediate Ballistics:**

- The influence of partially burnt propellant and gasses on objects after the bullet left the firearms
- The determination of propellant and deposit range by firearms
- The study of secondary projectile forming during intermediate ballistics

2.4 **External Ballistics:**

- Trajectory determination of bullets and projectiles
- The study of bullet shapes in ballistic trajectories
- The determination of bullet velocity
- Bullet trajectory, distance and direction determination

2.5 **Terminal Ballistics:**

- Wound Ballistics (wounding effect on tissue)
- Determination of entrance and exit wounds
- Attendance of post-mortem examinations
- Translation of post-mortem records
- The capabilities of projectiles related to velocity, energy, penetration and impact
- Projectile properties during tissue wounding
- Influence of projectiles on various target materials
- Influence of target material on projectiles
- The study of the interactions between internal, external and terminal ballistics
- X-ray photo analysis
- Interpretation of bloodstain evidence and patterns at crime scenes

3

ADDITIONAL TRAINING & CERTIFICATIONS

Land Surveying Course
18 month full time course Pretoria, *South Africa, 1980*
Formal training received from the Dept. of Environmental Affairs
Covered surveying equipment use and measuring of contour intervals & mapping, precise levelling, and beacon triangulation
Pretoria, South Africa

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South African Defence Force Military Training Course
Pretoria, South Africa, 1983 & 1984

Certification in Classification and Identification of Fingerprints
Jan. 1985- July 1985
South African Police Services – Fingerprint Division
Pretoria, South Africa

Police Officer's Training & Certification – 6 months –
Pretoria, South Africa, 1985
Covered: Firearm Training, Riot Control & Crowd Management
(Use of Teargas)
Criminal Procedure Act, Collection of Evidence at Crime Scenes.
Crime Scene Management & Collection of Trace Evidence

Forensic Field Workers Course
South African Forensic Ballistic Laboratory. Pretoria 1989
Covered: laboratory procedures, handling of exhibits, primer residue collection, trace evidence collection, preservation of crime scenes, documentation and labelling of exhibits, protection of integrity of exhibits, & preservation of chain of custody

Advanced Officer's Management Course -Paarl, South Africa, 1992
Covered: team building, change management, strategic thinking, decision making, delegation, effective communication, management of resources, functional management, financial and logistical management

Ballistics Identification Workshop (How sure are you a match is a match?)
B. Bachrach, PhD., Intelligent Automation Inc. AFTE Conference, 2000

Restoration of Obliterated Serial Numbers Workshop
BATF Forensic Science Lab-4 Credit Hours AFTE Conference, 2000

POSLEC-SETA Verifiers Course -2005
To conduct verifications of accredited firearm training programs
Receive training on the writing and implementation of policy & procedure

Mathematics & Physics for Bloodstain Pattern Analysis Course – USA
Jan. 2010
Presented by the Miami Dade Public Safety Training Institute, Miami, Florida
Five day / 40 hour course
Covered: Mathematical theory behind the formulae used to determine the origin of blood sources and the scientific principles that dictate the motion of blood. Learned to analyze, interpret, and testify more effectively in cases where bloodstain pattern analysis performed. Hands-on exercises utilized to reinforce principles learned in the classroom and included instruction in the use of the Backtrack® computer program for bloodstain pattern analysis.

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Detection, Recovery & Examination of Footwear Impressions – USA
May 2011
*Presented by Bill Bodziak author of "Footwear Impression Evidence: **Detection**, Recovery & Examination in Ft. Collins Colorado USA*
Five day / 40 hour course
The course provides instruction and hands on experience in key areas, including the recovery methods of photography, casting and lifting from the examiner's perspective; enhancement of bloody impressions; the evaluation of class and identifying characteristics; footwear sizing issues and the examination and reporting process. Attendees work approximately 30-35 exercises, including approximately 20 comparative examinations.

4

PROFESSIONAL EXPERIENCE

4.1 I have 24 years' experience in the forensic ballistic investigation of crime scenes, scene reconstruction, documentation of investigations and compiling of opinions, results, and findings. This includes scene photography, developing and printing of photos and compiling albums thereof.

4.2 In addition to forensic ballistic experience privately and with the SAPS, I have an additional (2) two years' service with the SAPS whereupon I investigated a wide range of crime scenes and general grievances. I also underwent a further (2) year's compulsory military service.

4.3 I am a recognised member of A.F.T.E. (Association of Firearm and Toolmark Examiners) an International organisation based in the United States. Qualified experts throughout the world belong to this organisation. I also receive quarterly A.F.T.E journals, which highlight the most up to date material available in this profession.

4.4 I visited the F.B.I and Virginia Commonwealth Laboratories in the USA in June 1993 and during February 1995 the Washington Metropolitan Police Firearm Section and Virginia Commonwealth Laboratories. In July 2000 I attended the A.F.T.E. firearm and toolmark conference at St. Louis, Missouri and visited the F.D.L.E. Laboratories in Tampa and Orlando. During my visit to the laboratories I studied the newest technological progress in the forensic ballistic field which is

G sm

used by these well-accredited laboratories. I also had the opportunity to visit several firearm factories where I studied the manufacturing processes of firearms and firearm parts and the interaction between the mechanics and the cartridge case in the firing process. I was able to acquire valuable information used in the microscopic identification process. In February, 2008 I visited the Georgia Bureau of Investigation (GBI) Forensic Laboratory in Columbus, Georgia, USA. During this visit I studied the handling of exhibits, report writing as well as lab accreditation processes. I also learned about their paperless documentation and security system.

4.5 I was trained in the selected measure of crime scenes with regards to the vertical and horizontal angles with Theodolite (GTS 4) measuring equipment. I also received training in measuring of contour intervals with the Theodolite, and the documentation of information on a topographical map. I was exclusively responsible for the training of the ballistic members in the set-up and working **and application of the Theodolite GTS 4.**

4.6 **I am actively involved in a current and on going study of all the latest technologies in the forensic ballistic field using reference materials available through subscriptions to international firearm magazines, internationally recognised reference books and articles written by other experts listed on the internet.**

4.7 **I have to date investigated more than 8000 ballistic related cases.**

4.8 **During the past 24 twenty-four years I have investigated forensic / ballistic cases** and have given evidence in High Courts and Magistrates Courts throughout South Africa, and neighbouring countries.

4.9 **<u>INDEPENDENT SHOOTING RANGE ASSESSOR</u>**

From May 2004 – December 2005

Owner/ Assessor: Range Assessments cc.

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When the Compulsory Specification for Small Arms Shooting Ranges was introduced in May 2004, the South African Bureau of Standards (SABS) requested my ballistic expertise to put together a standardized ISO 17202 company which would implement and conduct the assessment of shooting ranges thought the country. Detailed knowledge of the specifications was attained and applied whereby we assisted many ranges with an entirely new design in order to comply.

Having assessed over 300 ranges in the initial years, the foundation was laid for the SABS to continue annual assessments of ranges for their yearly certification.

4.10 COMPUTER RELATED EXPERIENCE

In 1992 I began working with computer hardware and the building of personal computers. Over the last 19 years I have furthered my computer knowledge by self study in also working with and becoming acquainted with various software (how they work and interrelate with hardware and other software), internet solutions, networking and database construction, design and management. I further work with computerized photograph, video and sound editing software.

I am highly efficient in the use of all Microsoft Office products including: MS Word, MS Outlook, MS PowerPoint, MS Publisher, Windows Media. I am beginning self study into animation software for court presentation purposes of crime reconstructions.

4.11 TRAINING

I have been appointed by the Legal Aid Board to present courses to their members on ballistics. To date I have presented lectures in Kwazulu-Natal, the Free State and Gauteng, the Northern Cape, the Western Cape and the Eastern Cape. I have also launched a series of ballistic seminars designed for private advocates and attorneys specialising in criminal law. I have been appointed by the State Attorney's office in KwaZulu Natal to present this course as well.

Ezemvelo Wildlife/ Parks Board has used my services to present a course on Footwear Impressions: Recording and Casting which teaches Park members how to approach a scene in a standardized manner and how to photograph, cast &

GSM

record footwear impressions for court presentation. This course requires completion and a positive result on a final written examination including photographic and cast specimens from each attendee.

5

STATEMENT

On the 8th of February 2012 I received instructions from Mr. Khuba of the Independent Complaints Directorate whereby I was given a case file containing various statements, affidavits and reports as well as four compact disks (CD) containing photographs of the scene and post-mortem taken by the Local Criminal Records Centre, Durban.

6

POST-MORTEM

Deceased, Sakhile Prince Thabede. death register 1434/2009 Phoenix - post-mortem was conducted by Dr. T Naidoo in Phoenix. I attended this post-mortem and made my own notes and took photographs of particular gunshot wounds as related to ballistics. The deceased sustained multiple gunshot wounds from in an upward direction from the bottom toward the top of the torso and head.

There were three (3) entrance wounds on the right hand and arm which created further multiple re-entry wounds on the chest, neck and face. There was one tangential wound of 57 x 6mm on the upper right side of the face between the eye and the ear. The x-rays reveal multiple small fragments which created a lead 'snowstorm' effect in the chest which is consistent with a 5,56 high velocity calibre fragmented bullets. See photographs inserted.

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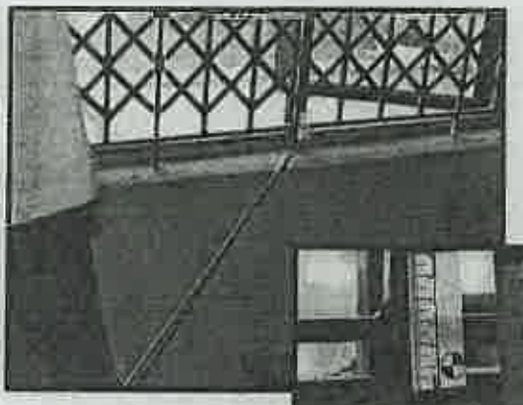
SCENE PHOTOGRAPHS & INVESTIGATION

On the 17th of February I attended the scene reconstruction at G 185 Mpunga Road, Kwa Mashu with the ICD task team. The incident occurred in the main bedroom of the house. The house is a corner home with surrounding high walls. I took photographs and measurements which I later used in conjunction with the original scene photographs, depicting the deceased on the bed, to compile a computerized sketch plan attached to this report. See photographs inserted



The sketch plan indicates the following:

- **A bedroom with an en-suite bathroom**
- **Upon entering the door a double bed with a leather/wood headboard and two side tables are directly in front and behind the headboard is a window.**
- **On the left side of the bed was a dressing table with a mirror**
- On the right hand side of the bed was a doorway leading to the en-suite bathroom
- **Opposite the bed on the wall (with the door) one impact mark was found. Upon** examining this mark I found it could be consistent with a bullet impact mark originating from the en-suite bathroom. However, after examining the original scene photographs, I did not observe any plaster or cement particles on the floor **underneath this impact mark, therefore I am not convinced that this is a bullet impact mark.**

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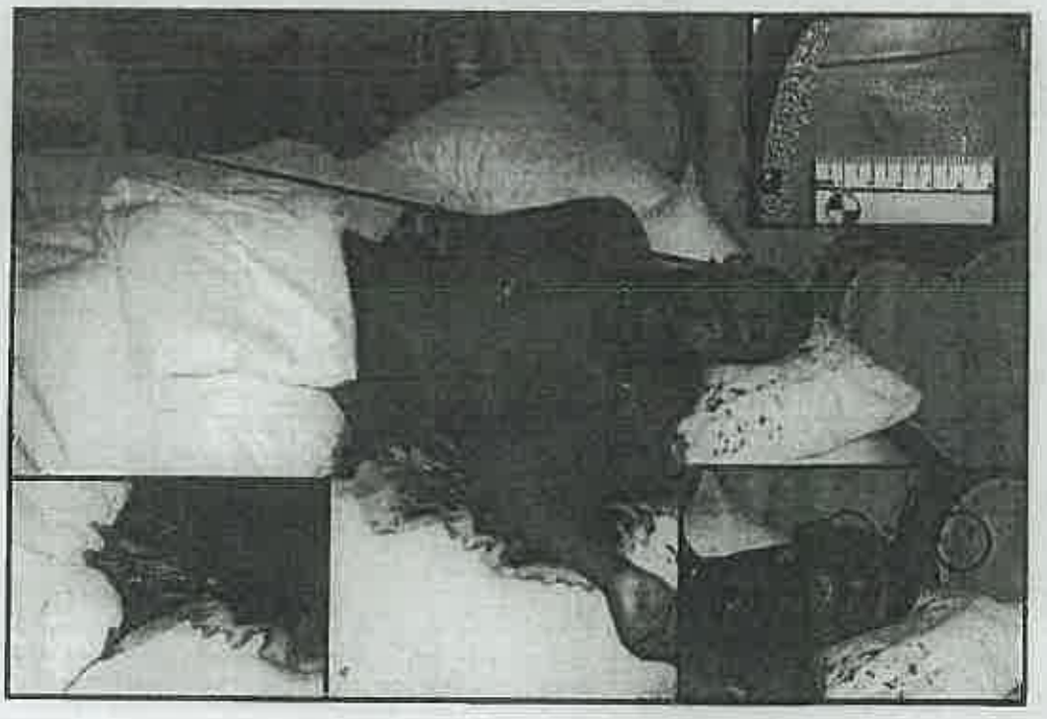
- The burglar bars indicate an impact of a high velocity projectile which created fragments as well as lead vaporizing.
- The headboard was located at the house C552 Ifafa Road, Kwa Mashu. Upon examination I found a defect (8 x 19mm – keyhole) caused by an unstable, high velocity bullet. The height, angle and trajectory coincide with the impact mark found on the burglar bar.

Scene Photographs taken by the LCRC:

These photos depict the bedroom and layout as described in my sketch plan. It further shows the decreased lying in the middle of the bed with his head on a pillow turned toward the left. The impact mark on the headboard is clearly visible as related to the sketch plan. The tangential wound on his head correlates to the unstable bullet impact mark on the headboard.

Medium and high velocity blood spatter visible on the headboard is consistent with the wounding of the deceased in a lying position on the bed.

Next to his left elbow was a revolver. Later on this revolver was pictured on the sheet with five live rounds and one fired cartridge. There were also 5,56 x 45mm cartridge cases depicted mostly on the right side of the room. See photographs below.



8

BALLISTIC STATEMENT

The ballistic statement was compiled by Avintha Behari, LAB No 184900/09.

She received the following exhibits:

- One .38 Special calibre Taurus Revolver with serial number erased
- Five 5,56 x 45mm calibre fired cartridge cases marked 'A, B, C1, C2 & D'
- One .38 Special calibre fired cartridge case marked as 'E1'
- Five .38 Special calibre cartridges unmarked (unfired)

She concluded that the Taurus revolver was not capable of discharging any ammunition due to the broken transfer bar.

The firearm used by the shottist was not tested and compared to the (5) 5,56 cartridge cases found on the scene.

9

CONCLUSION

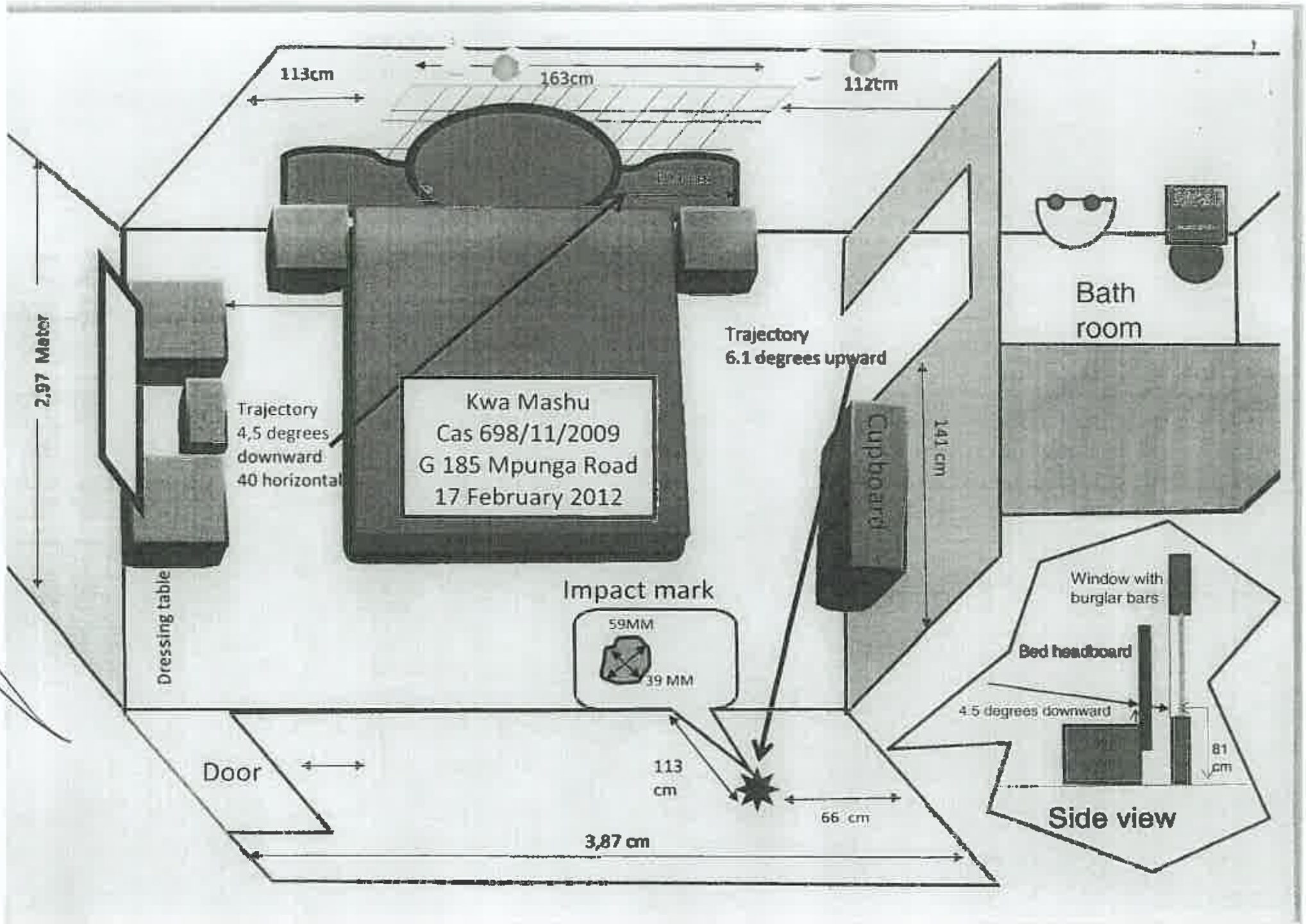
Based on the information available to me at this time, it is my opinion that:

- Deceased, Sakhile Prince Thabede, death register 1434/2009 Phoenix sustained multiple gunshot wounds in an upward direction from the bottom toward the top of the torso and head.
- The bullet that caused the tangential wound on the right side of the face continued its unstable trajectory through the headboard and impacted the burglar bars where the projectile was fragmented.
- The deceased was lying on the bed with his head on the pillow, turned to the left side when he sustained the tangential wound as described above.
- All the above mentioned wounds indicate that the deceased was in a lying position when he sustained these injuries.

SEQ 29/2021-517

- Medium and high velocity blood spatter visible on the headboard is consistent **with the wounding of the deceased in a lying position on the bed.**
- The revolver as depicted on the scene photographs and later examined by the State ballistic expert is defective and not capable of discharging ammunition.
- I am not convinced that the impact mark found on the opposite wall from the bed was a bullet impact mark. It is further unclear if this impact mark was related to this incident.

Jacobus Steyl
Wednesday, 14 March 2012



SEQ 29/2021-518

Cm 30
A21/1

DEPARTMENT: INDEPENDENT COMPLAINTS DIRECTORATE
REPUBLIC OF SOUTH AFRICA

STATEMENT FORM

STATION KWAMASHU CAS 698/11/2009 CCN: 2009110638

I, NQABA MALUHI

STATES UNDER OATH IN ENGLISH ~~THAT~~: translated from Zulu by Mr Musiapoa

HOME ADDRESS: ~~CTPD~~ KNOWN TO THE IPID INVESTIGATOR

TEL/CELL NO: _____ DATE OF BIRTH: _____

GENDER: MALE AGE: _____ ID: Adult

WORK ADDRESS: UNEMPLOYED

TEL NO.: _____

2

I hereby state that I cannot remember the date but it was about 02h00 when police officers of Cato Manor Organised Crime unit arrived at my residential place with a Toyota Quantum and a Grey BMW 3 series vehicle. The police officers arrested and then loaded me inside my BMW vehicle, and I was police officer Mostert and Lucken who loaded me inside my BMW and they drove with me to Khetha's residential place, of which on arrival Khetha was also arrested and

SIGNATURE OF DEPONENT

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loaded inside the Police Grey BMW. My BMW vehicle is Navy blue in colour.

3

The police vehicle and my BMW vehicle were driving in a convoy and thereafter the vehicles proceeded to the residence of Nkanyiso 08 which Nkanyiso was also arrested. I and Nkanyiso were then loaded together inside the Police Toyota Quantum Fun and Khehla remained inside the police BMW. Thereafter the vehicles proceeded in a convoy to Kwamashu G-Section where the deceased - Sakhile Thabethe was staying. While going to where Sakhile was staying the police Toyota Quantum was in front, followed by my BMW and then the police BMW.

4

On our arrival at where Sakhile stayed all the police vehicles including my vehicle were parked next to the yard as the said yard is on the corner. The street lights were working and the visibility was clear due to the lights from the street lights. Khehla was then taken into the Toyota

N. [illegible]
SIGNATURE OF DEPONENT

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A2/3

4

Quantum where I and Nkanyiso were loaded and we were guarded by an African black male police officer.

5

I then realised that all the police officers were six in number and five police officers rushed inside the yard of where Sokhile resided. From this six male police officers I know Mostert, Lockram, One Indian officer whom I know by sight, One white officer whom I also know by sight and two black males whom I also know by sight and all this police officer are well known to me unfortunately I cannot recall the names of the other four.

6

The said five police officers entered inside the yard of where Sokhile resided and in a blink of an eye police officer Mostert came back to the Toyota Quantum. Mostert was carrying an R5 firearm with his hand and he (Mostert) opened the left front passenger door of the Toyota Quantum and he said he forgot his spook (guard). by then

SIGNATURE OF DEPONENT

A21/4

6

I, Nkanyiso and Khulile were still inside the Rapha Quarters, and I was occupying the seat which is behind the front seats (Passenger and driver). Mosteri then took a .38 special Revolver under the passenger seat and he went back inside the yard of where Sakhile resided.

7

I hereby further state that ~~the~~ the ~~part~~ fence of the yard of which Sakhile resided is a high wall. I then heard a noise of a person kicking the door. The door of where Sakhile resided was a zinc door. I immediately heard Sakhile screaming saying that please don't kill me. I then heard several gunshots found coming from Sakhile's house and I smelled propellent powder.

8

The police officer who was guarding us then said to us that our friend is being killed inside the house. In the process of gunshots found Sakhile was screaming and the

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SIGNATURE OF DEPONENT

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8

screaming went off. The gunshots sound went off and the police officers came out of Sakhile's hand and they took the three vehicles which parked from in front of the gate of Sakhile's yard.

9

All the police officers went outside the vehicles and had a discussion. After the discussion Mosfert opened the door of the Toyota Quantum and grabbed my shoulder. Mosfert further said to me that come and see your friend. I and Mosfert went inside the yard and Sakhile's girlfriend was standing next to the house and she was crying. I and Mosfert entered inside the house with a front door and proceeded to the bedroom where I saw Sakhile lying on the bed and was bleeding from his face and upper body.

10

I then didn't wanna look further at Sakhile further and Mosfert forced me to look at Sakhile and Mosfert

SIGNATURE OF DEPONENT

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A21/6

10

told me that if I continue the way I am acting I will follow Sakhile. I didn't look further at Sakhile because of the way he was injured as a result I did not saw anything around him. The reason why I didn't look at Sakhile further was that I was very close to Sakhile

11

Thereafter Mosfert took me back to the police Toyota Quantum. I hereby further state that when Mosfert came back to the vehicles after the gunshots sound, he was not possessing the pistol that he took from the Toyota Quantum. The only firearm that he was possessing was an R5 firearm.

12

The police officers who were in police uniform and private clothes arrived at the scene including the family members of Sakhile (deceased). Thereafter the six members of Cato Manor organised Crime unit drove left with us in a convoy and proceeded to the flat

N. [illegible]
SIGNATURE OF DEPONENT

G [illegible]

A21/7

12

to look for someone whom they didn't find and thereafter we went to the office of Cator Manor organised crime unit. At the said office we were forced to write a ~~statement~~ confession statements and thereafter we were detained at Cator Manor police station until we went to court on monday.

13

I hereby further declare that at one stage the police officer who was guarding me, Nkanyiso and Khula was called China.

I know and understand the contents of this declaration
I have no objection in taking the prescribed oath
I consider the oath to be binding on my conscience

SIGNATURE OF DEPONENT

I certify that the above declaration was taken by me and that the deponent knows and understand the contents of this declaration. This statement was sworn to before me and the deponent's signature was placed here under in my presence at DURBAN (Place) on 19 / JAN / 2012 (Day) at 14:00 (Time)

COMMISSIONER OF OATH

FULL NAME AND SURNAME: Temane Kumang

RANK: S/Investigator

ICD: Independent Complaints Directorate

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A12

Kwa Mashu CA 695/11/2009 CMSH

STATEMENT OF **CLIENT**

DENISE HURLEY
IDENTITY NO: 891207 0146 08 7

I am a second year student nurse at Addington Hospital living out.

On Wednesday the 25th of November 2009, I was at the deceased's mother's house which is at C553 Kwa-Mashu. I have been in a relationship with him for approximately a year and I had been living with him (Sakhile Prince Thabode) at his address at G187 Kwa-Mashu for the past six months. On this day the deceased came to fetch me from his mother's home at 9h30 / 10pm. On that day because I was not well they gave me off from work at about 14h30. I then contacted the deceased and he arranged via his mother (Constance Thabede) and another friend of his to fetch me from work at about 14h30. From that time 14h30, I was at his mother's home. It takes about 5 to 10min to travel from his mother's house to our house.

D.M.H

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AR

The house at C187 is free standing. It has a fence. It comprises of 4 rooms and an extension of a bathroom (diagram attached hereto). There is an entrance gate and the vehicle was parked in front of the entrance to the lounge. At this stage there was nobody in the house. It's just the two of us that live there.

We entered the house put the lights on, had a bath, had something to eat and then we got into bed. We got into bed at about 22h45. We were having general discussion more so about how I felt because he knew that they had let me out early that day.

We fell off to sleep.

At about 01h15 in the morning of the 26th, that is Thursday, we were awakened by somebody kicking down the front lounge door. When the door was kicked in the damage to the door related to where the lock was. No photograph was taken but the lock was repaired and replaced.

The repair to the door would have been done by the deceased's elder brother by the name

D.M.H

G.S.M

of Sihle and his friends. The distance from the lounge to the main bedroom is approximately 3-4 meters. By the time we really got up and acclimatized to what was happening, they were already at the main bedroom door. They were two male figures. There was one Indian male who was shorter than the white male. The main bedroom door had been left open and they were at the door. Each room has one window. The outside light comes in via the lounge window, which has lace curtains, lighting up a part of the main bedroom.

At that point the white man then shouted 'Mtako'. That's the nick name of the deceased. The deceased responded by saying "yes". The white male had a torch which he flashed on the two of us. The white person (Stoltz) then instructed the Indian male (Padaychee) who was carrying this large firearm to shoot. The deceased was trying to protect me because I was naked by raising the duvet. At that stage I was in the process of getting up in a position where I was seated with my feet on the ground and at that stage the first shot was fired and it struck him on his right arm. The distance between the shootist

D.M.H

GSM

A12

and the deceased would be approximately 1and half to 2 meters. The deceased them shouted saying "do not shoot". At this stage I was still in the bedroom but was now out of the bed standing. I was on the right hand side of the bed next to the dressing table. The white male came to me, pulled me by my hair and took me out of the bedroom. I was now standing in the lounge at the entrance of the main bedroom while the other two remained in the room. After the first shot I don't know how many shots in fact were fired because I just heard repeated sounds. After I was pulled at the back the white male gave further instructions to the Indian male to fire shots. Other shots were then fired. As this was being done the white male made a remark directed at the deceased saying "die". As he was being shot at the deceased shouted out in zulu, asking what he had done. At this stage the deceased was still on the bed. The deceased at all stages never moved from the bed. Everything went silent. No further shots were fired. At this stage I said nothing. I couldn't scream or shout because I was in a state of shock. When they saw that I was completely naked they then asked me to get dressed. I

D.M.H

A12

then told them that I am a nurse, may I go and check the deceased because maybe I could help him. At this stage the white male that was there then threw a pistol on the right side of the bed on the pillow. Before I entered the main bedroom that's when the two other males, the one black male and the other white male had come into the lounge. The white male (Mostert) then asked what happened here The first white male then responded to the second white male by saying that the deceased had fired shots at them and in retaliation thereof they had fired shots at him. I went to the left hand side of the bed and held the deceased left hand and I determined that he was dead. The white male called me out of the room and asked me where the deceased had got the gun from. I responded by telling him that the deceased had no gun and that I had seen the other white male throw the gun in the vicinity of the deceased. He threatened to say that he would arrest me if I am telling lies. I told him I swear he didn't have a gun. We were fast asleep. The black male then said to me that I must not say things that I am not sure of. I was then escorted out of the house. I was seated outside on the side of the

D.M.H

Gsm

A12

house using one of the chairs from inside the house. The first white male and the second white male and the Indian male was still in the **house. The black male accompanied me outside.**

The second white male had them phone Kwa-Mashu police station asking for back up indicating that there was a shoot out at the deceased home which is at G187 Kwa-Mashu. He then reported that one was deceased and several were injured and then asked for paramedics and then hung up. The second white male then left the yard and returned with one Accused. The second white male was then telling Ngwaba, come look at your friend, see your friend that's when they entered the house. I was still on the outside. Then came back out of the house with the **Accused. I learnt that they had arrested 3 persons, who were in a B.M.W and the police brought one into the house.**

Shortly there after 3 SAP vehicles arrived. **They were standing by the gate which is a distance from where I was seated. The African** male then came to me and said that I must go

D.M.H

G sm

712

and sit in one of the police vehicles. This was about 02h00 / 02:15. We had gone to bed at about 22h45. The incident happened at 24h45. Police and SAP Kwa-Mashu had come at 02h15. The Indian male together with another person that I had not seen had exited the house before I could go to sit in the vehicle which they had asked me to do. There were two vehicles. One was a navy BMW and the other one was a Quantum combi. I then noticed that there were two other persons that were detained in the BMW. The second white male (Mostert) then came to the Quantum where I was seated and at the entrance then said to me girl I am going to arrest you if you tell lies. White male no.2 then referred to another white male who had come there by the name of Charles. They then said that they need to go to Ntuzuma to write a statement. On the road next to the quantum they took photographs of three guns on the road. These guns being an AK47, another small gun, looks like the one that was thrown next to the deceased and another gun. The ~~white~~ INDIAN male and the black male and somebody else now then left to Ntuzuma. The black male was using a blue overall, was also holding a big

D.M.H

G sm

gun. The African male had asked me again whilst I'm in the Quantum as to where the deceased got the gun from and I had repeated that he had no gun. He said how sure I am that he did not have a gun. I told him that I make the bed everyday and that there was no gun there. We had just come home, we had a bath, I had got into bed and he had returned on the bed with me. I explained to him what had happen and it would have been impossible to get a gun because there was no time to do that. He left me and went back. Whilst this was all happening the first group of policeman from Organized Crime were all together near the Quantum were I was, whereas the Saps from Ntuzuma /Kwa-Mashu were running up and down. The second white policeman(Mostert) then came and started questioning me in the Quantum asking me inter alia my occupation, where I lived, my age, where the deceased got money from, whether I have seen the deceased with loads of money, if I have seen anything suspicious in the house, our sexual relationship he was then making remarks to the effect that I was no more than a prostitute to the deceased. He advised me that the deceased had other

D.M.H

G sm

girlfriends and referred to a Gloria Mthethwa and she had directed them to the house. He then said that she lived in P section Kwa-Mashu but I believe that that was a lie. The second white male I did not know his name but when I was describing this incident to other people they then told me that must be Mostert the Inspector. I describe him as being tall and big in size, huge tummy, thick legs, wearing shorts, boots, and soft denim shirt light blue and had two black cell phones. It appears that the Indian male who did the shooting was Padayachee and the first white male I could not get his name. I will be able to identify them. The first white male is medium built in a hat and a black t-shirt and cargo pants. I managed to get the name of Padayachee whilst on the phone they were repeating some serial numbers of firearms that were used at this incident. The Indian guy said that he used four rounds. At this time the **mother of the deceased had arrived, the police had already taken my cell phone with them. The person who had my cell phone with him was Charles. They saw a lot of people coming to the scene. I was then allowed to join the people. Before I could leave there was**

D.M.H

G Em

a black female Superintendent from the Kwa-Mashu police station, who took my name and my details.

To the best of my recollection the first black male who had come into the house with the second white male he was wearing a black beanie, a black jacket , a long pants and a gun that was hanging on him, a clip board and a pen and he was writing. The black male number two was wearing an overall, he also had a gun. Holding it in a ready position. ~~White~~ BLACK man number-~~8~~ was wearing a camouflage jacket; he was standing on the left hand side of the BMW that had the other Accused in it.

The Indian male (Padaychee) wearing a black t- shirt, grey overall pants. White male number one(Stoltz) was wearing a cargo pants, black t-shirt, cap. White man number two was the big guy Mostert – soft denim shirt, shorts, and boots. White man number three was Charles – black t-shirt with white print, cargo pants. Then the members of the first unit that's the Organized Crime Unit left. That's when the mother of the deceased was allowed into the

D.M.H

G.S.M

A12

house. When I returned into the house I then noticed the change, when I had first seen the white male put the gun on the right hand side of the deceased on the pillow I now noticed that there was a blood stain of a gun on the left hand side towards the mid section of the deceased. There was no stain on the pillow. The deceased mother spoke to an Inspector Ngcwayo, they waited there till about 06h30 / 07h00 that's when the body was then removed. I have also now learnt that Inspector Stoltz has opened a charge of attempted murder against the deceased.

DENISE MONTCBEKO HURLEY
8912070146087

----------END OF STATEMENT----------

Ek verklaar dat bostaande verklaring deur my afgelees is en dat verklaarder geen dat hyby verstand is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is voor my bevestigend en verklaarder en [illegible] is in my teenwoordigheid [illegible].

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to/affirmed before me and deponent's signature/mark/thumbprint was placed thereon in my presence.

Phoenix 03/12/2019 11:50

(HANDTEKENING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

Sharmilla Williams

VOLLE VOORNAME EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

BESIGHEIDSADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

Phoenix

Senior Investigator — ICD
RANG/RANK — STATUS

G Smith

A30/1

Cm 31.2

independent
complaints directorate

Department
Independent Complaints Directorate
REPUBLIC OF SOUTH AFRICA

Denise Nontobeko Hurley states in English under oath:

1.

I am an adult female with the following ID Number: 8912070146087. I am currently selfemployed. My contact numbers are 072 282 1153. My residential address is 988 Emachobeni Inanda Durban.

2.

On Wednesday the 25th of November 2009, I was at boyfriend mother's place at number C553 Kwa-Mashu. The name of my boyfriend was Sakhile Prince Thabethe. I have been in relationship with him for approximately a year and living together at his residential place at house number G 187 Kwa-Mashu. On the same day Sakhile came to fetch me from his mother's home between 21:30 and 22:00PM. On that day in question I went to my work as usual and during the day i was not feeling well and I reported to my supervisors who allowed me to go and consult with a Doctor. I then called Sakhile to inform him that am not feeling well, he then said to me I must wait he will call someone to come and picked me up from my work place. After some few minutes Sakhile called me and informed that his mother and his friend will come and picked me up. Sakhile's mother and his friend (Bantu) came after plus minus 45 minutes and they took me to his mother's residential place.

3

I stayed at his parental place until he came back at around 21:30. On his arrival I was feeling much better and I did not go to consult the Dr, he then said we must go to his residential place. We used his car his VW micro bus to his place. On arrival he open the gate and drive in, he parked the vehicle in front of the lounge door. He opens the front lounge door and I got out of the car and entered the house and went to close the gate. He then came and locked the door, I then went to the bed room lying on the bed. At that stage we were talking to each other while on the other hand he was busy preparing something to eat. He then took a bath immediately after he ate.

4

After taking he came to bed and we continue talking to each other until we felt asleep. At round 01:00 am I heard something sounded like the gate is opening I started to focus to the direction of the lounge window because the outside light were on. I was in the position to can see what is happening outside because the lounge window was fitted with a lace curtain which makes it easier for me to see outside. I then saw two shadows moving to the front door and I wanted to see what was happening, immediately I heard a bang and a door was flung open. I then screamed and grabbed Sakhile by the hand and pulled him towards me in order for him to see what was happening. I noticed two people in front of the bedroom door one of them was having a torch in his hands and I could realised that it's a white male person. The white male person said Mtako and Sakhile responded by saying yes, (Mtako is the nick name for Sakhile). Immediately after Sakhile responded to the white man call's, he then seated upright in the bed and the white male person instructed the Indian person to shoot, Sakhile then pushed me out of the bed and they started shooting at him. I have recognised these people as a white and Indian people because the reflection of bathroom light made it possible see them because the bathroom light was on.

G sm

A30/2

5

The Indian guy was having a long and big fire arm while the white guy was having a small and big fire arms. The Indian guy is the one who started shooting at Sakhile with a long and big fire arm. He was shooting at Sakhile repeatedly and the white guy was also shooting at him with a small fire arm. The white person grabbed me with my hair and pulled me out of the bed and I was standing behind them and they carried on shooting, the white guy keep on instructing the Indian one to keep on shooting. At the time when the white guy instructed the Indian guy to shoot he pleaded with them not to shoot because he asked them what he did. They ignored his request and continue to shoot at him. Sakhile did not have any dangerous weapon or a firearm in his possession and he did not even shoot at them because he was not having anything on him. The white man kept on saying "die" "die" to Sakhile, They stopped shooting at him and turned around and faced me, they realised that I wasn't dressed I then requested them to go inside to see if I can't help Sakhile, they refused and said to me I must go and get dressed.

6

I just pulled out the dress from the washing which was on the other bedroom but before I can get the dress the white guys went in to the bedroom and place a small fire arm just next to Sakhile's right hand, I was standing in a position which make it possible for me see inside the bedroom where Sakhile was shot and from there I grabbed a dress and put it on. I just wanted to clarify that immediately when I saw the Indian and White guy I realised that they are police officials because the manner in which they used to open the door was the same as the one they used previously and at that time they did not shoot at us, they only took Sakhile and left. He informed that they ended up at Cato Manor offices.

7

After I dressed two other guys' 1 black and 1big white guy entered the house, the white big guy started asking the three of us being myself, the white and Indian guys who shot at Sakhile about what happened, the white guy said to him Sakhile shot at him and they responded by shooting at him. I then said to him Sakhile did not shoot at them, the white big guy asked me where did Sakhile get the fire arm from, I responded by saying he did not have a fire arm with him. The Police allowed me to enter the bedroom where Sakhile was lying; I even saw the firearm which was placed by a white guy. While inside the room I saw Sakhile with full of blood and could see the bullet wound on his chest, right hand and another one like it grazed on his forehead.

8

The white big guy ordered the black guy to take me out of the house and black guy accompanied me to the right side of the house and while I was on the side of the house it's when I started shaking and feeling cramps from my lower abdomen as I was 4 about months pregnant . There were couples of car outside and I managed to identify a silver BMW, a white Quantum and another navy BMW. While I was seated I heard a white big guy calling the police by saying they need a backup because there was a shooting incident, he requested the person whom he was talking to summon the paramedics because several people were injured. After this white guy making a call, he went to a BMW and took one of Sakhile's friends Nqaba into the house telling him to come see what has happened to his friend, I further realised that there were 2 other people in the car and I identified them as Nka which is short for Nkanyiso and Candice. Candice is deceased. At the time when these guys taking Nqaba to the house there were only organised crime unit members on the scene of the incident. They were going up and down or walking in and out the house. While I was seated in the Quatum the white guy who shot at Sakhile made a call to someone else and he gave that person the serial number of the fire arms that were used. He

GSM

further reported to that person, that Padayachee and him are the one who shot at the crime scene. Inside the quatum I saw a black bag with lots of fire arm inside, I noticed this at the time when the white guy open the bag and took out the firearm to read out the serial number.

9

The other SAPS Police officials arrived later to attend the crime scene and the paramedics came shortly after. His body was taken by the mortuary vehicle. That is all I wanted to say

10

I know and understand the contents of the above statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience

Pretoria
22 March 2012
10h00

D.N.H.

Ms. Denise N Hurley

I certify that the above statement was submitted to me and that the deponent has acknowledged that he knows and understands the contents thereof. The statement was sworn to in my presence and the deponent's signature was placed thereon before me in Pretoria on 22 March 2012 at 10h00.

Commissioner of Oaths
Molatedi Molatedi
Independent Complaints Directorate
114 City Forum Vermeulen Street
Pretoria

G SM

Kwa Mashu CAS 078/11/2009

CM32
A5

Gonasagren PADAYACHEE

STATES UNDER OATH IN ENGLISH;

1.

I am employed as a police officer in the South African Police Service with force nr 0638855-8, holding the rank of D/Inspector and attached to the Organised Crime Unit situated at 446 Bellair Road, Cato Manor, Tel. (031) 203-7337.

2.

On 2009-11-26 I was on duty together with Insp Stoltz and other members from our unit. We had information regarding a suspect who was wanted for numerous cases of armed robbery. The suspect's name was Sakhele Thabethe also known as "Mfaku".

3.

At approximately 01:50 we proceeded to a house situated at G187, Kwa-Mashu the information received was that the suspect was hiding there. Insp Stoltz and I proceeded to the front entrance door while the other members took guard outside the house.

4.

I then knocked on the door and audibly demanded entry by shouting "Police, open up". However our demand to gain entry was ignored. The door was then kicked open in order to gain access into the house. Upon entering the house I noticed a black female ran out of one room and into another.

5.

As we approached the bedroom that the female exited from, I noticed a black male in the room. We identified ourselves as police officers. The black male then produced a firearm and pointed it at us. I immediately fired three rounds from my R5 rifle at the suspect in order to prevent him from shooting us. The suspect was fatally wounded. The necessary role players were contacted and attended the scene. I did not give any person the right to point a firearm at me.

6.

I know and understand the contents of this statement.
I have no objection to take the prescribed oath.
I render the prescribed oath to be binding on my conscience.
I hereby swear that the contents of this declaration is the truth, the whole truth and nothing but the truth, so help me God.

SIGNED. PADAYACHEE (D/INSP)

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she know and understand the contents of the statement. This statement was sworn to/affirmed before me and deponent's signature/mark thumb print was placed thereon in my presence at _____ On 25/11/2010 At 11:45

SIGNED:
COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
ORGANISED CRIME UNIT
CATO MANOR
DURBAN

RANK: _____

G SM

CM33

KWA MASHU CAS 698/11/2009 A6

G.P.-S. (1/92) P. 21 (81/148198)

I Makhosini Sibisi states under oath in English

1

I am a Detective in the South African Police Service with nr 0413171-1 stationed at Organised Crime Cato Manor Lab. Telephone work cell nr 031-2637337.

2

On 2009-11-26 I was on official duty in the Kwa-Mashu area. Information was followed up regarding possible suspects involved in armed robbery cases.

3

At 01:50 members of the unit went towards No 6187 where suspect Sabelo Thabatha @ Mabu resided. Members surrounded the house and Insp Padayachee and myself proceeded to the front door of the house. The front door was locked & he gave access to the house. As I moved to the one room where I observed movement an African female came running out. I pushed her to the side as she was between the suspect and myself. The suspect produced a firearm and shots were fired.

4.

During the exchange of gunfire the individual was fatally wounded. The necessary role players were contacted and came to the scene. Detailed statements will be submitted.

GSM

KWA MASHU CAS: 688/11/2009 AB

G.P.-S.01/02 P. 21 (81/143198)

I have read and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

[illegible]

[illegible] 26 07 16

[illegible]

[illegible]

446 [illegible] RD

[illegible]

[illegible]

SA POLICE
SA POLICE

G sm

Cm36.1

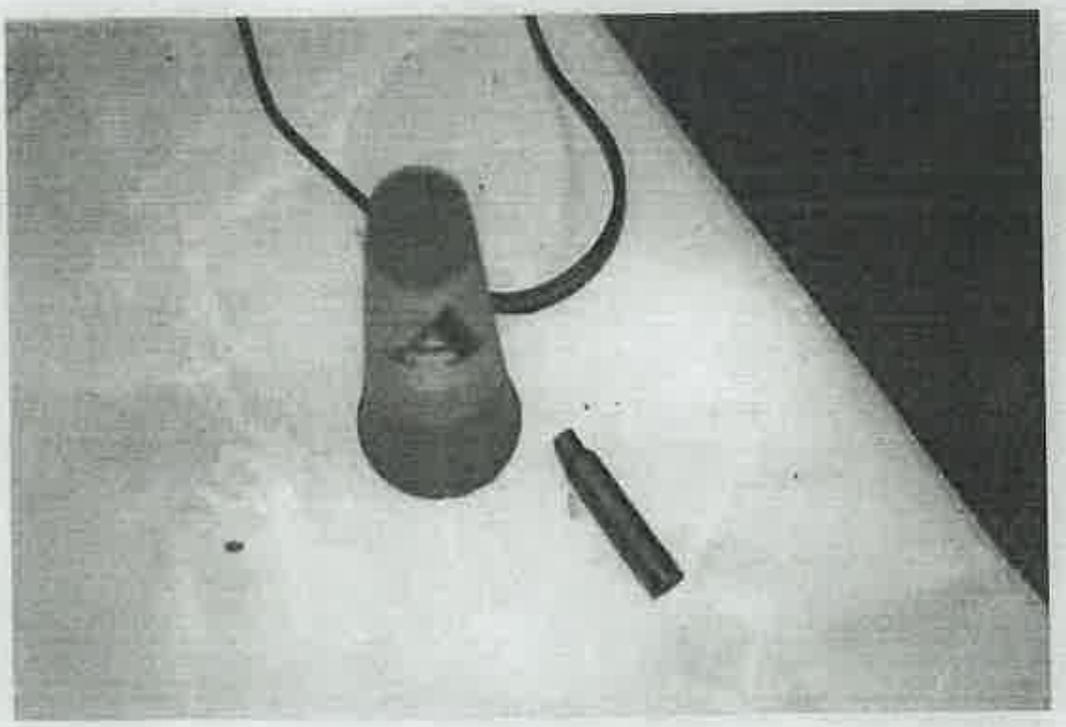
PHOTOGRAPH 1

PHOTOGRAPH 2

G Smith

Cm342

PHOTOGRAPH 3



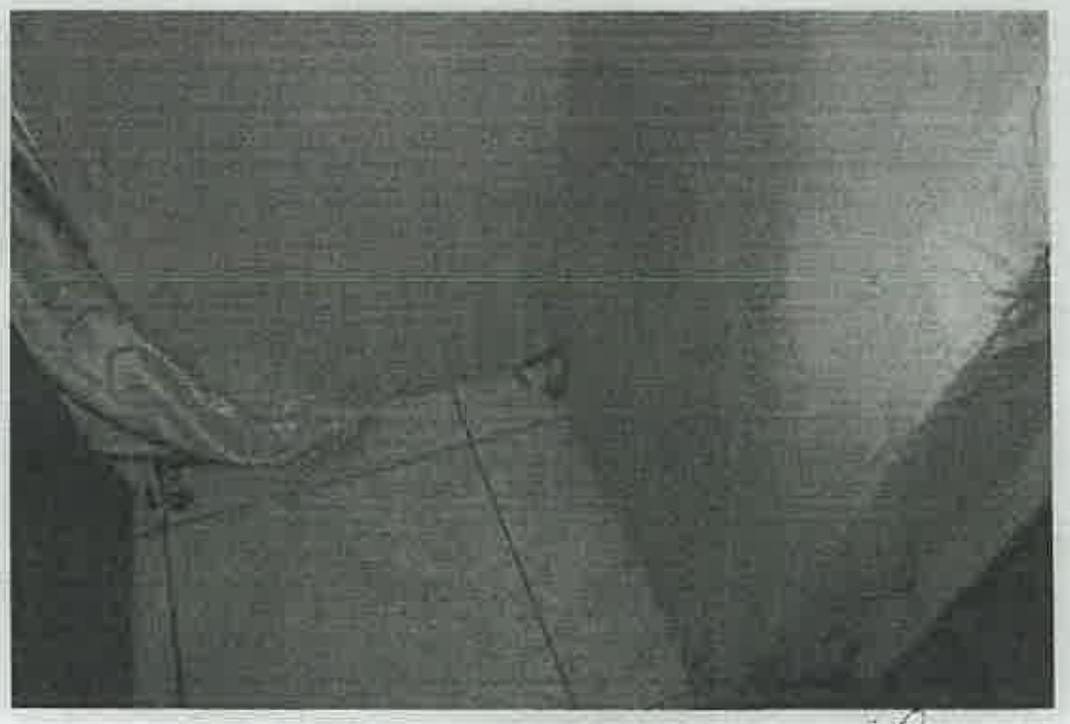
PHOTOGRAPH 4

G Sm

CM363

PHOTOGRAPH 5

PHOTOGRAPH 6



GSM

CM346

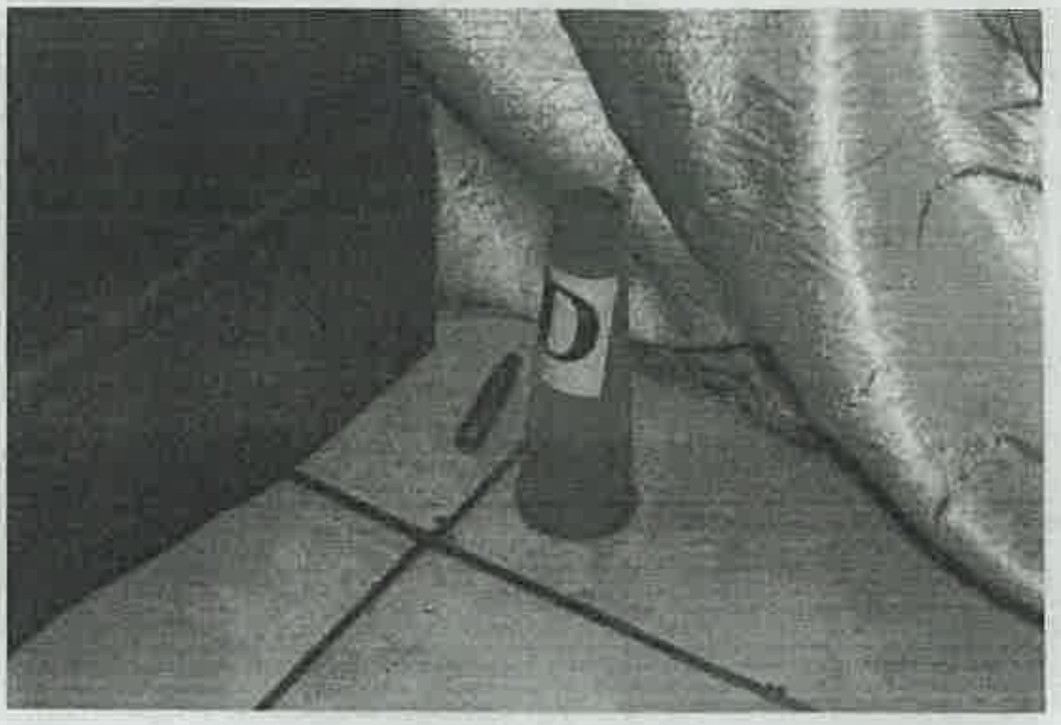
PHOTOGRAPH 7

PHOTOGRAPH 8

GSM

Cm365

PHOTOGRAPH 9



PHOTOGRAPH 10

asm

Cm 346

PHOTOGRAPH 11

PHOTOGRAPH 12

G Sm

Cm 34

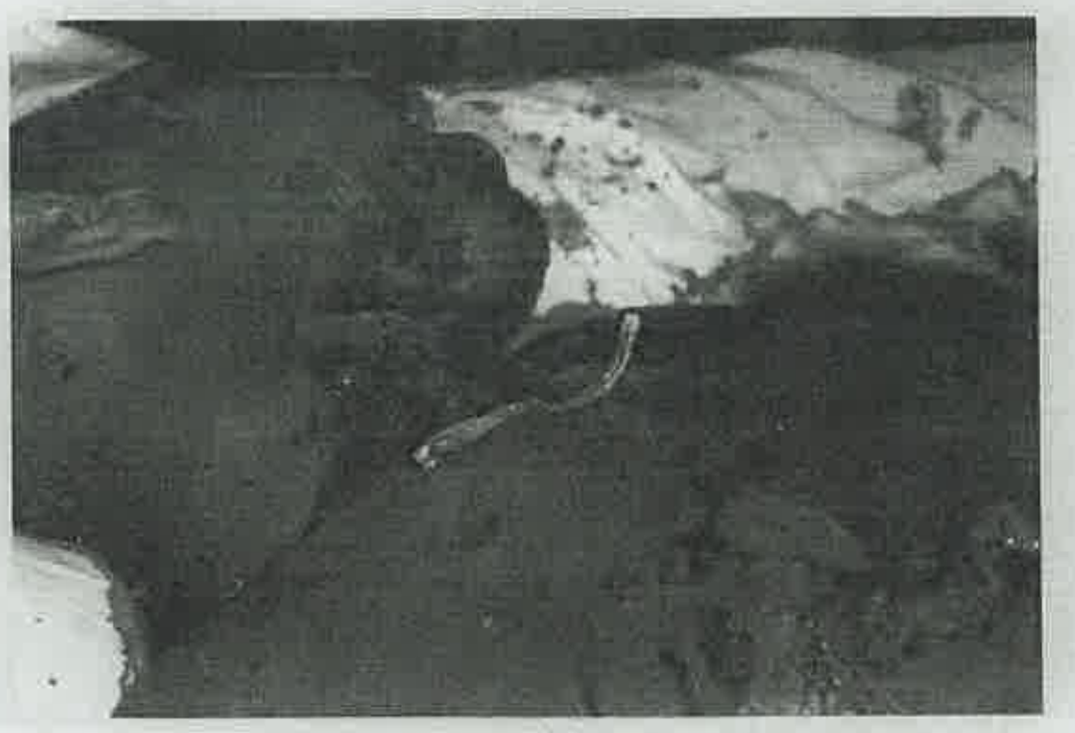
PHOTOGRAPH 13

PHOTOGRAPH 14

GSM

CM34-8

PHOTOGRAPH 15



PHOTOGRAPH 16

G S M

Cm34-9

PHOTOGRAPH 17

PHOTOGRAPH 18

G sm

CM35

AF

Edinburgh CPS 03/04/2010

I am Sebuono Viktoria Nakiwa Patricia number S-7307095365089 of the age of 37 years old self employed resident at Edinburgh S1 Scotland number 63 contact number 07941080490

1/1

I would like to state under oath as follows interpreted to English as follows

2/1

On the night of 31st October 2010 I arrived at my house around about 21:30 at night from my business activities at Milbridge Village. When my arrival at I found my son Fungi Allen sitting at the lounge watching television after I found him - I instructed my young boy to tell him matters he [illegible] for me.

4/1

After I had supper we sat together with Fungi watching record on TV and the program Gumball Adams. Between 21:30 to 23:00 I left Fungi and I went to sleep he was still watching record.

5/1

While I was sleeping I heard a loud bang the door being kicked and I heard some footsteps inside the house. As I was approaching my door on my bedroom to go and see what happened was happening I heard a gunshot inside the house and I fell down on the floor me and my wife and [illegible]

GSM

Eskalonian CTS 08/04/2010

Siberian Kalkian Conference

A4

Stay daily After few seconds I hear somebody speaking and knocking the door like he/she was using the telephone and asking who was inside the room and must come out and I woke up and went out.

4/

I went out with my hands on the air and I closed down and slept on the floor of the passage showing that I was not armed. I could hear that there were many people inside the house but I was afraid to lift up my head and they were asking me my name and go out and give me my name and I answered to them. I couldn't be able to count how many of them were inside the house.

5/

I was then ordered to go inside the small bedroom by that time I have not seen my son. Few seconds in the small bedroom there one of my name again and I told him and I was told to wake up and was taken out through the kitchen door I was not able to look through to the sitting room as there was somebody blocking the entrance to the sitting room.

6/

As I was taken outside there was a mob that surrounded me and one tall white person asked me where is Jilab

GSM

SEQ 29/2021-554

found in in the house at the my wife and my two kids. They asked the vehicles that those parked in the yard and I told them that that were my vehicles. I showed them three of the vehicles that are belonging to me and one was left by my friend called Eddie who used to borrow me when my vehicle (Van) is broken.

I was asked that 1991 all the vehicle are used by me and I said yes only the Vehicle that is being driven by Bekezela Nkosana who works for and is staying of Mr Section Ezimbokwini. I was then taken to show them the house of Mr Bekezela Nkosana stays. The vehicle are not on my yard. They went to take their vehicles.

SEQ 29/2021-555

Williams 03/04/2010

A4

Zburuso Mbeki Continues
and my response was that I don't know
Tiliki the officer who was wearing the
correctional service clothes said to me
you see boy we are not here to play
we can't come from Gauteng to play we
are here to work and that was an order
made. One white man pointed me
with a small finger and said lets kill
the bastard.

9/11

From there I was taken to was made
the house and how many of us are in
the house and I realised that we are

GSJ 6

Subsequently Between Between
they came with the white Toyota Quantum
with NV registration followed by the
Dark Grey 5 with dark colour South NV
registration but I could not see the
number as a white Nissan drive Gold
Toyota Corolla. I was instructed to go
and enter on a Toyota Quantum before
I could enter I was told not to enter.
I must go to a Nissan drive

11

On the white drive there was two white
males and it was followed by a
Quantum the other two vehicles were left
in my yard. Along the way on white male
asked me who lives nearby in the nearby
town I told them that it was my son.
and the white male responded by saying
'Your son' and I said yes and asked I
how old is your son then I said 15 years
and I saw him taking a deep breath and
asked me what is he doing taking my son
and I said he is not taking after he is doing
good to I think I was forced 4 times I
am question before we reached N2 where
it took about 2 hrs.

12

Before we arrived at N2 the Sketeyo
is burning they forced the vehicles and took
to walk on foot to the house. On arrival to
the house I was instructed to break and
I did and Sketeyo young brother killed

Grm

Statement CAS 03/09/2010 A4

Detective Police Constable
telephoned and I told him that he must
call Sbetegeto and tell him that Sbu
is looking for him. Sbetegeto came and
was taken for questioning but he was released
after 'Tlele' and he was taken
to the vehicle and we drove back to
my house with Sbetegeto.

B/1

When arrived to my house my house was
ransacked with a single drawer taken and
the police officers from Esikhawini. I
pulled over next to the vehicle that I was
in before looking for my wife and I
phoned my wife asking where and I called
her. My wife came and I asked her where
she the children and she has taken
the small baby to his grandmother when
he asked to take both of them they said (there)
they are still questioning him. I said to
my wife the vehicle has been ambushed
because when you see the tape it shows
that something has happened.

1/4

From this my wife screamed and ran straight
to the house to see through the window.
and she saw the boy and his stereo
has been given a electric. From this I went
to where made that was with me in the vehicle
and I asked him where is my son and
he said my son is injured and they are
looking for an ambulance. Mr. M. [illegible]

GSM

Witness CAS 05/04/2010 A4

Witness Statement

Two who appear my boy to door by the Detention and I asked them inside as those police he said they have gone to Lisfield because they say injured and I asked him why they shot the police man he said they had been shot and I asked him why they took them to Lisfield they done themselves.

15/11

I asked the Policeman if they can be able to drive to Lisfield why that they left my son behind and get take him to Lisfield and he can't speak anymore with me what he knows is that I just waiting for an ambulance that has been called.

16/11

I asked the Police to allow me to get inside the house so as to get clothes or not taken wearing a sleeping suit only. I was denied entry on the sitting room place and asked that the kitchen door to my bedroom. Before I could enter my bedroom I slept in the passage hand I saw my boy sleeping on the carpet not moving. I could see the blood on his chest. After dawning up I went to stand outside until the paramedics arrived when they arrived they entered the house and I also entered with them.

17/11

The paramedic asked me whether was it a murder or what so one on.

GSM

Sibusiso Nelson continues

him and I saw the knife was between his arm and the body on the couch. I immediately went out and started crying. I called the white policeman who was with me in the car and he said he didn't know what happened and he was not there when the stabbing took place.

18

Talking about the circumstances of my son's alleged have not contacted any person with him or I was sitting beside him before I left him to go to sleep. The knife that was found next to the body of my son was placed after he died although I couldn't be able to see the person who placed it for the reason the police denied me to see my boy after the stabbing of question (forgiveness that they found or (police) to place the knife after realizing that they have killed the wrong person.

GSM

[illegible] 03/02/2020 44

I KNOW AND UNDERSTAND THE CONTENTS OF THIS DECLARATION
I HAVE/HAVE NO OBJECTING TO TAKING PRESCRIBED OATH/AFFIRMATION
I CONSIDER THE PRESCRIBED OATH/AFFIRMATION TO BE BINDING ON MY CONSCIENCE.

SIGNATURE OF DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGE THAT HE/SHE KNOWS AND UNDERSTAND THE CONTENTS OF THIS DECLARATION WHICH WAS SWORN TO/AFFIRM BEFORE ME AND THE DEPONENT'S SIGNATURE/THUMBPRINT/MARK WAS PLACED THEREON IN MY PRESENCE AT

2020/04/12
PLACE

DATE

TIME

COMMISSIONER OF OATHS

FULL NAMES: Simnea Bonca Khumalo

RANK: Pr Investigator

ADDRESS: P.O. Union Street Pietermaritzburg

INDEPENDENT COMPLAINTS DIRECTORATE

G Smith

LAB 66451/2010(3)

ESIKHAWINI CAS 03/04/2010

CM36

AFFIDAVIT IN TERMS OF SECTION 212 OF THE CRIMINAL PROCEDURE ACT. 1977 (ACT 51 OF 1977)

CHRISTIAAN MANGENA declares under oath and in terms of Section 212(4)(a) and 212(8)(a) of Act 51 of 1977 that:

1.

I number **0471799-6** am a **CAPTAIN** in the South African Police Service, and in service of the State. I am attached to the Ballistic Section of the Forensic Science Laboratory.

2.

I have been attached to the Ballistic Unit since 1995 as an examiner of Forensic Ballistic related cases. I have to date examined an excess of 5254 cases. I examine Ballistic related cases as part of my daily task and testify on a regular basis in the courts of South Africa. I have successfully completed a three (3) year in-service training course at the Ballistic Section in the theoretical and practical application of the Forensic Ballistic Science.

2.1 **I have received in-service training in the following aspects of Forensic Ballistic Science:**

2.1.1 Identification of ammunition, fired bullets and fired cartridge cases.

2.1.2 The use of microscopic equipment.

2.1.3 Microscopic individualization of firearms, ammunition, fired bullets and cartridge cases.

2.1.4 Microphotography.

2.1.5 Identification of firearms.

2.1.6 The examination of firearm mechanisms.

2.1.7 The different manufacturing processes of firearms and firearm components.

2.1.8 The examination of home-made devices.

2.1.9 Techniques associated with the recovering and restoration processes of obliterated alpha-numeric figures on metals.

2.1.10 The reloading of ammunition and the manufacturing processes of ammunition.

2.1.11 Shot range determination.

2.1.12 Crime scene investigation and examination techniques.

GSM

2.1.13 The taking of photographs and the documentation of the results during an investigation.

2.1.14 Microscopic individualization of tools and toolmarks.

2.1.15 Physical matching.

2.2 **INTERNAL FORENSIC BALLISTICS**

2.2.1 Functioning of firearm mechanisms during the firing process.

2.2.2 Burning rates of propellant powder and gas pressure.

2.2.3 The transfer of marks by the firearm to cartridges, fired cartridge cases and fired bullets.

2.3 **INTERMEDIATE FORENSIC BALLISTICS:**

2.3.1 The effect that hot gasses, propellant powder and partially burnt propellant powder has on an intermediate target, before and after the exit of a bullet from the muzzle.

2.3.2 The forming and effect of secondary missiles caused by intermediate targets.

2.4 **EXTERNAL FORENSIC BALLISTICS:**

2.4.1 The trajectory of the bullet from the muzzle of the firearm to the final point of impact.

2.5 **TERMINAL FORENSIC BALLISTICS:**

2.5.1 The wounding effect that the bullet has on tissue (Wound Ballistics).

2.5.2 The effect that the bullet has on the target.

2.5.3 The effect that the target has on the bullet.

2.6. I visited the following firearm and ammunition manufacturers to ascertain for myself which processes are used in the manufacturing of firearms and ammunition:

Local

2.6.1 Lyttelton Engineering Works (LEW).

2.6.2 Truvello.

2.6.3 New Generation ammunition (NGA)

2.6.4 Somchem.

2.6.5 Swartklip.

Foreign Country

2.6.6 Norinco in China

2.7 During August - September 2002 I attended a course presented by the Federal Bureau of Investigation (FBI) of the United States of America which comprised of the following:

2.7.1 **Bullet Trajectory Reconstruction.**

2.7.2 **Techniques in Firearms Identification.**

2.7.3 **Gunpowder and Gunshot Residue.**

2.8 During November 2010 I attended a course presented by the Ross M Gardner of Bevel, Gardner & Associates from the United States of America which comprised of the following:

2.8.1 **Bloodstain Pattern Analysis Level I**

2.8.2 **Bloodstain Pattern Analysis Level II**

2.8.3 **Crime Scene Reconstruction Level I**

2.9 I obtained a National Diploma in Policing with The University of South Africa.

3.

On 27th February 2012 during the performance of my official duties I received a copy of LCRC case files with reference **RICHARDS BAY LCRC 01/04/2010(ESIKHAWINI CAS 03/04.2010)** from Commander of LCRC Richards Bay Lt-Colonel Redman. The case file contained:

3.1 Crime scene photos on a disc compiled by Constable SB Sithole.

3.2 Crime scene photos album compiled by Constable SB Sithole.

3.3 Crime scene sketch plan.

4.

On 13th March 2012 during the performance of my official duties I received a copy of a Police case Docket with reference **ESIKHAWINI CAS 03/04/2010** from Lieutenant-Colonel Mano of the Task Team. Amongst the documents in the docket I found the following documents which were to be utilized in reconstructions of the crime scene:

4.1 Post mortem report marked **DR 156/10 (ESIKHAWINI CAS 03/04/2010)** compiled by Dr NEMPUMELELO ZANELE KHUMALO.

4.2 Statement by Detective Warrant Officer Eric Alfred Nel.

4.3 Statement by Detective Warrant Officer Gonasagren Padayachee.

4.4 Statement by Detective Warrant Officer Adjithsingh Ghaness

5.

The intention and scope of this Forensic examination comprise the following:

7.1 Crime scene reconstruction.

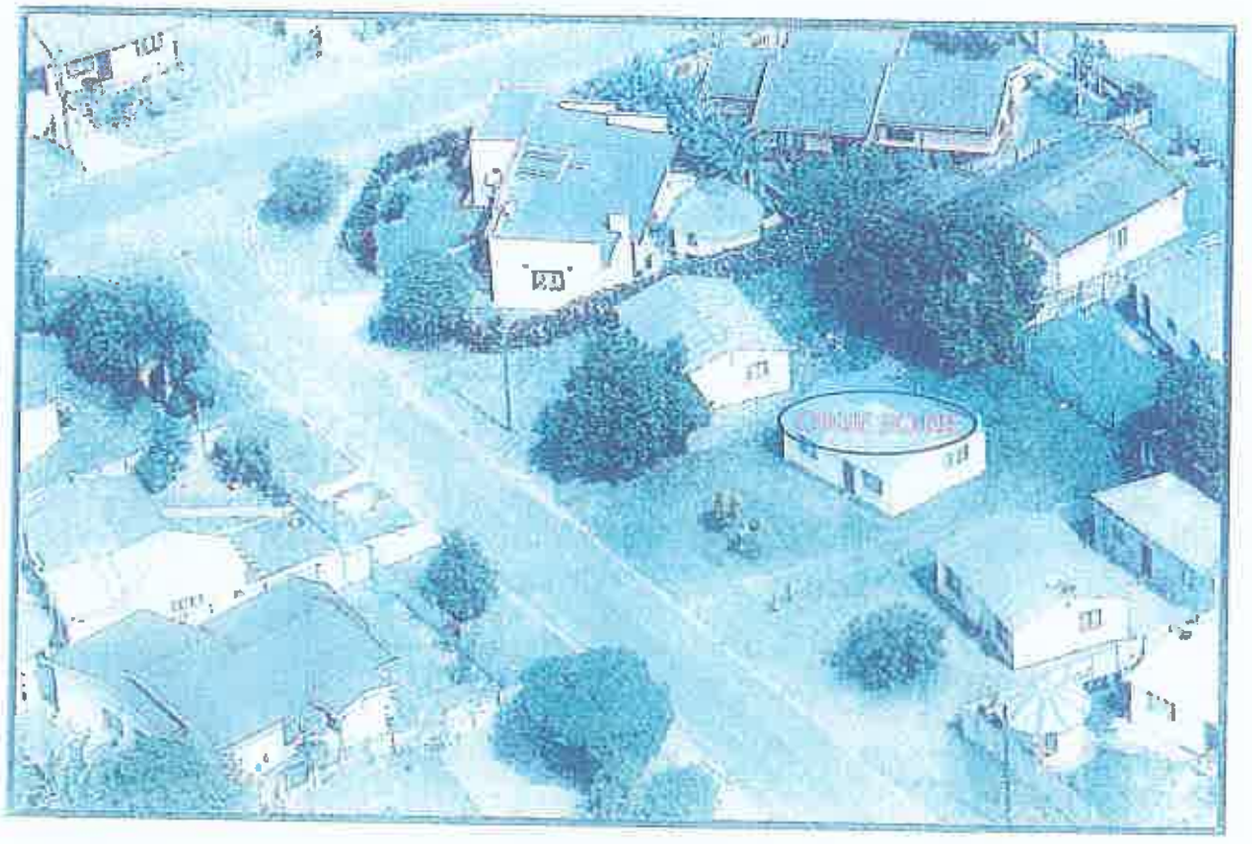
7.2 Bullets trajectories determination.

7.3 Expert opinion concerning the shooting incident.

6.

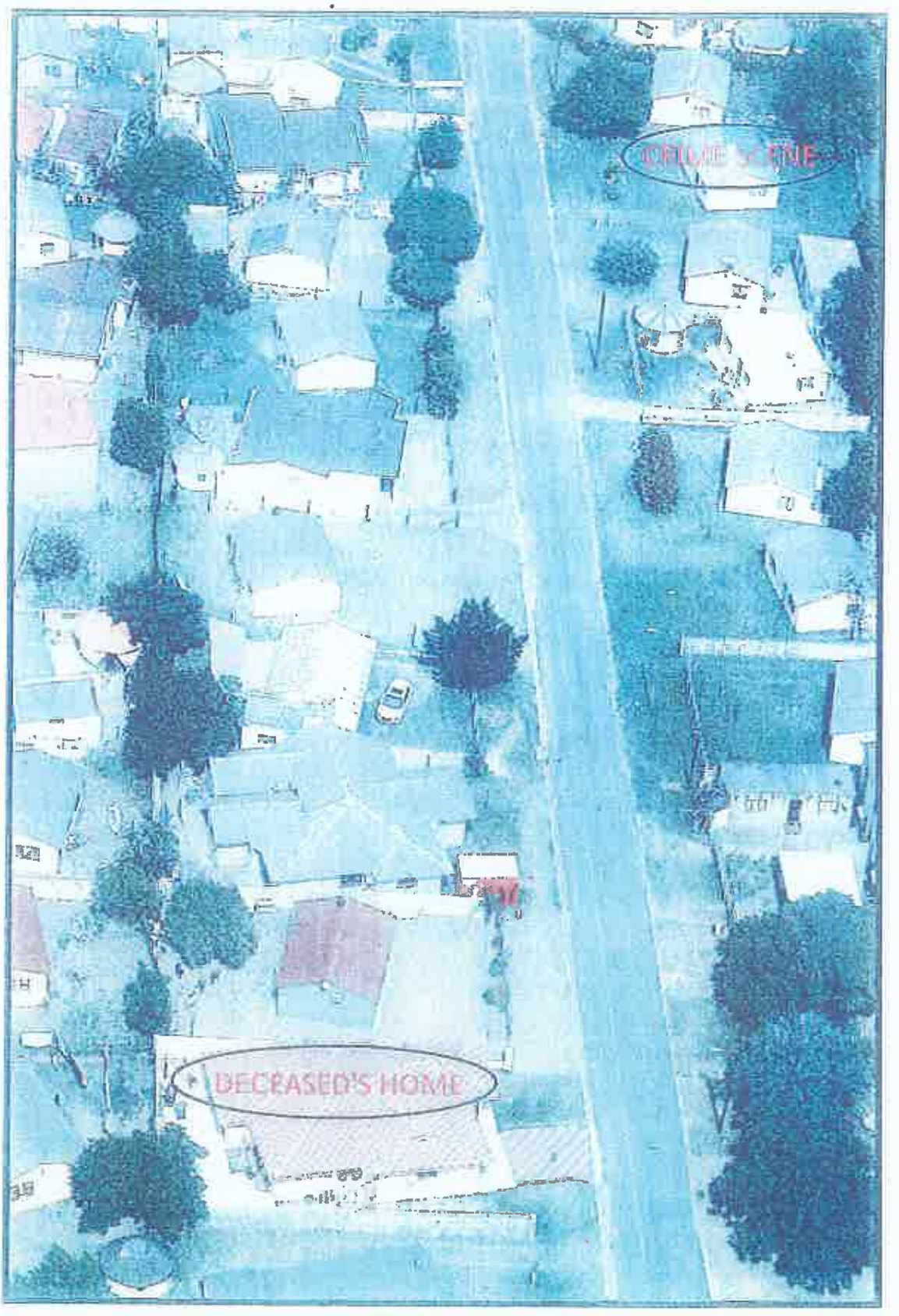
On 22nd March 2012 I took the Arial photos of the crime scene. The house was pointed out to me by Lieutenant Colonel Mano.

Photo 1



G Sm

Photo 2

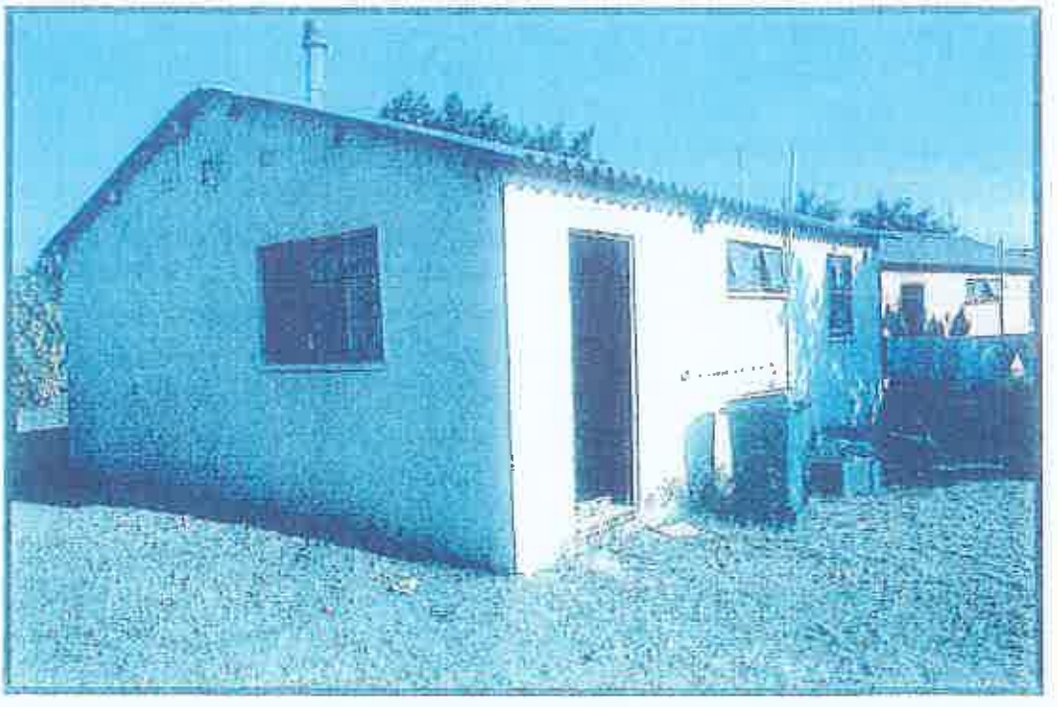


7.

On 27th March 2012 I examined the crime scene at House number J63 Inyathi Street Esikhawini. The crime scene was also pointed out to me by Lieutenant Colonel Manc.

Photo 3

Photo 4



During examination of the crime scene I found two possible bullet holes in the living room wall, holes marked W1 and W2.

Photo 5

Photo 6

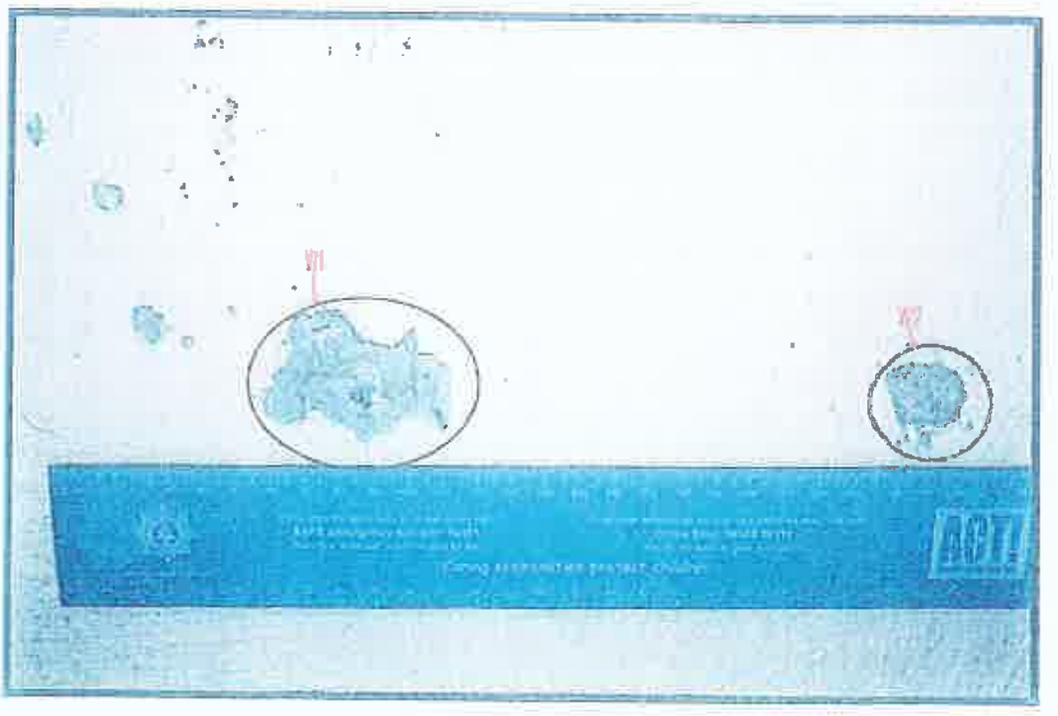


Photo 7

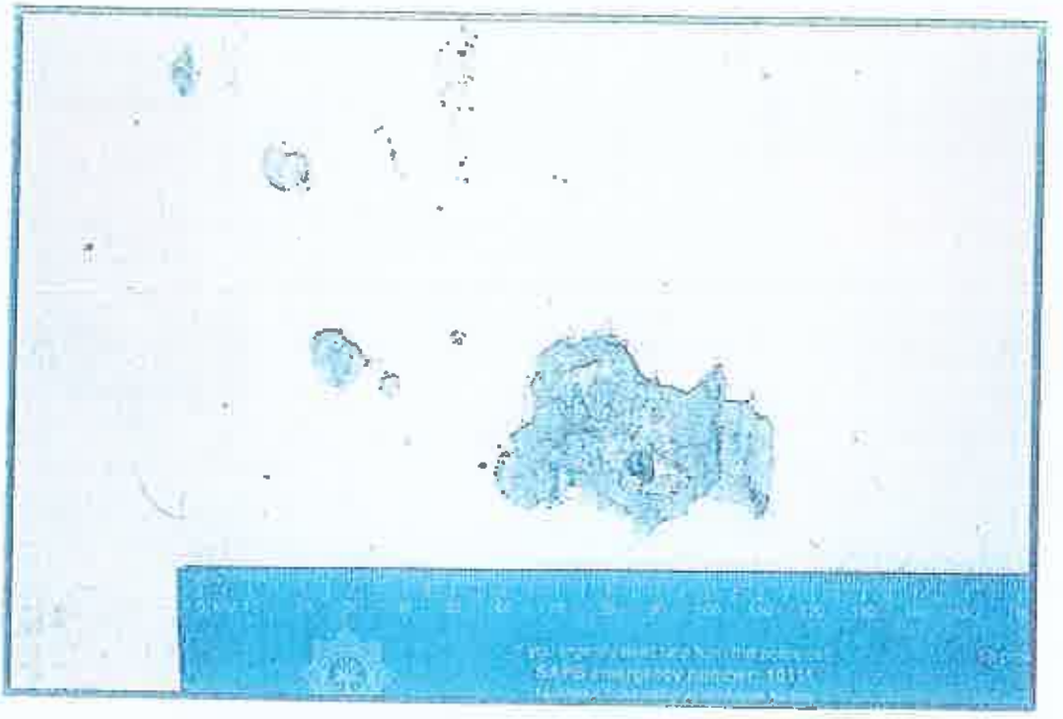


Photo 8

GSM

8.

On the same day I examined the sofa that the deceased allegedly was lying on. On examination I found:

8.1 Bullet holes on the back rest and at the back of the sofa.

Photo 9

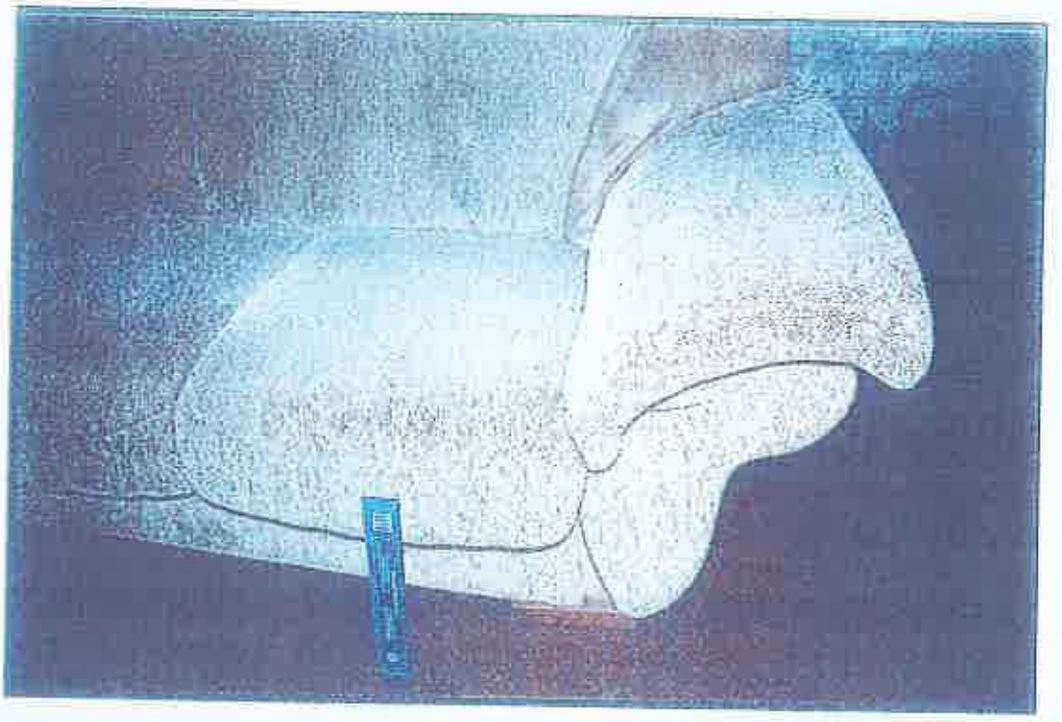


Photo 10

GSM

Photo 11

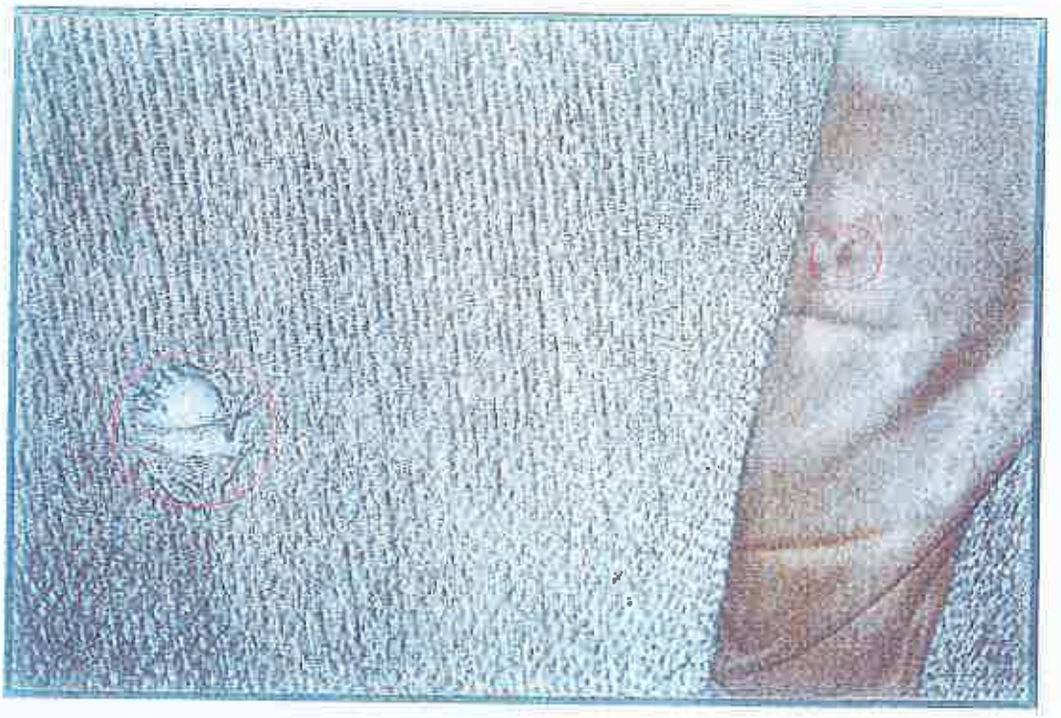


Photo 12

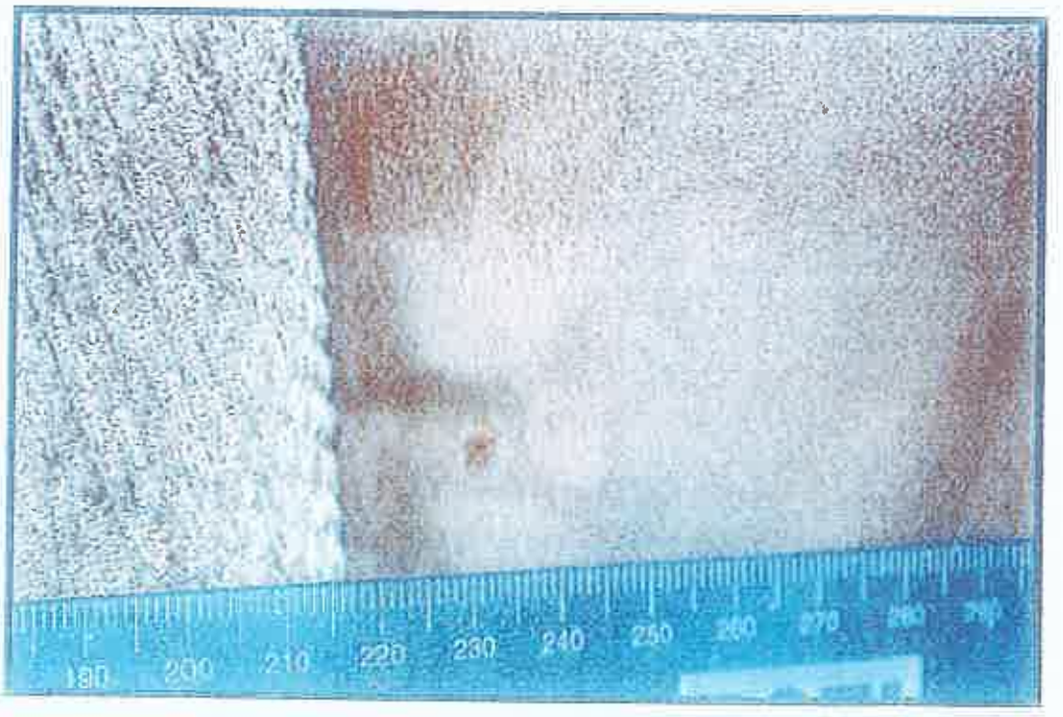


Photo 13

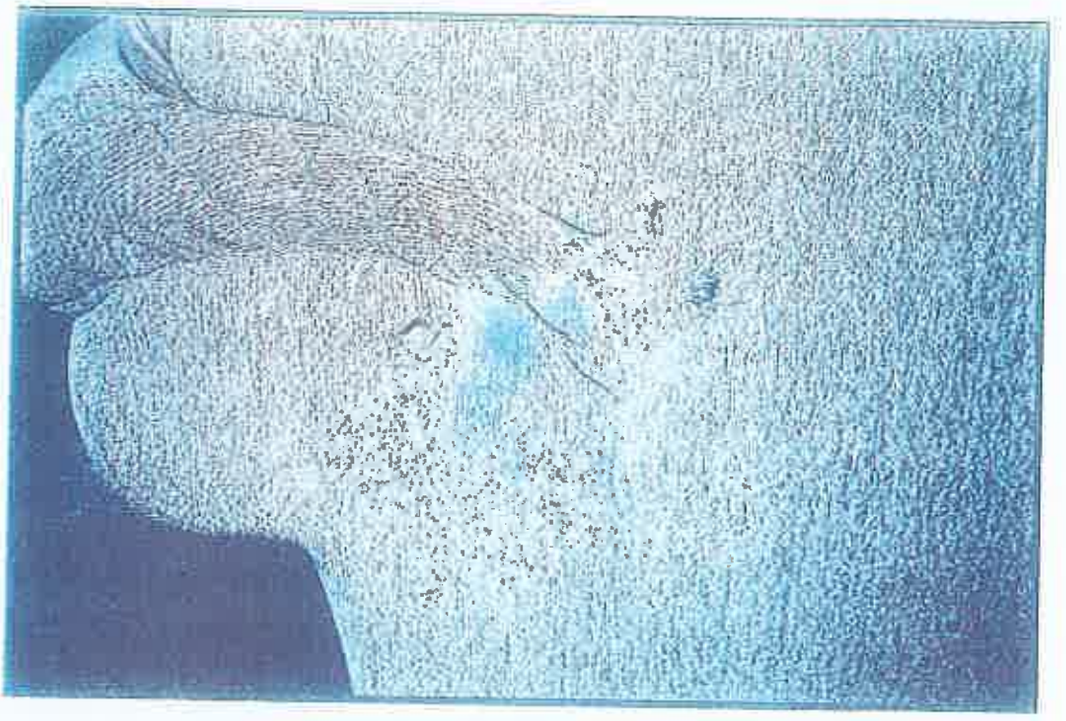
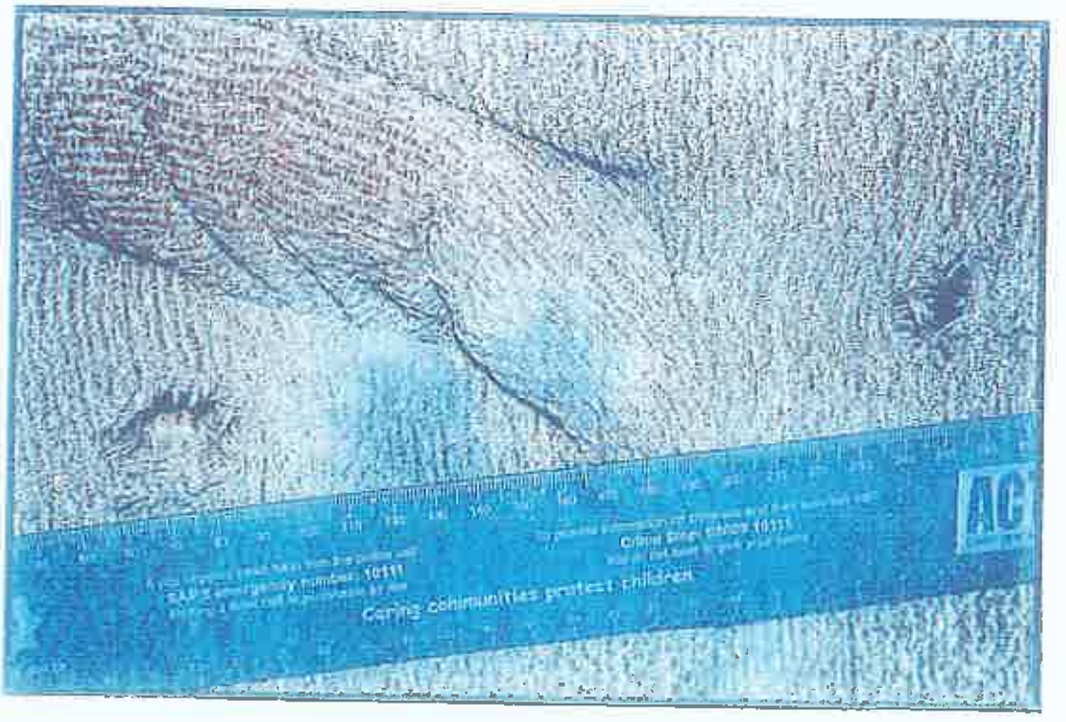


Photo 14



The bullet holes in the sofa are consistent to the holes in the wall. The hole marked W1 was most probably created by an unstable bullet that had perforated the right arm of the deceased and hole marked W2 was created by a bullet that missed the deceased that went through the small hole in the sofa.

GSM

9.

I studied the post mortem report and noticed the wounds sustained by the deceased described as follows:

9.1 A 5x5mm circular wound left face 1510mm above heel features are those of a distant gunshot entrance wound. (Wound marked 1a).

9.2 A 5x5mm circular wound left abdomen 1110mm above heel features are those of a distant gunshot entrance wound. (Wound marked 2a).

9.3 A circular wound right forearm 10x5mm in diameter features are those of a distant gunshot entrance wound. (Wound marked 3a).

10.

I observed the crime scene photos and noticed that:

10.1 The deceased was lying on the sofa with a pistol under his left arm.

Photo 15

Photo 16

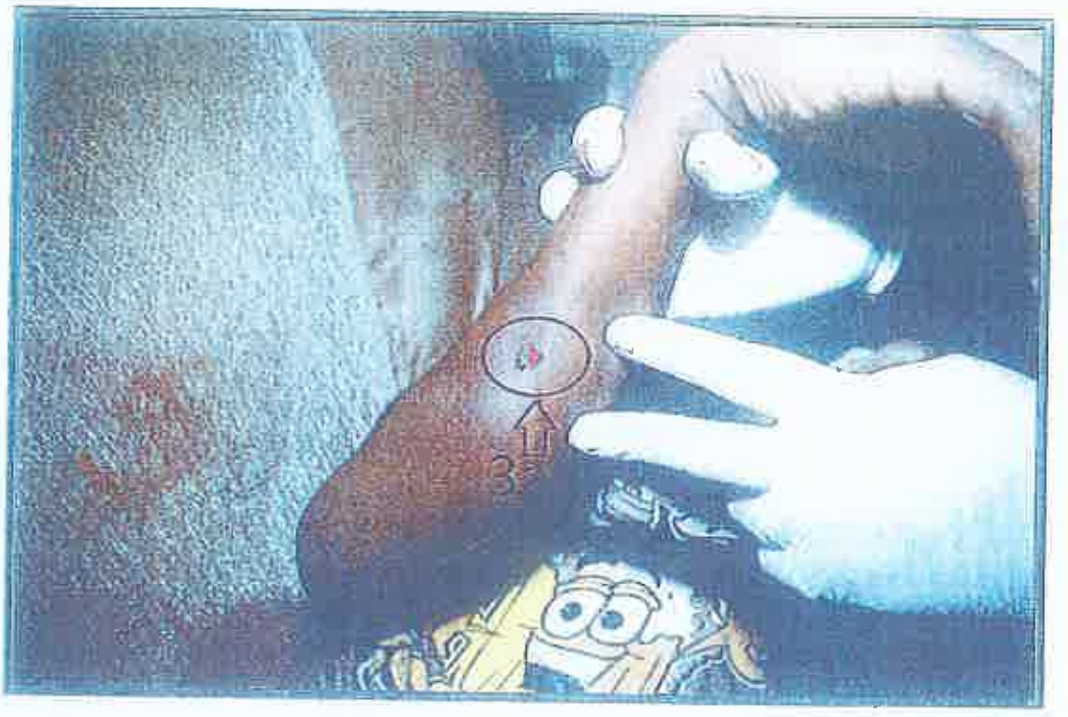
10.2 The deceased sustained gunshot wounds as follows:

10.2.1 Gunshot wound on the left side of the face. (Wound marked 1a).

Photo 17

10.2.2 Gunshot wound on the right forearm. (Wound marked 3a).

Photo 18



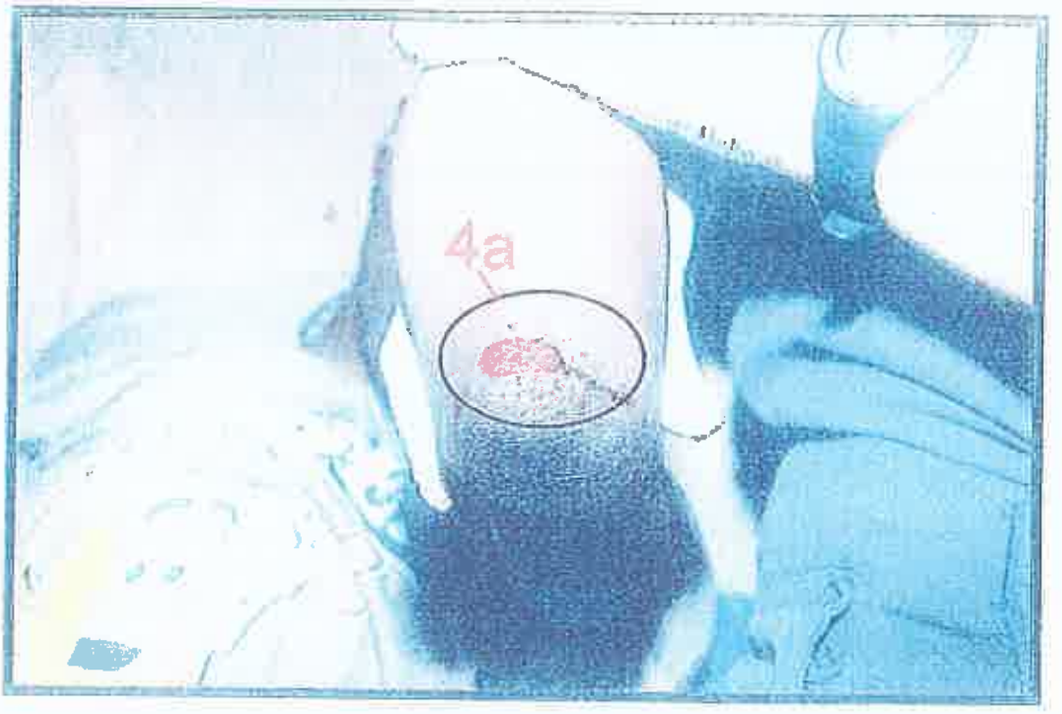
10.2.3 Gunshot wound on the right arm. (Wound marked 3b).

Photo 19

GSm

10.2.4 A graze wound on the left elbow. (Wound marked 4a).

Photo 20



11.

The wounds as described by the doctor are consistent with the wounds visible on the photos except for the graze wound on the elbow which is not mentioned on post mortem and the wound on the left abdomen not visible on the photos. The position of the wound on the abdomen can only be noticed with blood stain on the shirt.

Photo 21

GSM

12.

After examination of the crime scene, and observation of the crime scene photos and post mortem I am of the opinion that:

12.1 The deceased was hit by at least three bullets. Four fired cartridge cases were collected from the crime scene means four shots were fired and one bullet missed him and perforated the sofa at hole marked W2.

12.2 The bullet that perforated the right arm of the deceased at wounds 3a and 3b also perforated the sofa at hole marked W1.

12.3 Looking at the position of the deceased I am of the opinion that wounds marked 2a and 4a were inflicted by the same bullet.

12.4 The bloodstain pattern on the back of the sofa next to the right arm of the deceased is classified as forward spatter. This pattern is caused as the bullet exits target and a larger amount of high force impact spatter is directed in the same direction as the bullet. The amount of high force spatter created will depend upon the calibre of the bullet fired. The bigger the calibre the greater the spatter. The positions of the spatter and the wound sustained indicate that the arm of the deceased during the incident was almost positioned were it is currently positioned. There was slight movement of the arm after the incident.

12.5 The injuries and damages caused by all four bullets had characteristics of high velocity bullets. This is most probably 5.56mm calibre bullets supported by a number of fired 5,56x45mm calibre cartridge cases.

12.6 Looking at the wounds sustained, the bloodstain pattern and bullet holes, all these confirm that the deceased was shot while in a lying position on the sofa.

12.7 The current position of the deceased shows slight upward movement of the left arm and the position of the firearm is unexplainable.

13.

The abovementioned conclusions were arrived at by means of an examination and process, which require knowledge and skill in Forensic Ballistics.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

.....CAPTAIN

C. MANGENA

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn before me, and the deponent's signature was placed thereon in my presence at DURBAN ON 2022-04-27

.....

COMMISSIONER OF OATHS

.....

Forensic Science Laboratory

270 Pretoria Road

SILVERTON 0184

..... :SOUTH AFRICAN POLICE SERVICE

/cm

Esikhawini Cas 03/04/2010

CM37.

GSM

SEQ 29/2021-578

SEQ 29/2021-579

CM37.2

GSM

SEQ 29/2021-580

CM37.3

GSM

BHEKITHEMBA CAS 44/05/2010

CM381

SEQ 29/2021-581

CM38.2

G SM

CM38.3

GSM

CM3.8.4

GSM

CM 3.9

Statement of Sibongiseni

CM39
A6

BHEKITHEMBA CAS: 44/05/2011

SIBONGISENI NGCOBO

STATES UNDER OATH IN ENGLISH

1.

I am an adult African male who is 18 years old who was born on 1993 November 21. I am residing at no K232 Dloko Road at J Section at Bhekithemba Township in Durban. I am currently studying Grade 12 at Qhilika High School at Bhekithemba area and I contacted on my sisters cell phone Khanyisile Ngcobo which is 0839765551. I would like to state as follows.

2.

On Tuesday 2011/05/10 at about 01h45 in the early hours of the morning I was at my above place of residence sleeping when I was awoken up by the footsteps coming from outside the outbuilding that I was sleeping in. I then got up and proceeded to open the door and I then saw several men outside and they had firearms with torches on them which they pointed at me and then I concluded that they were policemen. Two of them grabbed me and put me on the side of the house opposite the door that I came out of and one of them shouted something to the effect of asking if I was not one of the people that they were looking for and the whole time there were firearms pointed at me. Where I was standing I had full view of the policemen but I could not see inside the other room where my two brothers and my cousin were sleeping. I then saw one of them kicking the door open and then straight after that the policemen fired shots pointing inside the room firing plus or minus nine times. I could not count properly as I was in shock and I was scared. Then after the shooting I was taken to the main house where I was told that I must not leave the house until further notice. I stayed in the house with my mother for about two hours until an African police man came to the main house and asked me to come to the room where my brothers and cousin were in and where I had witnessed the shooting. I went with him to the room and he let me into the room where I was asked to identify my two brothers and cousin, my cousin was lying on the floor and I identified him as Moye then on the bed I saw Xolani Ngcobo who is my brother then on the cough there was Msawakhe Ngcobo who is also my brother.

G 5m

This is all I wish to state at this stage.

I KNOW AND UNDERSTAND THE CONTENTS OF THIS STATEMENT.

I HAVE NO OBJECTION IN TAKING THE PRESCRIBED OATH.

I CONSIDER THE PRESCRIBED OATH TO BE BINDING ON MY CONSCIENCE.

SIGNATURE OF DEPONENT

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirm before me and the deponent's signature/thumbprint was placed thereon in my presence at

PLACE: DURBAN DATE: 2011/05/10 TIME: 17H22

COMMISSIONER OF OATHS

FULL NAMES: PHILILE DLAMINI

RANK: SENIOR INVESTIGATOR

ADDRESS: 22 DOROTHY NYEMBE STREET

INDEPENDENT COMPLAINTS DIRECTORATE/KZN

GSM

Durban North Cas 67,69,71/07/2011

CM4.0.1

SEQ 29/2021-588

CM40.

GSM

SEQ 29/2021-590

Cm41.1

G sm

CM41.2

G Sm

M42
A4

SAP-S 0102 R 21 (81/143198)

Durban North CAS 71/07/2011, 69/07/2011

NAME: TSHEPISO MBONAMBI
ADRESS: 16 GLASTONBERRY, SOMMERSET PARK.
ID NO: 9407095682082
SEX/GENDER: AFRICAN MALE
TEL NO: 0824366925

STATES underoath in English

I am a person with all the above information and would like to state as follows

On 2011-07-04 around about 08:25 my mother (Ngenzeni) left to the doctor I was left in my house at no: 16 Glastonbury with my brother WANDILE, we were in the lapptop watching movies and my father BOYZI was in his bedroom, I heard my father calling my brother WANDILE on the same day to give him a toilet paper.

On the same day my father's friend (Qumi) buzzed and WANDILE opened for him, he was a driving a white FOLO, he then greeted me and went down to my father's bedroom.

After 5 minutes I noticed (Qumi) coming up the stairs talking on his cell-phone, he then went to the garage, he then stood at the garage to talk out the phone avoiding the noise of the movie. I heard him saying loud (Ngenzeni) in English means what did I do, I then saw him raising his hands

T.A.

G 5m

Duibon North CSC 11/07/2011/ 69/07/2011

I then heard ~~see~~ the Cop saying, Put your hands up, and my brother was coming up the stairs he is the one who noticed the police shooting. When I heard the gun shot for the first time I ran out opening the sliding door. I then heard another gun shot.

They were shooting at me as they shot a sliding. I heard my brother WANoile crying. I then carrying on lying down as I had fell. I saw the police in the house with the firearms, they were all over the house, I saw my father running from his bedroom I think he used the bedroom sliding door jumping the fence. But the police were busy looking for my father in the house.

The police came to me asking me where is my fucking father violent I told them that I do not know them they asked again I told them that I saw him running they then took me upstairs where my brother was they asked my brother where is my father and if he don't tell them they said they will kill my father.

Some police went out and some were left in the house going in and out the bedrooms one indian cop came back and called me violently, he took me to the kitchen asking me

GSM

Durban North cas 71/07/2011, 69/07/2011

what do I have to drink. He demanded you to open the fridge, I then showed him the fanta he asked me what fuckin flafor is this I then gave him the drink we then went upstairs with him I went back to the balcony he then went outside with a drink.

I then later heard the gun shoot again in the house. The same police came back with an empty bottle of the same I gave, he swore me using fuck words, he made me go in the front and he was busy playing with his firearm he then wanted me to show him my father's bedroom, we then went inside my father's bedroom he let me sit down, he then said something is suspicious in this room he wanted to check, he started opening the wardrobes, he then held a cushion still walking in the bedroom checking and he was still playing with his firearm, he asked me if I do go to church. He then left the bedroom he told me to wait he went to the toilet, he then went up again I then went out to the balcony, he also went outside.

Another white police came, he was wearing casual carrying a firearm, he was busy asking other police if they found him, he asked where is the other one, they replied to him that they found one, and

GSM

4 A34

G.P.S. 0002 P. 21 (81/143186)

Durban North CAS 71/01/2011, 69/01/2011

the other one has ran away. They all came back inside the house with the dogs checking in the house. me and my brother we were still sitting in the balcony but we could see everything that was going on in the house.

Later when I went to check my phone in my bedroom I found out that it was no longer there as I had left it in the charger in my bedroom. I also noticed one cop/police carrying my father's bag he went out of the house with it.

I know and understand the content of this statement I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

I certify that the above statement was taken down by the informant of the deponent and he acknowledges that he knows and understand the content of this statement. This was sworn to before me at Durban on 2011-10-28 at 17:00

Constable
Constable
04 No

G sm

CM43.1

9 5m

CM43.2

GSM

A11(1)
CM44

Durban North Col 31/07/2011
Nthungwile Goodness Sonbo
State under cover in Kwphila

1.

I am an adult African female, 49 yrs old my identity document no. unknown. I am residing at no 7456 Umlazi T/ship. I am working at no. Norfolk, 7 Macsonell Crescent, Umhlanga Ridge. 4319 as a casual domestic worker. My contact no is 0836680249. I would like to state as follows:

2.

On Monday 2011-07-04 at about 14:00 while I was at my place of work busy folding the ironing - the bedroom I heard the gate behind the house banging & sliding. I looked through the window and I saw a African male unknown to me running inside the back yard from where I heard the gate banging. I noticed that he was wearing a black short (trousers) and a black and white T/shirt. I saw him trying to climb the wall to no 2 house but he could not climb through as there was the dog that stopped him from entering the yard.

3.

I saw him also trying to climb to the wall but he could not climb that wall as it was a fencing wall with electricity on top. He also tried to come to the back door as it was opened but I just closed the

GSM

A11(2)

Duban Nath Ces 7/1/07/2011
Nishangwile Goodness Gosibo continued under oath in English

3.

the burglar gate. I ran out through the kitchen door to no 14 house where the care take of the apartment person. I told the caretaker of no 14 what I have seen. The caretaker from no 14 called the the care take from no 11, they both came with me to no 1. We all went inside the house and checked but we could not see any person. They advised me to lock the house and continue working.

4

I went back to the bedroom where I was initially was I continued with the folding/packing of the clothes. I then heard a laughing noise of a person from the gate side. I ran back to the care takers and report that I heard a person laughing. I'm not sure whether the care takers came with me on the second incident because I was so frightened. What I know is that I came back to the house and had to finish my work. While inside the house finishing work I heard two gunshots from the direction where I heard laughing person. I ran and lock myself inside the garage and closed the doors. I remained inside the garage for about ± 10 minutes and I went out and

TGSun.

TGSun

K11(3)

Durban North CAS 71/07/2011
Nthenguzile Goodness Sonto continued under oath
in English

prepared myself to go home. The gate that I saw into is inside the house. When I went out by the house I saw Mr. [illegible] was in the yard and cutting the grass. When I was leaving my place of work I had a plastic bag ~~with~~ to throw it in the dust bin yard. I had to go to the dust bin area but I was stopped by the police not to enter that area. The dust bin area was already cordoned off. I proceeded with my trip and left the plastic on the ground. I don't know what happened after that. I only heard later that a person was shot and killed at the dust bin area, when an official from IPID contacted me.

5.

I would like to state that when I saw the African male in white short (trousers) and black and white T/shirt, it was during the day, visibility was clear and good. I was inside the house, curtain blinds were opened, door (back door) was wide open. I could see that he was trying to climb the walls there was nothing in his hands, and when I ~~had~~ went to close the taxi gate I had going to be able to see if he was

TG

TG

GCM

A11(4)

Durban North CAS 71/07/2011
Nkshenyuni Goodness Sosibo confirmed under oath in English

Carrying anything in his hands. That is all I wish to state.

I know and understand the contents of this statement
I have no objection in taking an oath.
I consider the oath to be binding on my conscience. [signature]

I certify that the deponent has acknowledge that he knows and understand the contents of this statement which was sworn to before me and the deponent's signature was placed on it in my presence on 2012-01-09 at 16:01 at Durban North.

Deponent's signature [signature]

[signature]
MPAYA WITNESS ANGEL
DATE: 2012-01-09
PLACE: DURBAN NORTH
RANK: Principal Investigator
ICD/KZN

G SM [signature]

CMLS.

G.P.-S. 01/00 P. 21 (01/145198)

Durban North CAS 71/07/2011, 09/07/2011

NAME: WANDILE MBONAMBI
ADRESS: 16
ID NO: 1999-08-02 / 9908025274080
SEX / GENDER: AFRICAN MALE
TEL NO:

STATES UNDER OATH IN ENGLISH

I am the person with all the above information and would like to state that.

On 2011-07-04 around about 08:25 My mother left to the doctor my mother is NGENZENI and my father (BOYZI) was in his bedroom alone. Me and my brother TREPISTO was in a upper lounger watching movies.

On the same day around about 12:50 my father's friend (Dumi) came with a white Polo I then opened a garage for him, he asked for my father, I told him that he was in his bedroom I then took him to my father's bedroom.

There were both talking in the bedroom I do not know what they were talking about. Whilst walking up the stairs to carry on with my movies and Dumi was also come out to leave the premises but he was busy talking on the phone and I heard that person who was talking on the phone saying

GSM

G.F-S 01/02 P. 21 (61/143186)

Durban North cas 71/07/2011, 69/07/2011

that where are you guys rush rush. then Dumi said wait I am coming I am on my way as I was to close the garage I just saw the Cop (police) one cop said to Dumi put your hands up, he asked what did I do, at that time Dumi was standing in the garage ready to leave as I was standing next to him wanted to close the garage:

When I heard the cop saying put your hands up I then panicked and ran to the balcony as I was running I heard a gun shot then I looked at my brother he also heard a gun shot & started to run I then heard another gun shot. The cops also wanted to shoot me but I tried to hide, but it hit the sliding door.

Whilst hiding at the back of the balcony I saw my father running down and the cop said freeze boyzi, The other cop ran and after my father him. The same cop that that killed Dumi came to me asked, What is my dad's name and I said (Boyzi) he threatened us he said if we don't tell him where my father is he will kill him, then I told the same cop that my father jumped over the fence, another indian indian cop called my brother to go with them somewhere.

~~I know and witness~~

GSM

G.P.S. 01/02

P. 21 (81/143189)

A3 6

Durban North CAS 71/07/2011, 69/07/2011

I then saw the cop carrying my dad's black bag written PRADA in red. While I was in my mother's car when people were talking on the scene I saw the same cop with my dad's bag putting it in his car and closed the door.

I know and understand the content of this statement. I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

I certify that the above statement was taken down by me in front of the deponent and he acknowledges that he knows and understand the content of this statement. This was sworn to before me at Durban North on 2011-10-28 at 17:00

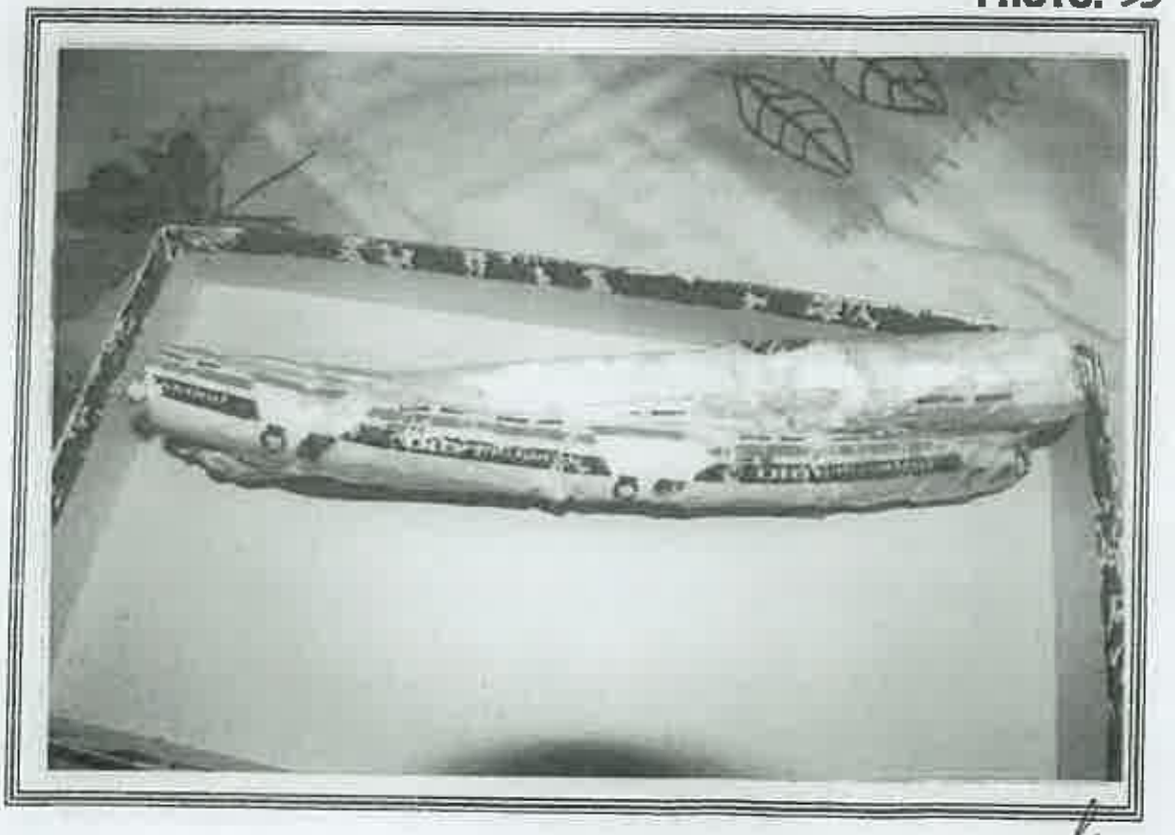
Jabulile Langa
Constable
Off Norine Avenue
Durban North
SA Police Service

G Sm

(ml 8.16

PHOTO: 32

PHOTO: 33



G SM

Cm48.17

PHOTO: 34

G5m

Cml48.18

PHOTO: 26

PHOTO: 27

G 5m

CM49
A13

KwaMashu C.I. 115/05/2005
Thamsanqa Paul Mazibuko - 0718231740.
Further states under oath as follows

On Friday 2005/07/31 at about 17:00 Fulwana Zwane who is the accused in this case came and fetch me at home Lufan's we were not in good terms with him he came to fetch me so as to reconcile. He took me with his car BMW whose number plate is unknown to me and he drove with me to his home at F-Section. He then washed his car and while he was washing his car I was next to him but outside the car.

2

After he had finished to wash his car we then drove to Durban North at No Name to have supper and we did have supper. When I was with him he received calls from his friend Bongani of Tin and mistaken he received three (3) calls and he was asking where he was and he was telling Bongani that we were at Nando's but we were coming back. After we've finished eating we drove back to KwaMashu and we first passed his friend house the one who was phoning him. His friend was at U Section at Emabalini. Fulwana went to Bongani and my father after that I heard Fulwana saying that

G.S.M

KwaMashu 101
Thandeka Pearl Magibulo continues

he was going straight home and he came to the 101 and drove to F section where Fikwana was selling.

3

At F-section Fikwana parked his car inside the yard and he asked me to enter his house but I refused. Within five minutes of our arrival I heard the banging doors of cars closing. I turned back to see who were those people banging the doors and I saw two white males with a uniform with firearms on their hands and I told Fikwana that there were police and he told me that police were coming to search what were looking for but they were going to go and leave us.

4.

There two white males went to opposite direction one came to my side at ~~right~~ left front passenger door and the other came to right drive door where Fikwana was. One grabbed me and took me to his room and the other one grabbed Fikwana and pushed him to the wall and his hands were stretched and up in the air as the white males have instructed Fikwana and he complied.

GSM

Kwa Mashu 105
Thandile Paul Masilela continued

5

When I left of the car I left Fikiwane on the wall outside his car. When I on that side where I was taken to an African male one white males was asking me where and I fell in love with Fikiwane and did he used to leave me in his mind right at 00:00. I told him that we were were in love for a Year and he had not left me at night when we were together.

6

When I was on that side where I was taken to I had several gun shots ± eight, but I am not too sure they were more than one. I asked two African males that were with me that what is Fikiwane who was shot and they replied yes and I further asked why they were shooting him and they responded that the white males will tell them as only the white males were with him. I then heard that Fikiwane was trying to shoot at the white males but that was confusing to me as Fikiwane was already under their control and when I was with him from 17:00 till he was shot he did not have any firearm in his ~~possession~~ possession.

GSM

KwaMasha cor
Thandeka Pearl Madlala states

I deny that Fulwana had to shoot at the police because I was with Fulwana from 17:00 and he washed his car in my presence and if it was broken in as Colbyville that Colby was not working it was locked and if the firearm was in his possession on his body I would have felt or seen it as we were touching each other very closely as lovers if it was hidden on his legs I would have seen it because when he washed his car he became wet and took a walking bath and washed his feet in my presence and changed the shoes and unlifted his trouser so I am definitely sure that there was no firearm in his possession.

I know and understand the contents of this statement.
I have no objection in taking an oath.
I consider an oath to be binding on my conscience.

I certify that the above statement was taken down by me. The deponent has acknowledged that she knows and understands the contents of the statement which was read over to me in

GSM

CMSO
Exh C #3

ESTCOURT CAS 34 / 08 /2008

FULL NAMES & SURNAME: Mpendulo Magomezulu

I. D: SEX: Male AGE: 25 OCCUPATION: Taxi Driver

NATIONALITY: S.A. CELL NO 0726200240

RESIDENTIAL ADDRESS: 74 Dale Avon Flat Avondale Rd.

TELEPHONE NO (H): Morning Side Durban.

BUSINESS ADDRESS: c/o

TELEPHONE NO (W):

STATE IN ENGLISH UNDER OATH:

(1)

I am an adult male person of the above given particulars.

(2)

On Wednesday 2008-08-06 at approximately ±15:00, I was with Muzi Majola (Deceased) when we were arrested by the Police. We were at Glenroe

(3)

From there the Police who were driving in two (2) Cars, took me into one Car, and Muzi into another Car.

(4)

The Cars then followed each other to Durban. When we got in Esikant on the Freeway, the Cars went into a Service Station at Midway.

EGSM

15th court CAS 34/08/2008 CMSO 44 13

G P-9 01/02 P. 21 (81/143198)

Statement of Mr. M. Mugomezulu Cont.

(5)

At the service station, I requested to go into the toilet and the two (2) Police officials who were with me in the car took me to the ~~toilet~~ toilet, where, I was uncuffed on one hand and I urinate. Thereafter I had finished, they put on the handcuffs and took me to the car.

(6)

When I was in the car, the Police took Muzi out of the car and he was excited to the toilet too. When he was going to the toilet he was handcuffed at the back as me.

(7)

He went into the toilet, and I do not know how many Police officials went into the toilet with him.

(8)

Suddenly I heard a noise that quickly followed the by the gunshot, and I saw one White Policeman coming out of the toilet running. I saw all Police officials who were outside running into the toilet. Then they kept on coming in and

GSM

Estcourt CAS 34 /08/2008

Statement of Mr. M. Mngomezulu Cont.

out of the toilet. After a while one Policeman asked me if I heard what had happened and I told him, that I heard nothing, and he then told me that Mnzi has been shot dead.

That is all what I can say.

I know and understand the content of this affidavit.
I have no objection in taking the prescribed oath
I consider the prescribe oath to be binding on my conscience.

SIGNATURE OF A DEPONENT

I certify that the deponent has acknowledged that he/~~she~~ knows and understand the content of the above statement, which was sworn to before me and the deponent's signature was placed thereon in my presence at ESTCOURT on 08/08/06 at 21:23

COMMISSIONER OF OATH

MZWANDILE ABEDNEGO ZUMA
FULL NAME AND SURNAME

D/Insp.
RANK

South African Police Services
172Albert Street
Estcourt,3310
(036)3429525/6

G SM

Estrand Cos 34-08-08

(MST.)
A27
(8)

PHOTO 8

GSM

CMS1.2
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M.

Sokoma Cas 34 - 06 - 18

G Smith

Sgt Ward Cas 34-08-08

CMS 13

A27
(10)

PHOTO 10

G Smith

CMST-4
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(11)

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PHOTO 11

G Smith

CM 57.5
A27
(1)

Statement Page 34 of 48

PHOTO 12

Statement [illegible] 3X. [illegible] Cons 51.6 A23 (1)

PHOTO 13

GSM

Second Case 34.08.08

CMST-B

PHOTO 14

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CMSI 8
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(19

Estate and Cas 34-08-08

PHOTO 19

GSM

SEQ 29/2021-624

EST COURT CAS 34/03/2008 CMS2 A31

GP – S 81/804248 J55 (81/804248)

No. 26Year 2010

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Held at **ESTCOURT** in the district of **ESTCOURT**

By MICHELLE GELDENHUYS magistrate

of the said * district ESTCOURT

on (date) 22/03/2010 into the circumstances attending the death of the person mentioned below

Findings in terms of section 16 of the Act
MUZI SANELE MAJOLA, IDENTITY NUMBER 821112 5838 08 1, MALE

(State full name, identity number or age and sex)

(b) **Date of Death 06/08/2008**

(c) **Cause or likely cause of death**

MULTIPLE GUNSHOT WOUNDS TO THE BODY

(d) **Whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person .**

Yes, Insp Eric Alfred Ngt who shot the deceased

LANDROS PRIVAATSAK/PRIVATE BAG X7057 ESTCOURT 3310

Date: 2010 -03- 22

M GELDENHUYS
Judicial Officer

NOTE: 1. Section 15 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall set forth that fact.

2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke "should be followed.

DIRECTOR OF PUBLIC PROSECUTIONS

LANDROS PRIVAATSAK/PRIVATE BAG X7057 ESTCOURT 3310

In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959) I submit herewith the record of proceedings.

Date: 2010 -03- 22

M GELDENHUYS
Judicial Officer

The record is returned herewith for filing. My reference number is IN0965/2010

The Director: Public Prosecutions has decided to prosecute / not to prosecute.

Date: .....

PUBLIC PROSECUTIONS PRIVATE BAG/PRIVAATSAK 2010 -04- 26 PIETERMARITZBURG 3200

.....
Chief Clerk to the Director: Public Prosecutions

PUBLIC PROSECUTIONS PRIVAATSAK/PRIVATE BAG X7057 03 MAY 2010 ESTCOURT 3310

G SM

Estcourt Case 34-08-08 A25

ESTCOURT SA POLICE
STATION COMMISSIONER
SA POLICE SERVICE ESTCOURT

P O BOX 10
ESTCOURT
3310

Forensic Chemistry Laboratory
Private Bag X282
Pretoria
0001
Tel: (012) 322 66 00
Fax: (012) 320 6385

Reference PM-04024-08
Print Job 493

AFFIDAVIT

I, Solomon Saleleni Mathebula, hereby make oath and say :

1 I have a B Tech in Analytical Chemistry from Pretoria Technikon and am in the employ of the State at the Forensic Chemistry Laboratory of the National Department of Health in Pretoria

2 On the 19-August-2008 the Laboratory received a sealed container from ESTCOURT SA POLICE, with seal number FA071827 and bearing the identification mark

34/08/08 183/822/08 sap 13/493/2008

3 The container was kept in an access controlled area until analysis
On 08-October-2008, in the performance of my official duties,I removed the intact seal and found a blood specimen with a label attached to it bearing the following identification mark:

FA071827

4. I analysed the specimen by means of a process(described as per Annexure) requiring skill in chemistry and obtained the following results:

4.1 The concentration of alcohol in the specimen was 0 00 grams per 100 millilitres

5 I know and understand the contents of this affidavit and have no objection taking the prescribed oath and regard it as binding on my conscience

Dated at Pretoria on October 23, 2008

Solomon Saleleni Mathebula
Forensic Analyst

This signed and sworn before me at Pretoria on October 23, 2008

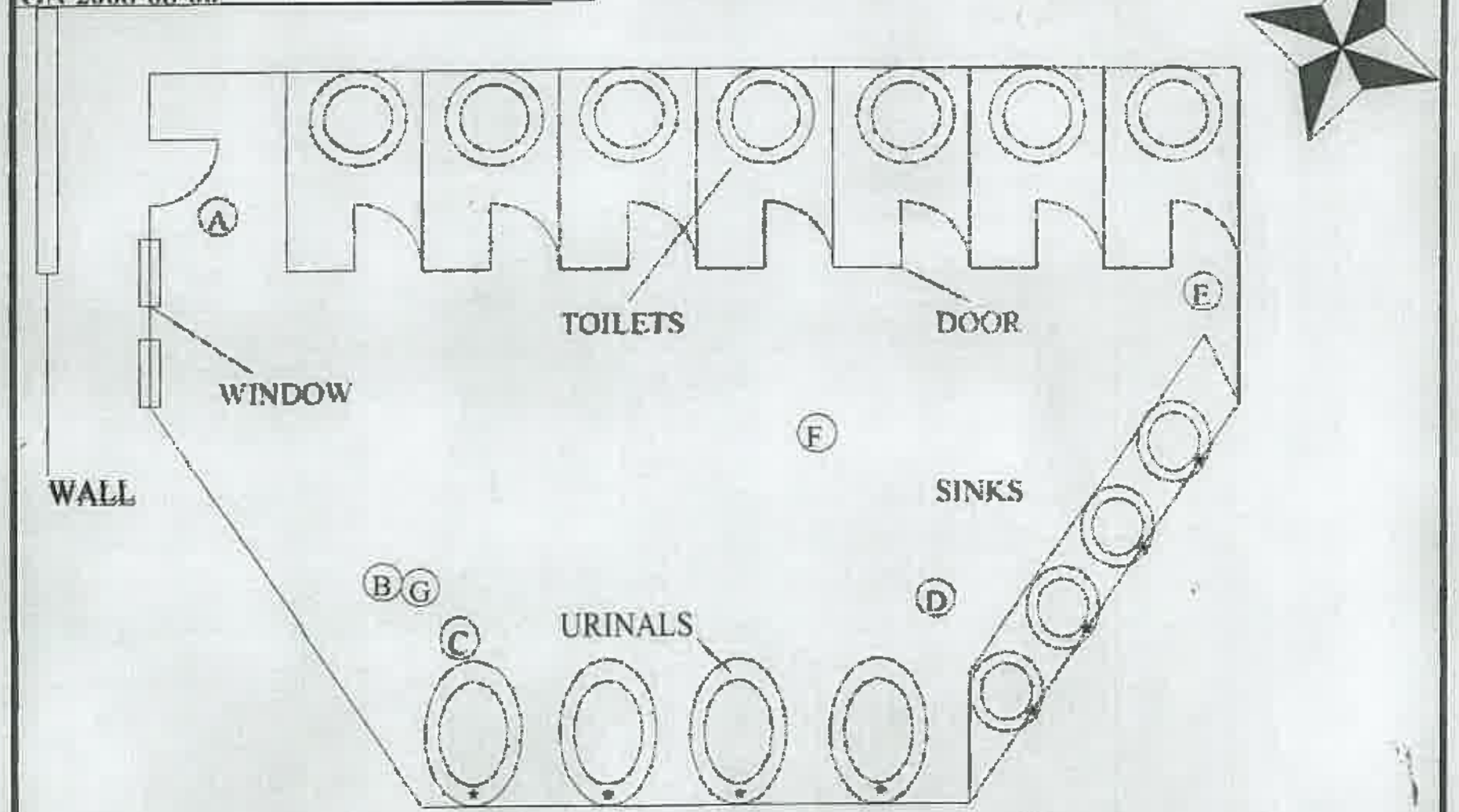
(EX OFFICIO)
COMMISSIONER OF OATH, RSA
Full names and surname: Christelle Mariana Deysel
FORENSIC CHEMISTRY LABORATORY
271 VISAGIE STREET
PRETORIA

493/08

G Smith

LADYSMITH LCRC 61/08/2008
ESTCOURT CAS 34/08/2007
COMPILED BY : SGT. A D BEHARIE
ON 2008-08-06

SKETCHPLAN



MIDWAY ESTCOURT

SEQ 29/2021-626

Statement Res 34.02.08

A.2.

PHOTO 1

Exhibit C
Case 34-56-06

PHOTO 2

SEQ 29/2021-628

SEQ 29/2021-629

Estimated Cost 36.08.08

A/27

PHOTO 4

GSM

D

Statement Case 24-08-08

A2.2
(5)

PHOTO 5

G Sm

Sgt Ground Floor 34-36-38

A27
(6)

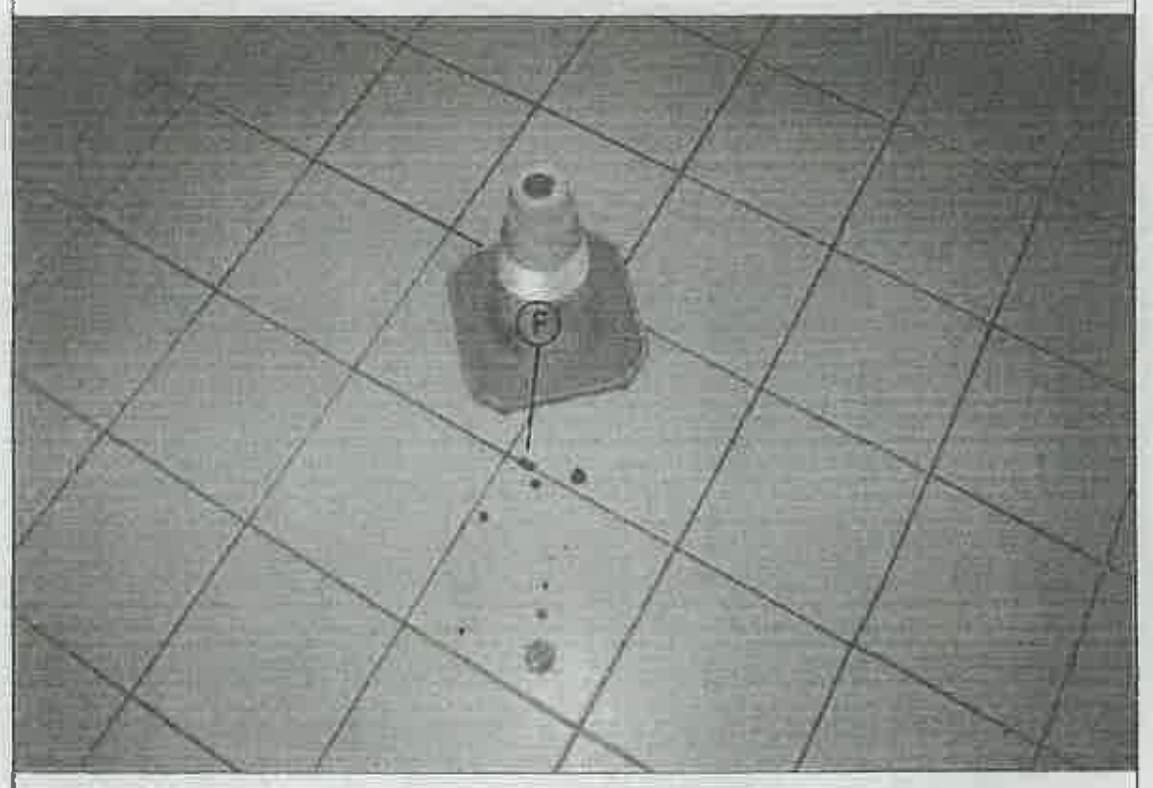
PHOTO 6

GSM

Exhibit Cat Rule 58-8

A27

PHOTO 7



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External Pos [illegible]

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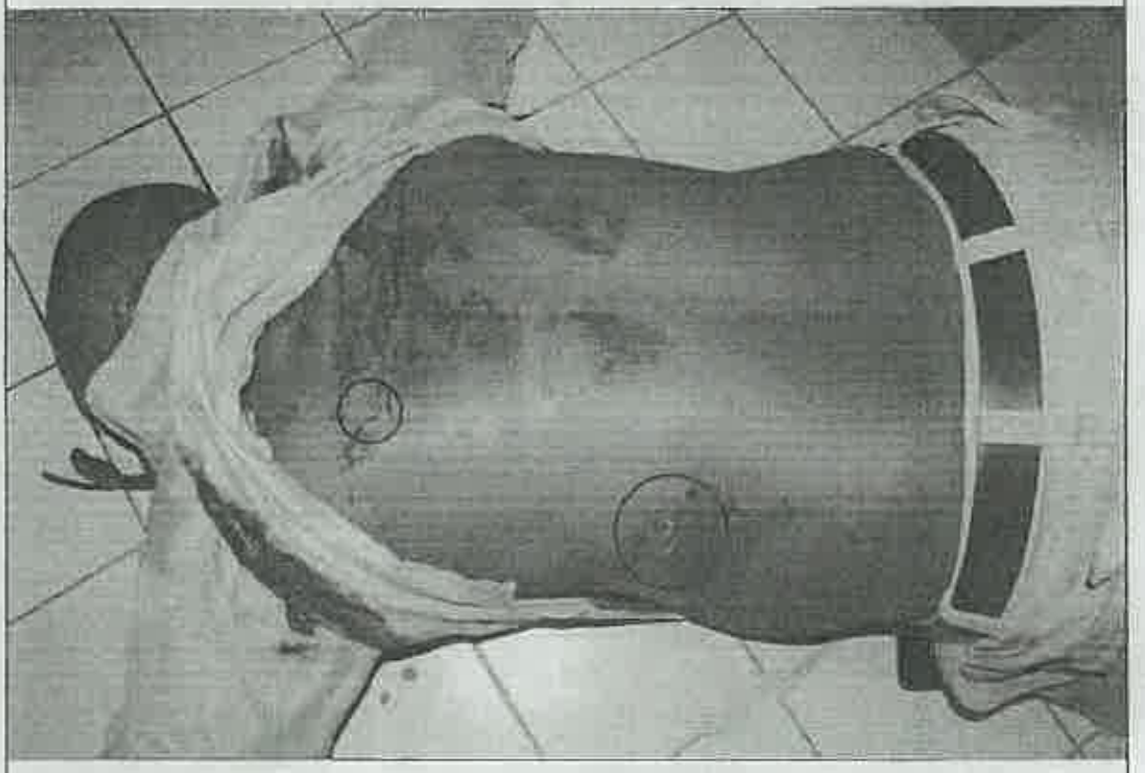
(b)

PHOTO 8



G Sim

Estimate Cos 34-08-08

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(13)

PHOTO 18

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Estate and Cos 34-06-08

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PHOTO 19

G Smith

Statement [illegible] 34 of 38

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PHOTO 9

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Sgt Ground Coal 34-08-08

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(10)

PHOTO 10

G Sm

Statement Page 34 of 46

A27 (iv)

PHOTO 11

G sm

Statement Cos 34 - 85 - 08

A27
(52)

PHOTO 12

G Smith

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PHOTO 13

G Smith

Sotheond Cos 24.08.08

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PHOTO 14

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Secondary Cas PM 08:58

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(15)

PHOTO 15

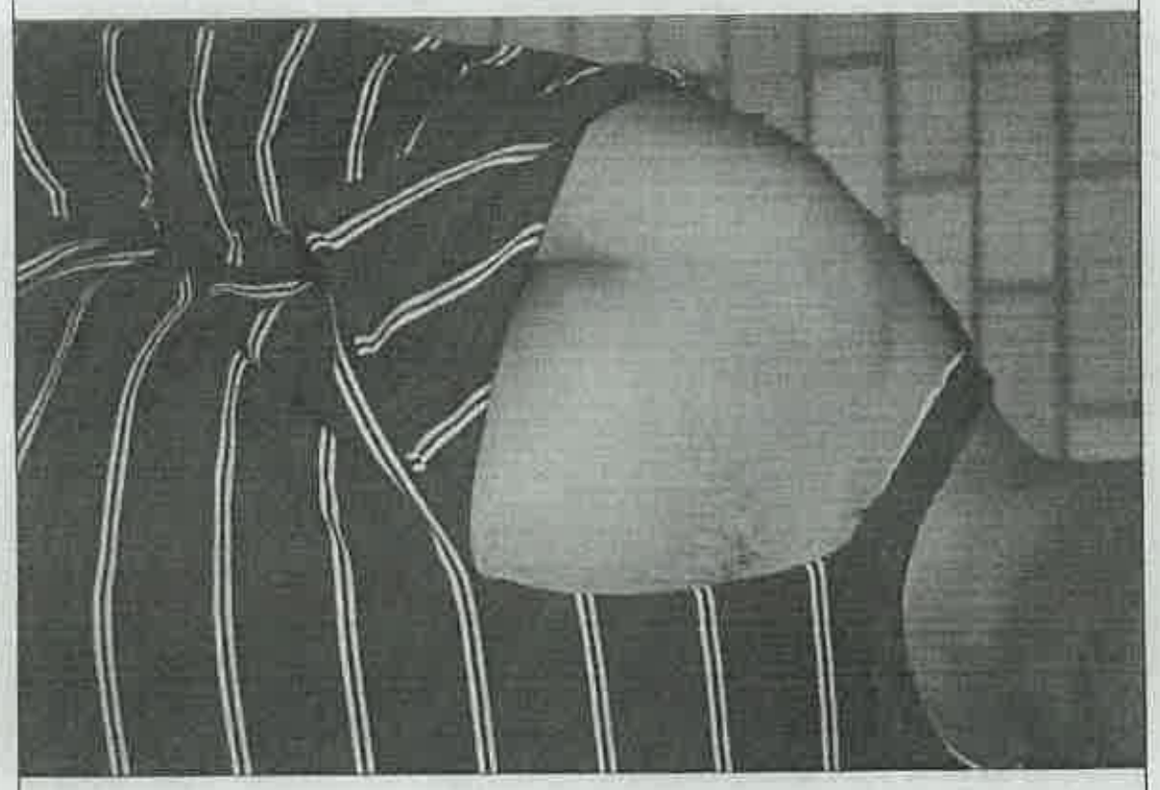

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Exhibit Case 34-07-08

PHOTO 16

Stevens Cres 8K-48-48

A23
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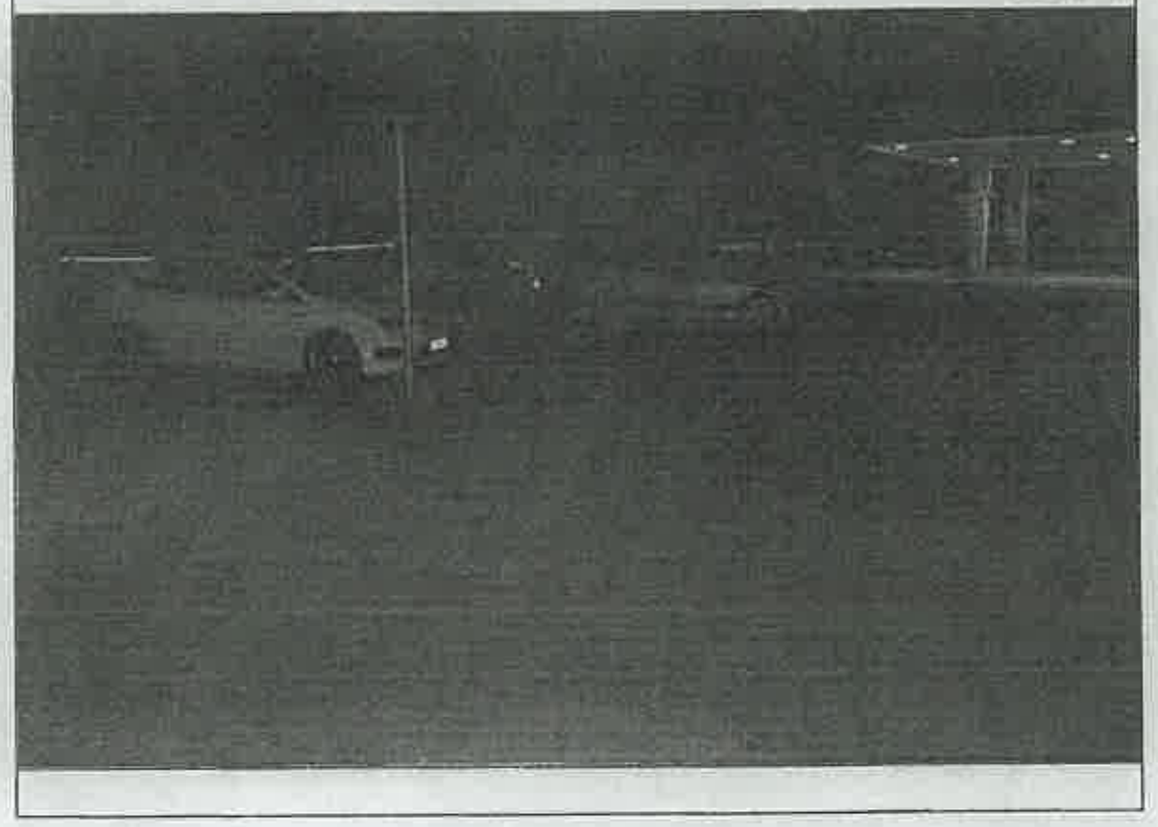
(13)

PHOTO 17



G Smith

Estcourt Pos 24-08-08

A26

MEASUREMENTS

A	-	B	=	2 Steps:
B	-	C	=	1 Step,
C	-	D	=	1 ½ Steps;
D	-	E	=	½ Step:
E	-	F	=	1 ½ Steps, and
F	-	G	=	2 ½ Steps

Scene was indicated by D/Cpl P.N. Khumalo at Midway Filling Station, Estcourt.

A.D. BEMARIE SGT.
0459360-0

G sm

425

KEY TO PHOTOS AND SKETCH PLAN

ESTCOURT CAS: 34/08/2008 **LADYSMITH LCRC: 61/08/2008**

Photo's and sketch plan indicates the Murder scene at the toilets of Midway filling station.

Photo 1	: Indicates the male toilets of Midway filling station where the incident took place.
Point A on Photo 2 & sketch plan	: Indicates the place where Insp. Nel was standing when he allegedly fired shots at the deceased.
Point B on Photo 2 & sketch plan	: Indicates the deceased as found at the scene.
Point C on Photos 2, 3 & sketch plan	: Indicates the firearm Z88 with serial number Q045562, which was allegedly grabbed by the deceased from D/Cst. Naidoo before he was allegedly shot by Insp. Nel.
Point D on Photo 2, 4 & sketch plan	: Indicates the cartridge case as found at the scene.
Point E on Photo 5, 6 & sketch plan	: Indicates the projectile as found at the scene.
Point F on Photo 5, 7 & sketch plan	: Indicates the cartridge case as found at the scene.
Point G on Photo 9, 11 & sketch plan	: Indicates the cartridge which was found underneath the deceased.
Photo's 8 & 10	: Indicates the wounds on the deceased body.
Photos 12 & 13	: Indicates the handcuffs on the deceased hands.
Photos 14 to 16	: Indicates D/Cst. Naidoo who was allegedly assaulted by the deceased before the deceased was allegedly shot by Insp. Nel.
Photo 17	: Indicates motor vehicle Blue BMW with registration number VGN043GP, which was allegedly used by members of Organised Crime Unit to convey the suspect.
Photo 18	: Indicates motor vehicle White Ford Focus with registration number 000SNPGP which was allegedly used by members of Organised Crime Unit to convey the suspect.
Photo 19	: Indicates both the abovementioned motor vehicles.

G SM

Exh I A24

SOUTH AFRICAN POLICE SERVICE **SUID-AFRIKAANSE POLISIEDIENS**

STATION : ESTCOURT CAS: 34/08/2008 LADYSMITH LCRC: 61/08/2008

SWORN STATEMENT :

I ***ASHWIN DEVIDAYAL BEHARIE*** state under oath in English :

I am an *Sergeant* in the South African Police Service, stationed at Local Criminal Record Centre, Ladysmith where I am employed as an official photographer and draughtsman.

On 2008-08-06 at 21:00, I was requested by D/Capt. Khumalo to visit an Murder and Robbery scene at Midway Service Station Estcourt.

The scene and certain points were indicated to me at 21:00 on 2008-08-06 by D/Capt Khumalo.

After making my own observations, I took photographs of the scene and prepared a photo plan and marked out all the relevant points thereon.

I know and understand the contents of this declaration.
I have no objection in taking of the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

LADYSMITH

Date : 2008-09-03

Time: 10:00

SGT.
0459360-0
A.D. BEHARIE

I certify that the deponent knows and understands the contents of this declaration. This statement as sworn to and signed by the deponent in my presence at Ladysmith on 2008-09-03 at 10:30.

Cst
0476565-6
Commissioner of Oaths

ANKI LEIH
CONSTABLE : EX OFFICIO REPUBLIC OF SOUTH AFRICA
LCRC : 43 MURCHINSON STREET
LADYSMITH
3370

Estcourt Cas 34-06-08

A23

SUID-AFRIKAANSE POLISIEDIENS | SOUTH AFRICAN POLICE SERVICE

AFFIDAVIT

Name: MBATHA MKHONZENI EDWIN

ID Number: 651203 5464 088 Age:

Res Add: 1083 ALEXANDER STREET ESTCOURT

Tel: 036 3526819

Work Add: ESTCOURT SAPS

Tel: 036-3522280

Occupation: INSPECTOR

STATES UNDER OATH IN ENGLISH THAT:

ON THURSDAY 2006-10-20 I HANDED OVER THE EXHIBITS AS PER SAPS 13/64/08 TO AMANZIMTOTI BALLISTIC EXPERT. THE EXHIBITS WAS SEALED AND DID NOT RECEIVED ANY DAMAGES WHILE IN MY CUSTODY UNTIL THE HANDING OVER

I know and understand the content of this affidavit
I have no objection in taking the prescribed oath
I consider the prescribed oath to be binding on my conscience.

SIGNATURE OF THE DEPONENT

I certify that the deponent has acknowledged that he/she understands the content of the above statement which was sworn to before me and the deponent's signature was placed thereon in my presence at ESTCOURT on 2008/10/20 at 11:00

COMMISSIONER OF OATH

FULL NAME AND SURNAME

INSPECTOR

RANK

South African Police Services
172 Albert Street
Estcourt

GSM

Estcourt Case 24.08.08

Exh Q A13

Form **GW 7/5** **Pietermaritzburg PM: 183/822/2008**

REPUBLIC OF SOUTH AFRICA
DEPARTMENT OF HEALTH- PROVINCE OF KWAZULU-NATAL

AFFIDAVIT IN TERMS OF SECTION 212(4), ACT 51/1977

REPORT ON A MEDICO-LEGAL POSTMORTEM EXAMINATION

Pietermaritzburg PM: 183/822/2008
Estcourt.Case No. 34/08/08 Estcourt.

To the Magistrate of **ESTCOURT**

I, **Gantcho Prodanov Gantchev** state under oath that I declare that the following statement is true to the best of my knowledge and belief, and that I made this statement knowing that if it is tendered in evidence that I will be liable to prosecution if I wilfully state in it anything that I know to be false, or which I do not believe to be true.

I am a medical practitioner registered with the **Health Professions Council of South Africa)** [registration number: MP 0510645] I am employed by the **Department of Health - Province of KwaZulu-Natal, Forensic Pathology Services** as a **Chief Medical Officer.**

That at the State Mortuary, 101 Alexandra Road, Pietermaritzburg

on: 08th August 2008 at 09H00, employing my skill in Anatomy, Pathology, Medicine and Clinical Toxicology, I examined the body of an Adult Black Male

This body was identified to me by: Miss N Nyathi of Department of Health, Medico-legal Laboratory, 101 Alexandra Road, Pietermaritzburg.

as being that of an: Adult Black Male [PM 183/822/2008]

whose reputed age was: .....years old.

that the body of the found deceased was dead:

a) **as informed on 06/08/2008 at 15H05**
b) **X 2 days** prior to my examination.

THE CHIEF POSTMORTEM FINDINGS MADE BY ME ON THIS BODY WERE:

1. ***Multiple gunshot wounds to the body as the fatal ones are the wounds to the right face and left posterior armpit.***
2. ***The wound to the left anterior chest perforating left upper lobe of the lung was produced while the body was lying down on its back. (the exit gunshot wound showing shored edges).***

GSM

Sgt Grant Cas 34 · 08 · 08

A13 (2)

3. *The wound on the right anterior face appears to be close range gunshot wound and was linked to left lumbar back exit (according to the bullet canal), appears to have been produced while the victim was lying down on its back.*
4. *The wound on the posterior armpit was linked to the bullet on right side of the neck according to the bullet canal. This is the gunshot which fractured 6th and 5th spine bones (condyles) causing the body fall immediately due to the bullet effect on the spinal cord.*

SCHEDULE OF OBSERVATIONS

GENERAL

1. HEIGHT: 1.75m WEIGHT: +-105kg
   PHYSIQUE: Tall NUTRITION: Obesed Grade I - II

2. SPECIAL IDENTIFYING FEATURES: The body was that of an **Adult Black Male; with moustaches.**

3. **SECONDARY POSTMORTEM CHANGES:** Rigor mortis absent; Hypostasis is identifiable and established over the back of the body.

4. **EXTERNAL APPEARANCE OF BODY AND CONDITION OF LIMBS:**

(A) ***Clothing: Greenish T-shirt, bloodstained, penetrated on left front, 3 X mid back and 1 X on left back; Grey shorts, khaki socks.***

(B) **Injuries: [Refer to Annexure A]**

1. **Round perforation to the right face sized 8mm in diameter, sized x8mm in diameter, surrounded by blackening and multiple tattooing measuring 70 x 60mm, commencing 1555mm up the heel and 70mm from the midline consistent with a close range gunshot wound.**
2. **Round perforation to the left anterior chest sized 5mm in diameter, surrounded by a rim of abrasion from 1 to 4mm in width, commencing 50mm from the midline and 1340mm up the heel, consistent with a close range entrance gunshot wound.**
3. **Leaf shaped laceration to the posterior area of left armpit, sized 15 X 9mm commencing 1350mm up the heel and 220mm from the midline, consistent with atypical entrance gunshot wound.**
4. *Leaf shaped laceration to the left lumbar back, measuring 22 X 4mm, commencing 1170mm up the heel and 150mm from the midline consistent with an exit gunshot wound.*
5. *Round perforation to left shoulder region, sized 5mm in diameter surrounded by a rim of abrasion from 1 to 6mm in width,*

CSM

Eastbound Cas 24.08.08

A/3 (5)

commencing 1350mm up the heel and 100mm from the midline consistent with exit gunshot wound related to the entrance in front of chest.

(C) Signs of Medical Intervention:

None.

HEAD AND NECK

5. **SKULL:** Intact

SCALP: Intact.

6. **INTRACRANIAL CONTENTS: BRAIN MASS: N/A g**
Brain – Intact; unremarkable.

7. **ORBITAL, NASAL AND AURAL CAVITIES:** Intact.

8. **MOUTH, TONGUE AND PHARYNX:** Blood into oral cavity; fractured right side of mandible.

9. **NECK STRUCTURES:** Bleeding bilaterally-into deep neck muscles

CHEST

10. **THORACIC CAGE AND DIAPHRAGM:** Left chest cage penetrated between 4th and 5th ribs anteriorly and through 8th rib laterally; Left chest cage penetrated between 3rd and 4th rib laterally; ±600mls blood into left chest cage present. Fractured ribs on left side-1st and 2nd-posteriorly and 9th rib-laterally.

11. **MEDIASTINUM AND OESOPHAGUS:** Oesophagus – bleeding behind and between oesophagus and trachea.

12. **TRACHEA AND BRONCHI:** Intact.

13. **PLEURAE AND LUNGS: RIGHT MASS:** N/Ag **LEFT MASS:** N/Ag
Right Lung – intact, well expanded
Left lung – Penetrated left upper lobe through and through; bruised left lower lobe.

14. **HEART AND PERICARDIUM: HEART MASS:** N/A g.
Heart sac – intact; coronaries – patent.

15. **LARGE BLOOD VESSELS:** Intact.

ABDOMEN

16. **PERITONEAL CAVITY:** Intact.

G Smit

External Cas 34-08-08

A13
14,

17. **STOMACH AND CONTENTS:** ±200mls of well digested food.

18. **INTESTINES AND MESENTERY:** Intact.

19. **LIVER, GALLBLADDER AND BILIARY PASSAGES: LIVER MASS: N/Ag.**
Liver – Intact, unremarkable.

20. **PANCREAS: N/Ag**, Intact.

21. **SPLEEN: SPLEEN MASS: N/A g.**
Intact.

22. **ADRENALS:** Intact.

23. KIDNEYS AND URETERS: RIGHT MASS: N/Ag LEFT MASS: N/Ag
Both Kidneys – intact.

24. **URINARY BLADDER AND URETHRA:** ±300ms or clear urine.

25. **PELVIC WALLS:** Intact.

25. GENITAL ORGANS: Intact.

SPINE

27. **SPINAL COLUMN:** Dissected partly-neck part. only, showing fractured body of C6 and C5.

28. **SPINAL CORD:** Not exposed.

29. **SPECIMENS RETAINED:**
(a) **Nature of specimen/s**
(b) **Nature of investigation required**
(c) **Disposal of specimen/s**

	(a)	(b)	(c)
1.	1 X Bullet	Ballistics	Investigating Officer Insp. Diamini
2.	Blood	DNA-07D4AA7591MX	Insp. Diamini
3.	Blood	Alcohol-F/A 071827	Insp. Diamini

G Sm

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A13 (5)

Form GW 7/5 Pietermaritzburg PM: 183/822/2008

30. ADDITIONAL OBSERVATIONS:

1. Bullet lodged into the deep muscles of right neck related to the atypical gunshot wound of left armpit.
2. Entrance gunshot wound on the right side of face, linked to the exit gunshot wound on left lumbar back.
3. The entrance on left anterior chest was linked to the shored exit on left shoulder blade area.

31. Scribe: .....

CAUSE OF DEATH:

As a result of my observations, I concluded that the cause/causes of death was/were:

MULTIPLE GUNSHOT WOUNDS TO THE BODY

A

I declare that I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.
I swear that this statement is true, so help me God.

Dated at **PIETERMARITZBURG**

on this 13th DAY OF AUGUST 2008.

SIGNATURE: _____

DR GP GANTCHEV

QUALIFICATIONS: **MD; Dip.For.Med. [SA]**

DESIGNATION: **CHIEF MEDICAL OFFICER**

ADDRESS AND TELEPHONE NUMBER:

Nedbank Building
161 Pietermaritz Street
Pietermaritzburg
3201

Tel. 033 - 3410806

G Sm

Sastrand Cas 84-58-08

A13
16

Form GW 7/5

Pietermaritzburg PM: 183/522/2008

I certify that the deponent has acknowledged that he knows and understands the contents of the above declaration, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

Thus signed and sworn to before me at : PIETERMARITZBURG

on this 13 **day of** AUGUST 2008

COMMISSIONER OF OATHS, R.S.A.

Full Name: SPHINDICE EVIDENCE SITHOLE

Address: 101 ALEXANDRA ROAD
PIETERMARITZBURG
3200

Rank: MORTUARY MORTUARY SUPPORT.

TRANSCRIBER'S CERTIFICATE

I, THE UNDERSIGNED, DO HEREBY CERTIFY AND DECLARE THAT THE AFOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF THE FINDINGS RECORDED BY MEANS OF A SCRIBE IN THE EXAMINATION OF THE ABOVE POSTMORTEM.

PERFORMED BY	:	**Dr GP Gantchev**
TYPED ON	:	**13-08-2008**
TRANSCRIBER	:	.....

THE HANDWRITTEN FORM WAS HANDED TO ME BY: DR GP Gantchev

.....
DEPARTMENT OF FORENSIC MEDICINE

G sm

CM53.1

G SM

Cm53.2

G sm

CMSZ
A3

KWA-MASHU CAS 314 /11/2008

STATEMENT OF: JABULISIWE GLADYS MASONDO OF E1141 NTUZUMA T/SHIP, UNEMPLOYED, TELEPHONE NUMBER 031-5093827

STATES UNDER OATH: IN ENGLISH

1

I am an adult female with the abovementioned particulars and I am the deceased mother in this case.

2

On Wednesday 2008-11-12 at about 00:00 I was at home sleeping and all my children were also at home sleeping in the same but different rooms, Nhlanhla as well was sleeping in his room in the same house. Whilst sleeping I had a knock at his room and he responded as to who that was .Someone replied and said he should open the door and it was the police. I quickly went to Nhlanhla's room, he wanted to open the sliding door in his room the one you can enter from outside. I told him not to open his room sliding door and that I will let the police in the house through the kitchen door. I told him that he must inform the police that we will open the kitchen door they must just come to the kitchen side and yet he did .

3

We both went to the kitchen with Nhlanhla and I opened the door for the police. The white males without police uniform came inside through the kitchen door. These police officers instructed me to get out of the house and I refused to do so.Nhlanhla wore black slip on sandals, tracksuit pant and a short sleeved sweater.Nhlanhla did not have any kind of weapon in his possession. The police officers pushed Nhlanhla to his bedroom and I followed them, Nhlanhla told me not to worry because he knows those police officers they are from Cato Manor SAPS. The police officers refused to let me inside Nhlanhla's bedroom and I ended up waiting in the passage not far from Nhlanhla's bedroom.

4

The police officers started making noise talking very loud in English and Afrikaans and I had several gunshots but Nhlanhla was quiet all this time. After those many gunshots another two gunshots were fired and those were two last gunshots fired in my house. I wanted to get inside my son's room but the police constantly denied me access. The police had already opened the sliding door at Nhlanhla's room the one that you can gain entry from outside. The police were in and out Nhlanhla's bedroom using that sliding door.

5

After the police were done with the shooting, other police officers came to me and told me that they were looking for Senzo that is my younger son than Nhlanhla.I asked them what exactly they wanted from Senzo.The police officers told me that they were looking for Nhlanhla's firearm, he might know its whereabouts as the brother. They kept on going in and out with Senzo looking for a firearm. I told the police officers that Nhlanhla did not own any firearm and there was no weapon in my house. A white police officer came to me and said he was sorry and I asked him what was he sorry for and he did not tell me, he then asked Nhlanhla's age, I told him and he left me standing. An african

x Jgl Masondo

GSM

KWA MASHU CAS 314-11-2008 43

police officer approached me and asked me why are we not handing over the firearm that is sought by the police. I told that police officer that there was no firearm in my house.

6

I peeped through a small space on Nhlanhla's bedroom door and I saw Nhlanhla lying on his bed and his feet hanging and there was blood on his pillow. The police still constantly denied me access to Nhlanhla's room. I think after two hours another group of police officers came in and I asked them which police station they come from .They told me they came from Kwa-Mashu SAPS. After the Kwa-Mashu police came I had a chance to peep again and I saw Nhlanhla lying with the same posture and his feet were almost greyish and I thought my son was dead all along .The police killed my son by shooting him without a reason.

7

After a while the police asked me to come inside and search Nhlanhla's pockets and yet I did .My son was already dead and he was cold, I closed his eyes and mouth. After that police officers told me that I should vacate the house with my other children as there was a bomb in Nhlanhla's room and that it was going to explode. I told them that I was not going to vacate my house as I clearly knew that there was no bomb in my house. I just refused to leave the house and no bomb exploded.

8

After a while after the bomb issue the police said they had found a firearm in Nhlanhla's bedroom and again the police were telling lies, there was never any firearm in my house. It is clear to me that the police officers planted this bomb and a firearm in my son's bedroom. If they are true and honest when they carry out their duties why they not transparent, why did they chase me away .I are believe they closed the door at Nhlanhla's bedroom and killed him in cold blood. After everyone has left Nhlanhla's cell phone, his Absa and Fnb and other clothing account cards were missing.

9

I know and understand the contents of this statement.

I have no objection in taking the prescribed Oath.

I consider the prescribed Oath to be binding on my conscience.

x Jsunsondo

I CERTIFY THAT THE ABOVE STATEMENT WAS OBTAINED BY ME AND THE DEPONENT HAS ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT WHICH WAS SWORN TO BEFORE ME AND HER SIGNATURE WAS PLACED THERON IN MY PRESCENCE IN DURBAN ON 2008-11-13 AT 13:05

G Sm

KIKA MANU CAS 314-11-2008

A3

20188168
N Gibson

NTOMBI GIBSON

30 FIELD STREET

DURBAN

SNR INVESTIGATOR

ICD/KZN

GSM

CMSS
A296

HPCSA Reg. No. MP0248592 Practice No. 5202108

Specialist Forensic Pathologist

DR G. PERUMAL (Reggie)

B.Sc. (U.D.W.) M.B. Ch. B. (Natal)
Dip. For. Med. (S.A.) M Med. For. Path (Natal)

Tel: 031 267 1140
Cell: 082 820 5679
Fax to email: 086 562 5594

5 Northcliffe Ave., Westville
P O Box 1597, Westville.3630
email: reggieperumal@telkomsa.net

16 March 2012

Attention: Mr I Khuba
Head of Task Team
Independent Complaints Directorate
Private Bag X54303
DURBAN
4000

Dear Sir

MEDICO-LEGAL OPINION – DECEASED: DAN PHIRI
TONGAAT CAS 190/03/2009 – PHOENIX PM NO.: 301/2009

I've been requested by Mr Khuba of ICD to provide an opinion on the gun-shot wounds sustained by the deceased in the above matter.

On 8 February 2012, Mr Khuba handed me a copy of the docket. I was subsequently handed cd's containing photographs of the scene and of the Post Mortem Examination.

The following observations were made:
The deceased was in a motor vehicle when he sustained gun-shot wounds from four (4) projectiles.

G S M

A296

1. Gun shot entrance wound on the right side of face:
   - This wound is a large wound with a large margin of abrasion with associated blackening.
   - It entirely consistent with a loose contact/or incomplete contact wound.
   - The projectile passed through the face and exited through the left lower side of the face.
   - This exit wound has a rim of abrasion and is referred to as a "shored" wound, meaning it was in contact with something when the bullet exited, in this case, it is most likely the back of the left hand of the deceased.
   - This is an atypical entrance wound.
   - The projectile then exits via the left index finger.
   - The projectile then struck the left shoulder superiorly but having lost energy when it passed through the face and hand, it did not penetrate into the chest cavity.
   - This projectile would have been in the motor vehicle.

2. Gun shot entry wound on the right side of face, anterior to the contact wound:
   The projectile passed through the face and exited via the left nostril. This projectile then passed through the fingers of the left hand creating an atypical entry wound. The projectile would have been in the motor vehicle.

   When considering the wounds in respect of the above two shots, the left hand would have been in contact with the face but the exact position is not known.

3. Gun shot entry wound on the right arm:
   - There was associated blackening of the overlying sleeve of the shirt and minimal tattooing on the skin surrounding the wound. These are features of a close/near wound.
   - The bullet then passed the chest and a bullet was removed from the left lower back.

G S M

A29(3

4. Gun shot entry wound on the right shoulder anteriorly:
   - This wound had a large rim of abrasion on the lateral side. There was also a glancing/linear abrasion to the right wound. The bullet passed into the chest and exited from the left chest wall laterally.

In regard to all four shots, the direction is in the main, right to left and downwards.

When considering the presence of firearm discharge residue in respect of the wound through the arm and the loose contact wound of the face. The shottist was close to the deceased when the shots were fired.

The trajectories pass from right to left, meaning the shottist was to the right and above the deceased.

All the blood relating to the gun-shot wounds are in the motor vehicle, indicating that the deceased in all probability was shot while seated in the motor vehicle. The shot on the right arm, in its track, was associated with laceration of the thoracic cord. This would have immediately incapacitated the deceased.

Yours faithfully,

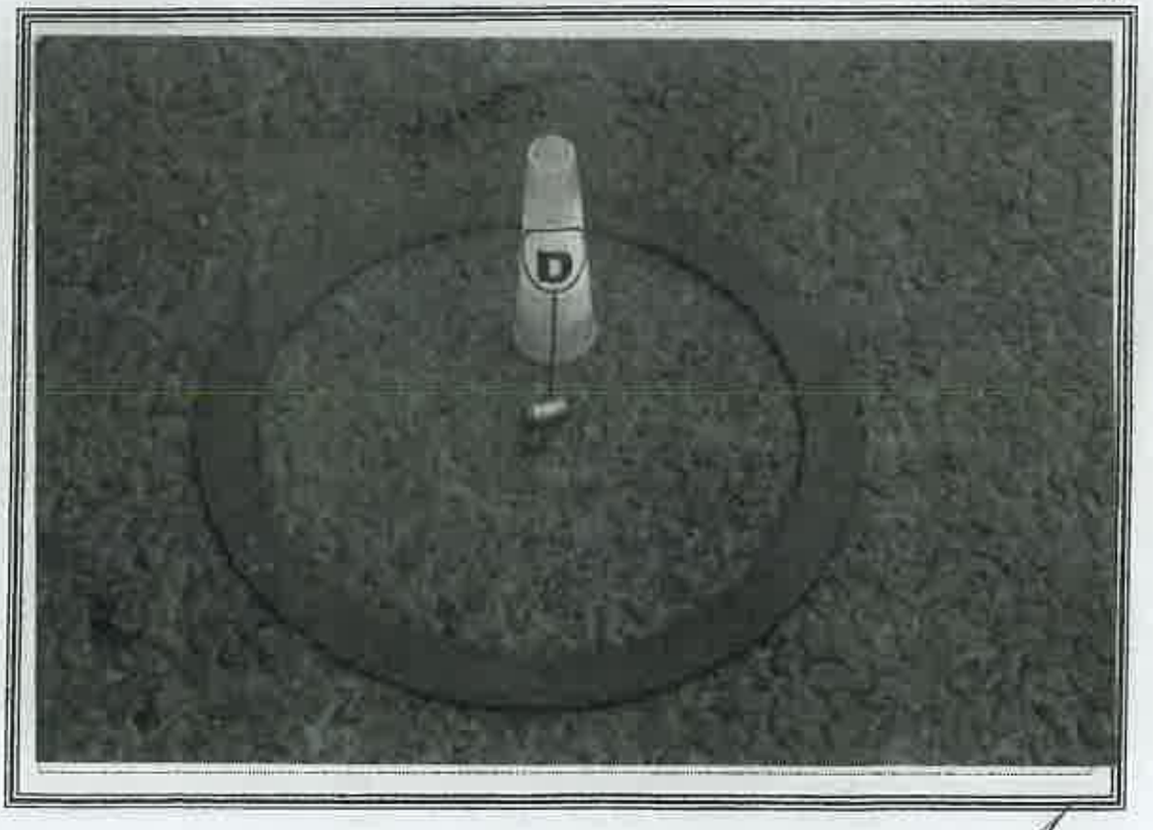
G. PERUMAL

G Sin

TONGAAT CRB 199/031/2009 CM56. A12

PHOTO: 9

PHOTO: 10



G S M

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TONGAT ... 19/03/2009

A12

PHOTO: 11

PHOTO: 12

(Page 2)

SEQ 29/2021-665

A12

TONGAAT ... 19/03/2019

PHOTO: 13

PHOTO: 14

G Sm

CMS63

TONGAAT 19/03/2009

A12
CM56.3

PHOTO: 15

PHOTO: 16

G S

TONGAAT CAC/90/031/299

PHOTO: 17

PHOTO: 18

A12

TONGAAT CRL/90/05/2018

PHOTO: 19

PHOTO: 20

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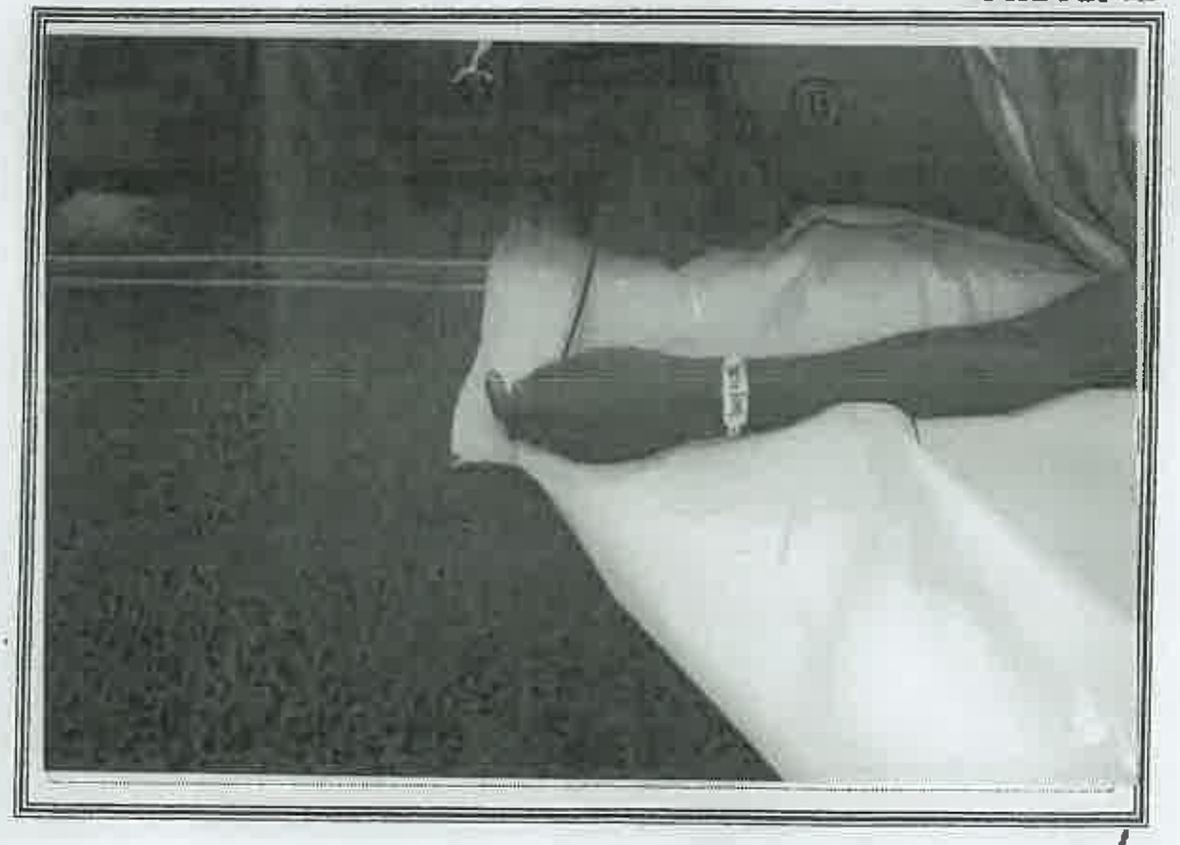
G Smk

TONGAAT CAC/190/02/1/2009

A12

PHOTO: 21

PHOTO: 22



L.95W)

TONGAAT CIC 19/03/2015

A1

PHOTO: 23

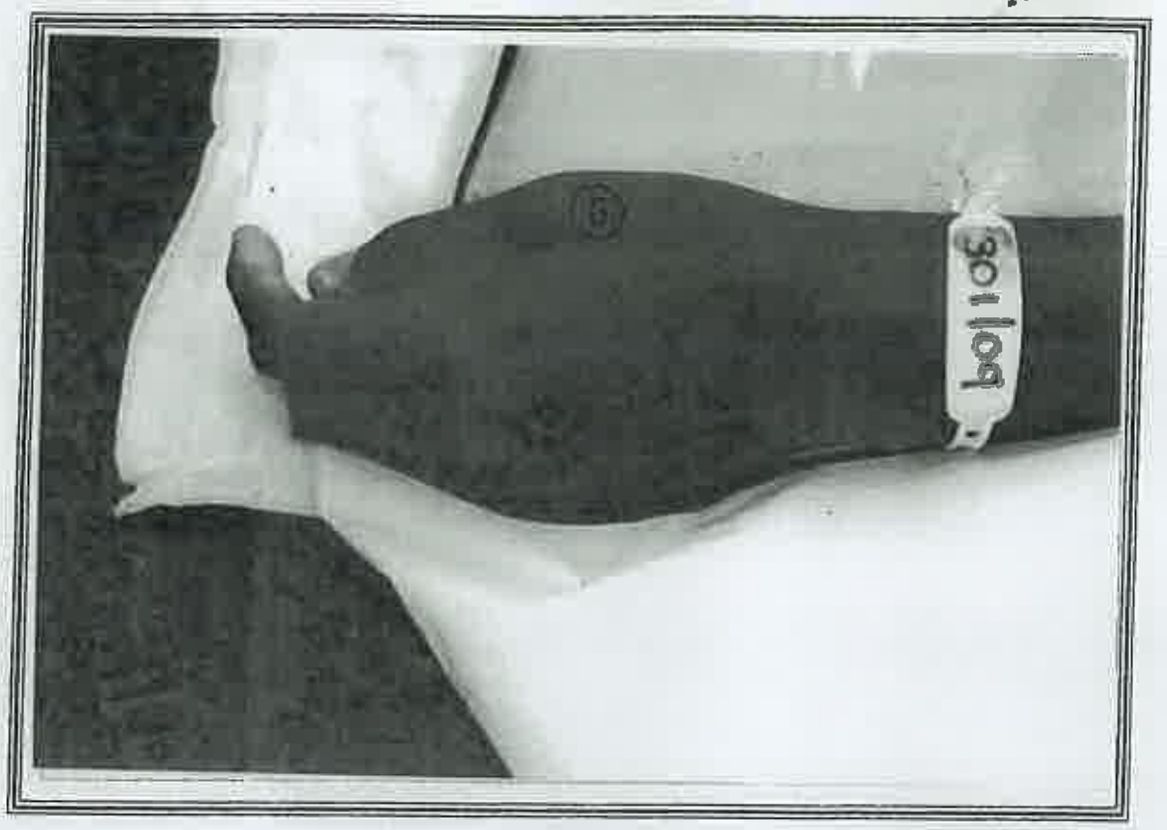


PHOTO: 24

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G S

STUNGAAT CASZ/ [illegible]

PHOTO: 25

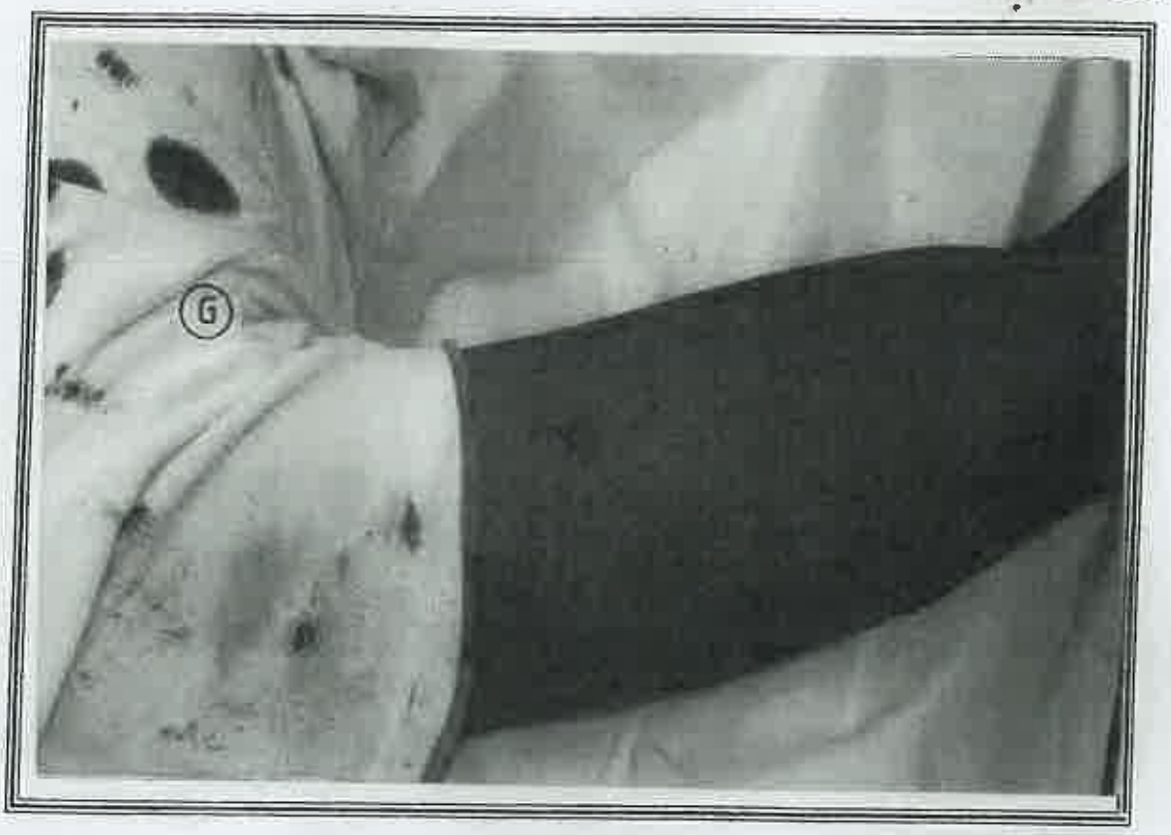

PHOTO: 26

6' 9.5W)

G 5m

/99.03.2005

PHOTO: 27

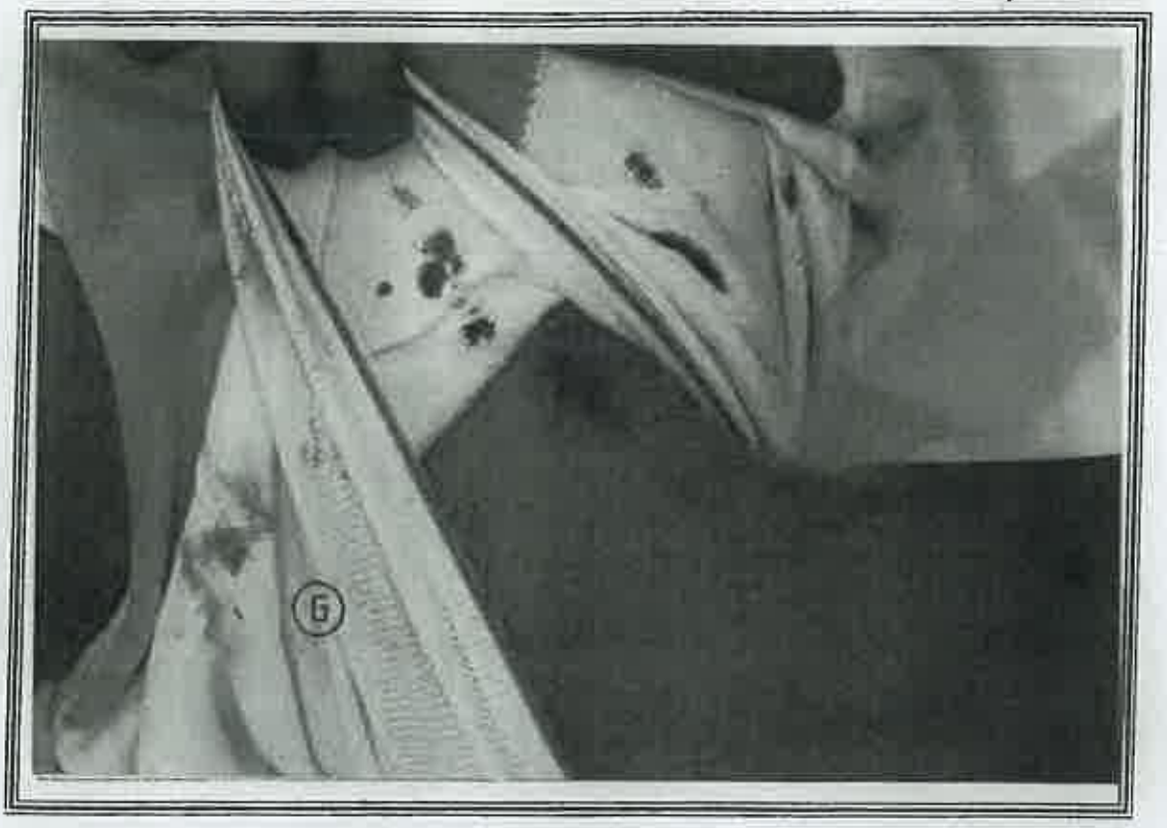

PHOTO: 28

TONGAM ..... /19.03.2009

A12

PHOTO: 29

PHOTO: 30

11.95m

G 5m

TONGAAT CAS/99031/295

PHOTO: 31

G5m

CM5T
A14

NAMES: MANDLA ISMAEL MAVUNDLA
RESIDENTIAL ADDRESS: KOLESTAND MAKWANA
PLACE STAYING TWO CITY IMPERIAL
MONTHS
GENDER: MALE
RACE: AFRICAN
PERSON NUMBER: 2101138652
AGE: 39 YEARS OLD

(2)

I MANDLA ISMAEL MAVUNDLA
STATES UNDER OATH IN ZULU
TRANSLATED TO ENGLISH THAT:

(3)

ON THE 18TH OF MARCH 2020 I
MADE ARRANGEMENTS WITH THE
DECEASED DAVID TO BUY GROCERIES
AT TONGAAT AS WE BOTH STAYED
AT MANDINI. WE WERE NOT STAYING
FAR FROM EACH OTHER AT MANDINI.
THE DECEASED WAS MY COUSIN AND
I WAS USING HIM EVERYTIME TO
BUY GROCERIES FOR THE TUCKSHOP
WHICH I WAS OWNING.

(4)

THE DECEASED ARRIVED AT MY PLACE
AT AROUND ± 07:30 AND HE WAS WITH
ANOTHER MAN WHO IS A MECHANIC AND
WHO USUALLY ASSIST HIM WITH HIS
OTHER VEHICLES AS HE IS A TAXI
OWNER.

(5)

GSM

WE DROVE AND THE DECEASED WAS DRIVING AND THE MECHANIC WAS SITTING IN FRONT AND I SATTED AT THE BACK OF THE VEHICLE. THE VEHICLE THE DECEASED WAS DRIVING WAS AN OLD WHITE TOYOTA COROLLA WHITE IN COLOUR. WE LEFT THE MECHANIC WHERE HE WAS WORKING AND PROCEEDED TO FETCH EMMANUEL TIKALI WHO WAS A FRIEND TO THE DECEASED. EMMANUEL TIKALI SAT AT THE FRONT PASSENGER SEAT AS I CONTINUED SITTING AT THE BACK SEAT ALONE.

(6)

WE DROVE TO THE TAXI RANK AND THE DECEASED TALKED TO ONE OF THE TAXI OWNERS AT THE RANK. AFTER THAT WE PROCEEDED TO TONGAAT AND ALONG THE WAY THE DECEASED RECEIVED A PHONE CALL AND I REALISED THAT THE DECEASED WAS MAKING AN ARRANGEMENT WITH THE PERSON WHO WAS ON THE PHONE WITH TO MEET ALONG THE WAY.

(7)

ALONG THE WAY WE PARKED NEXT TO A SILVER GREY SEDAN. I REALISED THAT IT WAS THE SAME PERSON WHO WAS TALKING TO THE DECEASED ON THE CALL. THE DRIVER CAME

MICLE

GSM

TO OUR VEHICLE BECAUSE THE DECEASED WAS PARALYZED. HE WAS USING TWO CRUTCHES TO WALK AS HE WAS SHOT DURING THE TAXI VIOLENCE THAT DRIVER WHO IS UNKNOWN TO ME TALKED TO THE DECEASED ABOUT A VEHICLE THAT WAS ABOUT TO BE BOUGHT BY THE DECEASED AND THE ARRANGEMENT WAS THAT THE MAN WILL CHANGE HIS VEHICLE AT HIS PLACE AND COME WITH US IN THE DECEASED VEHICLE IN ORDER THAT HE SHOULD SHOW US THE PLACE.

(8)

THE TOYOTA DROVE IN FRONT OF US AND WE FOLLOWED IT ALONG THE WAY WE CAME ACROSS A SILVER GREY BOMBA, A WHITE CORLLA AND A WHITE QUANTUM. IT WAS CLEAR THAT THOSE THERE VEHICLE WHICH WERE UNMARKED WERE WAITING FOR SOMETHING BECAUSE THEY WERE ALL IN A DRIVING MODE.

(9)

WE PASSED THOSE THERE VEHICLE AND IMMEDIATELY ALL OF THEM FOLLOWED US WITH THE BOMBA IN FRONT. THE OCCUPANTS OF THE BOMBA POINTED US WITH RIFLES IMMEDIATELY WHEN THEY WERE DRIVING PARALLEL TO US BECAUSE THEY

GSM

A14

WERE LOOKING ON THE SAME SIDE OF
IN-COMING VEHICLES. TWO WHO WERE
MCCL ON THE LEFT HAND SIDE ON THE
PASSENGER AND ~~FORWARD~~ BACK SEAT WERE
THE ONE WHO PONTIFIED US WITH
THOSE RIFLES. THEY LEFT THE
WHITE TOYOTA WHICH WAS IN
FRONT TO DRIVE AWAY BECAUSE
THEY DID NOT ATTEMPT TO STOP
IT. THE OFFICERS IMMEDIATELY
STOPPED THE VEHICLE.

(10)

ALL THE OCCUPANTS OF THE THREE
VEHICLES GOT OUT OF THEIR VEHICLES
CARRYING FIREARMS AND POINTING
THEM TO US. THEY OPENED THE DOOR
OF OUR VEHICLE AND TOOK OUT
PAYSLEE AND DISMOUNTED OUT OF
THE VEHICLE. THEY INSTRUCTED US
TO LIE WITH OUR STOMACH ON THE
GROUND.

(11)

THEY WENT TO THE OFFICERS WHO
WAS STILL IN THE VEHICLE. THEY TOLD
HIM THAT THEY HAVE BEEN LOOKING FOR
HIM FOR A LONG TIME. THEY FURTHER
TOLD HIM THAT HE IS GOING TO DIE
TODAY. THEY WERE ALL TALKING AND
HE WAS BEGGING THEM NOT TO
SHOOT HIM AS HE WAS ALSO
CRYING. MCCL

ESM

A14

(12)

ONE OF THE WHITE POLICEMEN WHO WAS POINTING THE DECEASED WITH A FIREARM SHOT TOWARDS HIM (DECEASED) TWICE. THAT WHITE POLICEMAN SHOT THE DECEASED WITH A 9MM PISTOL. THE DECEASED WAS NOT A THREAT TO ANY POLICEMAN AS HE WAS CRYING FOR HIS LIFE. THE DECEASED WAS NOT IN POSSESSION OF ANY FIREARM. HIS BODY WAS VERY THIN AFTER HE WAS SHOT DURING THE TAXI VIOLENCE, THUS IT WAS IMPOSSIBLE FOR HIM TO CARRY A FIREARM ON HIS PERSON OR WAIST. THEY CARRIED US FROM THE GROUND AND TOOK US TO THE COURTYARD. I SAW THE DECEASED STANDING FROM THE FORE.

(13)

THERE OF THOSE POLICEMEN DRESS WITH BALACLAVA AND CAMOUFLAGE BUTTO TO CARRY WEAPON AT THEIR OFFICES. WHEN WE ARRIVED THERE THEY SHOWED US THE PHOTO ALBUM OF ALL THE PEOPLE THAT THEY HAD KILLED. THEY TOLD US THAT IF WE DOWN COMPLAIN TO ANY BODY THEY ARE GOING TO KILL US LIKE THESE PEOPLE AND THE DECEASED

(14)

MCCC

MCCC

E SM

(14)

I attended court for several times and came to identify that as the person who got the declaration. I came to know his name because he was always in court on my appearances, and he also testified during my trial.

(15)

Subsequently Ribanel who was present when the deceased was killed, I came to learn that he was killed by the police during early February 2010. I read this on the newspaper.

(16)

That's all I can state.

(17)

I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

MXLL

GSM

A14

I CERTIFY THAT THE ABOVE STATEMENT WAS TAKEN BY ME AND THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT. THIS STATEMENT WAS SWORN TO BEFORE ME AND THE DEPONENTS SIGNATURE WAS PLACED THEREON IN MY PRESENCE

DATE: 10 JANUARY 2018 AT 13:40

ADDRESS: HOUSE ST. ANDREW STREET MOSSEL BAY

RANK: ASD

G smk

SEQ 29/2021-683

CMS8.
A28(1)

DEPARTMENT: INDEPENDENT COMPLAINTS DIRECTORATE
REPUBLIC OF SOUTH AFRICA

STATEMENT FORM

STATION Tonghaat CAS 190/03/2009 CCN: 200903-445

I, MANDLA ISHMAEL MAVUNDLA

STATES UNDER OATH IN ENGLISH THAT:

HOME ADDRESS:

TEL/CELL NO: DATE OF BIRTH:

GENDER: MALE AGE: 39 years

WORK ADDRESS: UNEMPLOYED

TEL NO.:

2

I am a male person and am currently a prisoner at Kokstad Maximum Prison under prison number: 210138652.

3

I hereby give an additional statement to the statement I submitted on the 10th January 2012 to an ICD official Mr Parmeau.

4

I hereby further state that on the day in question when the three vehicles I following us. The BMW grey in colour was driving parallel to Sam Ngcobo's vehicle, behind the grey BMW I

SIGNATURE OF DEPONENT

GSM

A28(2)

was a white Toyota Corolla and the white Toyota Quantum was behind Dan Plin's Toyota Corolla. I also did not memorize the number plates of BMW, Toyota Corolla and the Toyota Quantum however they were of KZN, Durban.

5

I further declare that Dan Plin stopped the vehicle in the middle of the lane that he was driving on after seeing that the occupants of the grey BMW vehicle were pointing us (me, Dan and Sikhumbuzo) with the firearms. The three vehicles stopped the same as they were driving next to Dan Plin's vehicle, meaning the grey BMW parallel to Dan Plin's vehicle, behind the BMW it was a Toyota Corolla and Toyota Quantum behind Dan Plin's vehicle.

6

I and Sikhumbuzo were taken out of Dan Plin's vehicle and we were instructed to lie down on the tar road with our stomach between Dan Plin's vehicle and the other Toyota Corolla vehicle which was behind

SIGNATURE OF DEPONENT

GSM

A28(3)

6

the Grey BMW vehicle. We were facing Dan Pluir's vehicle and I then saw Police officer NEL opening the driver's door of Dan Pluir's vehicle.

7

Police officer NEL then stood very close to Dan Pluri at about ± one metre away. Dan Pluri was still occupying the driver's seat of his vehicle. From where my head was lying to where Police officer NEL was standing it was about ± three metres away.

8

I hereby further state that the deceased told me and Sthembiso that Police officers who were present were not less than ten in number and the majority of them were white in colour.

9

Police officer Magwaza is the one who handcuffed me and took me away from the scene. I came to know Magwaza when we were taken to the Police station and as he introduced himself by Magwaza and further

2021/03/31

SIGNATURE OF DEPONENT

GSM

A28(4)

9

said that he is an investigating officer of the case in which I was arrested. Magwaza then showed me eight (8) count of charges which was written on the list and he (magwaza) said that if we don't confess on all charges we will follow Dan Phiri, meaning that we will be shot

10

I hereby further state the front and rear doors of Dan Phiri vehicle were opened by a white policeman whose name is unknown to me and they were left open.

11

That is all.

SIGNATURE OF DEPONENT

GSM

A28(5)

I know and understand the contents of this declaration
I have no objection in taking the prescribed oath
I consider the oath to be binding on my conscience

SIGNATURE OF DEPONENT

I certify that the above declaration was taken by me and that the deponent knows and understand the contents of this declaration. This statement was sworn to before me and the deponent's signature was placed here under in my presence at Kokstad MAX. PRISON (Place) on 21/03/2012 (Day) at 13:40 (Time)

COMMISSIONER OF OATH

FULL NAME AND SURNAME:

RANK: Investigator

ICD:

ESM

SEQ 29/2021-688

MS9 A20

GP 3 mp. 0059

SA 16.1

Verw. No / Ref. No. 301/2009

STAATSLYKHUIS · GOVERNMENT MORTUARY

LYKSKOUINGSSERTIFIKAAT · CERTIFICATE OF POST-MORTEM EXAMINATION

EK VERKLAAR HIERBY dat ek op die / THIS IS TO CERTIFY THAT ON THE 24th dag van / day of March 2009 om / at 09h45

'n lykskouing gehou het op die lyk van 'n / I held a post-mortem examination on the body of a Adult Black male (Ras en geslag / Race and sex)

wat aan my geïdentifiseer is deur / which was identified to me by C.C. Mazibuko

as die lyk van / as being that of Phoenix PM 301/2009

(Geskatte): / (Estimated): Leeftyd / Age 18yr. Massa / Mass 70kg. Lengte / Height 1.9m.

*Wat oorlede is te/gevind is te / Who died at/was found at Nyanyadeng road Tongaat

op die / on the 18th dag van / day of March 2009 om / at 09h50

Na my beste wete en oortuiging is die dood toe te skrywe aan:
The cause of death to the best of my knowledge and belief was:

Gunshot wound of the chest

Dr T Naidoo
M.B.Ch.B. (Medunsa) Dip For Med (SA)
FC ForPath (SA) UMMC (UKZN)
MP 0262476
Forensic Pathology Services
Private Bag X1 Dalbridge 4014

Datum / Date 24/3/2009

Patoloog / Pathologist
~~Distriksgeneesheer / District Surgeon~~

Die lyk van bogenoemde persoon is aan my geïdentifiseer in die Staatslykhuis deur—
The body of the above-named person was identified to me at the Government Mortuary by—

(naam / name)

van / of

(adres / address)

op / on

(datum / date)

Handtekening van lid / Signature of member

* Skrap woorde nie van toepassing nie
Delete words not applicable

G Smith

SEQ 29/2021-689

AP

KWAZULU-NATAL DEPARTMENT OF HEALTH

IDENTIFICATION OF BODY

Medico-legal Mortuary PHOENIX Death Register /CAS/CR No. PM301/2009

I, Mthwamari Nonhlanhla Pretty Identity No 7705031194084 a/n

(✓ appropriate block)

Adult	Minor		Black	Asian	White	Coloured		Male	Female
✓			✓						✓

Residing at MASHAYENI Reserve Umlazi 818

State under oath / confirm:

On 26 March 2009 at the Medico-legal Mortuary PHOENIX

Identified the body of a:

Black	Asian	White	Coloured		Male	Female
✓					✓	

To Bhekuthe P. Gumede as being that of Univ. Dam Chester.

Particulars of the deceased:

Identity Number 8002016062083 Date of Birth 1980-02-01

Residential Address MASHAYENI Reserve Umlazi 818

Employed at Self-employed

Relationship to deponent BROTHER Marital Status Single

Name and Address of residence /employment of deceased's next-of-kin Same as above 0733518968

The contents of this declaration are true to the best of my knowledge and belief. I am aware that should it be submitted as evidence and I know that something appears herein which I know to be false or believe not to be true, I could be liable to prosecution

I know and understand the contents of this declaration

*I have ~~objection~~ no objection to taking the prescribed oath

*I consider the prescribed oath to be binding /~~not binding~~ on my conscience

X

Signature / thumb-print

(P.T.O.)

1

CSM

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(continued)

I certify that the deponent has acknowledged that he /she knows and understands the contents of this declaration which was sworn to /affirmed before me and the deponent's signature /thumb-print was placed thereon in my presence at

PHOENIX (place) on 2009/03/26 (date) at 12 h 30 (time)

Commissioner of Oaths

Full Names and Surname: BENEDICTA NKUSUNO GUMEDE

Business Address: 177 LONGCROFT DRIVE, PHOENIX, 4068

Designation: Working Support Officer

KWAZULU-NATAL
DEPARTMENT OF HEALTH
FORENSIC SERVICES & BIOETHICS
25 -03- 2009
PHOENIX
MEDICO-LEGAL MORTUARY

ESM

A18

REMOVAL STATEMENT IN TERMS OF SECTION 212(7) OF THE CRIMINAL PROCEDURE ACT, 1977 (No 51 of 1977)

DEATH REGISTER NUMBER: PM 30 / T / 2009

I, NOMPUMELELO P. PHAKA Identity No. 7604142 6

employed by the KZN Department of Health as a TECHNICIAN

and stationed at the Medico-Legal Mortuary at PHOENIX (Place Name)

in the Health District ETHEKWINI (District Name) hereby state under oath:

On the 18 / MARCH / 2009 at 13h00 during the performance of my official duties I received the corpse /human remains of (✓)

Adult	X	Child		Foetus		Age			Gender	X		Race	X	A	B	C

1. From:
Name: S. G. NAIDOO Rank: O/ INSPECTOR
Address: 302 MAIN ROAD, TONGAAT

2. From: REIN NOORSBERG ROAD, UPPER TONGAAT Hospital and conveyed the deceased to the Medico-legal Mortuary at _____

I accompanied the corpse /human remains that was conveyed from REIN NOORSBERG ROAD, UPPER TONGAAT to the Medico-legal Mortuary at _____ in the motor vehicle bearing registration number KZN M_____

The deceased sustained no wounds or injuries whilst in my care.

The contents of this declaration are true to the best of my knowledge and belief. I am aware that should it be submitted as evidence and I know that something appears herein which I know to be false or believe not to be true, I could be liable to prosecution

I know and understand the contents of this declaration
I have no objection to taking the prescribed oath
I consider the prescribed oath to be binding on my conscience

Signature	N. P. PHAKA	TECHNICIAN	2009-03-18
		Designation	Date

The statement was read over by me to the deponent before he /she signed it. I certify that the deponent has acknowledged that he /she knows and understands the contents of this declaration which was sworn to before me and the deponent's signature was placed thereon in my presence at TONGAAT on this 18 day of MARCH 2009

ASSIST O/INSP
Signature
Commissioner of Oaths

Full Names and Surname: SHAN GOPAL NAIDOO
Business Address: 302 MAIN ROAD, TONGAAT
Designation: O/ INSPECTOR

P.T.O.

C 5m

A17

GW 7/15 Phoenix PM: 301/2009

AFFIDAVIT IN TERMS OF SECTION 212 (4), ACT 51 OF 1977
REPUBLIC OF SOUTH AFRICA
DEPARTMENT OF HEALTH KWAZULU-NATAL
REPORT ON A MEDICO-LEGAL POSTMORTEM EXAMINATION

To the Magistrate of **VERULAM/INANDA**

I, **Threnesan Naidoo**, state under oath that I declare that the following statement is true to the best of my knowledge and belief, and that I made this statement knowing that if it is tendered in evidence that I will be liable to prosecution if I wilfully state in it anything that I know to be false, or which I do not believe to be true.
I am a **Senior Specialist** in the Forensic Pathology Services of the Department of Health, Kwazulu-Natal Provincial Administration and a **Honorary Lecturer** in the Department of Forensic Medicine, Nelson R. Mandela School of Medicine, University of Kwazulu-Natal.
I am registered with the Medical and Dental Professions Board of the Health Professions Council of South Africa as a **Specialist Pathologist (Forensic)** [Registration Number: MP0524743].

That at the Phoenix Medico-legal Mortuary,

On **24th March 2009** at **09h45**, employing my skill in Anatomy, Pathology, Medicine and Clinical Toxicology,

I examined the body of an: **Adult Black Male.**

This body was identified to me by: **SC Mazibuko** of **Phoenix Medico-legal Mortuary, 177 Longcroft Drive, Phoenix,**

as being that of an: **Adult Black Male [PM 301/2009]**

whose reputed age was: **29 years**

that the deceased was found dead:
a) as informed on: **2009-03-18** at: **09h50** (the time of death was not established as the body was refrigerated prior to examination).
b) **6 days** prior to my examination.

THE CHIEF POSTMORTEM FINDINGS MADE BY ME ON THIS BODY WERE:
(1) Two perforating gunshot wounds involving the face with associated soft tissue and skeletal injuries.
(2) Penetrating and perforating gunshot wounds of the chest involving the lungs, heart and thoracic spine with partial lung collapse, mediastinal haemorrhage, bilateral haemothoraces and a haemopericardium.
(3) Two perforating gunshot wounds of the left hand with associated soft tissue and skeletal injuries.
(4) Mild renal pallor.

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GW 7/15 **Phoenix PM: 301/2009**

SCHEDULE OF OBSERVATIONS

GENERAL

1. **HEIGHT:** 1.9m **WEIGHT:** ±70kg
   PHYSIQUE: Slender **NUTRITION:** Adequate

2. **SPECIAL IDENTIFYING FEATURES:** Adult Black male with a white plastic identification tag labelled, "301/09," around the left wrist.

   Tattoos: Nil

   Clothing:
   - ✓ a pair of blue and white checked boxer shorts
   - ✓ a pair of grey and white tracksuit pants
   - ✓ orange, yellow, brown and white short-sleeved sweater

   The sweater is blood-stained with multiple defects overlying the gunshot injuries described in paragraph 4. The fabric surrounding the defect overlying the gunshot entry wound described as (6a) in paragraph 4 demonstrates blackening as well as deposition of burnt and unburnt powder in keeping with firearm discharge residue. This segment of the sweater was excised by myself at the time of autopsy and immediately handed over to SC Mazibuko to submit for ballistics.

   Old Scars
   - ✓ 300 x 15mm hypopigmented midline laparotomy scar extending vertically from the epigastrium to the suprapubic region
   - ✓ non-specific scars on the trunk, buttocks and limbs bilaterally

3. **SECONDARY POSTMORTEM CHANGES:** The body was refrigerated prior to autopsy and therefore no comment can be made on rigor mortis or hypostasis. No external or internal features of decomposition observed.

4. **EXTERNAL APPEARANCE OF BODY AND CONDITION OF LIMBS:**

   See Annexure A

   Signs of Medical Intervention: Nil

   General Appearance:
   - ✓ **moustache and beard**

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The following injuries were noted on external examination:

(1a) A circular distant gunshot entry wound measuring 5mm in diameter in the right temporal region, 115mm from the anterior midline and 30mm above the tragus of the right ear. This wound demonstrates an eccentric 1-8mm collar of abrasion which is broadest at the superior border. The absence of any obvious firearm discharge residue is consistent with a distant range of fire.

(1b) 11 x 7mm gunshot exit wound in the lateral aspect of the left nostril, 20mm from the midline and 10mm below the tragus of the left ear.

The direction of the bullet is therefore downwards from right to left in the anatomical position. The gunshot wound tract is associated with soft tissue injury and haemorrhage as well as a right maxillary fracture.

(2a) 14 x 6mm gunshot entry wound in the right pre-auricular region, 135mm from the midline and 10mm above the tragus of the right ear. This wound is oval in shape and demonstrates an eccentric 7-15mm collar of abrasion which is broadest at the lateral border. The absence of any obvious firearm discharge residue is consistent with a distant range of fire.

(2b) 17 x 6mm gunshot exit wound in the left mandibular region 55mm from he midline and 80mm below the tragus of the left ear. This wound demonstrates abraded edges as well as protruding bone fragments.

The direction of the bullet is therefore downwards from right to left in the anatomical position. The gunshot wound tract is associated with:

- ✓ soft tissue injury and haemorrhage
- ✓ haemorrhagic perforation of the tongue
- ✓ left mandibular fracture with displaced bone fragments.

(3) 10 x 5mm defect with an irregular 3-12mm collar of abrasion in the anterior aspect of the left shoulder, 175mm from the midline and 1655mm above the left heel. Subsequent field dissection revealed a non-penetrating injury. The probability that this defect represents a tangential gunshot wound (possibly following the gunshot wound tract described above as 2) must be considered, but correlation with case history and investigative findings is recommended. No obvious evidence of firearm discharge residue observed.

(4a) A circular distant gunshot entry wound measuring 8mm in diameter in the anterolateral aspect of the right upper chest, 155mm from the midline and 1560mm above the right heel. This wound demonstrates an eccentric 5-15mm collar of abrasion which is broadest at the lateral border. The absence of any obvious firearm discharge residue is consistent with a distant range of fire.

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(4b) 13 x 4mm gunshot exit wound in the lateral aspect of the left hemithorax, 255mm from the anterior midline and 1440mm above the left heel.

The direction of the bullet is therefore backwards and downwards from right to left in the anatomical position.
The gunshot wound tract is as follows:

- ✓ skin on the anterolateral aspect of the right upper chest
  ↓
- ✓ anterior aspect of the right 2nd rib
  ↓
- ✓ upper lobe of the right lung involving the perihilar vasculature
  ↓
- ✓ pericardial sac and heart involving the anterior walls of the right and left ventricles
  ↓
- ✓ upper lobe of the left lung
  ↓
- ✓ lateral aspect of the left 5th intercostal muscle
  ↓
- ✓ skin on the lateral aspect of the left hemithorax.

The gunshot wound tract is associated with mediastinal haemorrhage as well as a haemopericardium measuring approximately 200ml with blood clots.

(5) 16 x 7mm non-patterned superficial abrasion on the anterior aspect of the proximal one-third of the right arm.

(6a) A circular gunshot entry wound measuring 5mm in diameter in the anterolateral aspect of the middle one-third of the right arm, 160mm above the right antecubital fossa. This wound demonstrates an eccentric 1-7mm collar of abrasion which is broadest at the inferior border. Although there is no obvious evidence of firearm discharge residue surrounding or within the wound, the findings in the overlying clothing (cf. paragraph 2) are consistent with a near range of fire.

(6b) A palpable bullet in the left lower back, 115mm from the midline and 1300mm above the left heel. A copper-coloured bullet measuring 9mm in diameter at the base with a full metal jacket and rifling marks was subsequently recovered by myself from within the underlying subcutaneous tissue and immediately handed over to SC Mazibuko to submit for ballistics.

The direction of the bullet is therefore backwards from right to left in the anatomical position.

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The gunshot wound tract is as follows:

- ✓ skin on the anterolateral aspect of the middle one-third of the right arm
- ✓ soft tissues in the middle and proximal one-thirds of the right arm as well as the right axilla
- ✓ anterolateral aspect of the right 2nd intercostal muscle
- ✓ upper lobe of the right lung involving the perihilar vasculature
- ✓ 8th and 9th thoracic vertebrae with haemorrhagic laceration of the underlying spinal cord
- ✓ lower lobe of the left lung
- ✓ posterior aspect of the left 9th intercostal muscle
- ✓ **bullet lodged within the subcutaneous tissue in the left lower back**

The gunshot wound tracts described as (4) and (6) in this paragraph are associated with:

- ✓ soft tissue injury and haemorrhage
- ✓ partial collapse of the lungs bilaterally
- ✓ right haemothorax measuring approximately 800ml with blood clots
- ✓ left haemothorax measuring approximately 1 litre with blood clots.

(7a) 15 x 10mm atypical gunshot entry wound in the dorsal aspect of the left hand. This wound demonstrates an irregular 3-10mm collar of abrasion which is broadest at the lateral border. The absence of any obvious firearm discharge residue favours a distant range of fire, but the atypical appearance of the surface defect makes assessment difficult. The possibility that this wound represents a re-entry gunshot injury must be considered, but correlation with case history and investigative findings is essential.

(7b) 15 x 7mm gunshot exit wound in the medial aspect of the middle one-third of the left 3rd finger.

The direction of the bullet is therefore downwards in the anatomical position. The gunshot wound tract is associated with underlying soft tissue injury and haemorrhage.

(8a) 12 x 5mm defect in the dorsal aspect of the middle one-third of the left 3rd finger. No obvious firearm discharge residue observed.

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(8b) 20 x 11mm defect in the lateral aspect of the middle one-third of the left 3rd finger. No obvious firearm discharge residue observed.

The defects described as (8a) and (8b) in this paragraph are consistent with a perforating gunshot wound. Owing to the atypical appearance of the surface defects, however, no definite comment can be made on range of fire or direction of the bullet. The gunshot wound tract is associated with soft tissue injury and haemorrhage as well as a palpable fracture of the middle phalanx.

No further recent injuries were noted on external examination.

HEAD AND NECK

5. **SKULL:** See paragraph 4. No deep scalp bruising observed.

6. **INTRACRANIAL CONTENTS:** The superior sagittal sinus is patent and the dura appears intact. No extradural, subdural or subarachnoid haemorrhage observed. The brain appears intact and uninjured. No cerebral contusions, features of meningitis or signs of raised intracranial pressure demonstrated. On serial coronal sections of the brain, there are no obvious areas of haemorrhage, infarction or gliosis. The blood vessels of the Circle of Willis appear intact and uninjured.

7. **ORBITAL, NASAL AND AURAL CAVITIES:** See paragraph 4. No subconjunctival or scleral haemorrhages observed. The orbital and aural cavities appear intact and uninjured.

8. **MOUTH, TONGUE AND PHARYNX:** See paragraph 4. The pharynx appears intact and uninjured.

9. **NECK STRUCTURES:** The blood vessels, strap muscles and midline neck structures (thyroid gland, laryngeal cartilage, hyoid bone and cervical spine) appear intact and uninjured.

CHEST

10. **THORACIC CAGE AND DIAPHRAGM:** See paragraph 4. The test for pneumothorax is negative bilaterally. The diaphragm is intact and uninjured.

11. **MEDIASTINUM AND OESOPHAGUS:** The oesophagus is intact and the mucosa appears unremarkable. There is mediastinal haemorrhage.

12. **TRACHEA AND BRONCHI:** The trachea and main bronchi appear intact and unremarkable.

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13. **PLEURAE AND LUNGS: See paragraph 4. No fibrinous pleurisy, areas of suppuration or consolidation observed. The cut surfaces appear otherwise unremarkable. No cavitation, caseative necrosis or thrombo-emboli demonstrated.**

14. **HEART AND PERICARDIUM:**
See paragraph 4. The coronary ostia are correctly positioned and patent. The coronary arteries are intact and 100% patent. No evidence of atrial or ventricular hypertrophy or dilatation observed. The valves appear uninjured and within normal limits. No subendocardial haemorrhage or fibrosis demonstrated.

15. **LARGE BLOOD VESSELS:** The subclavian vessels, aorta, pulmonary trunk and vena cava appear intact and uninjured. No features of complicated atherosclerosis, thrombo-embolism or aneurysmal dilatation observed.

ABDOMEN

16. **PERITONEAL CAVITY:** There are loose intra-abdominal adhesions, but no effusions, free blood, faecal soiling or features of peritonitis observed.

17. **STOMACH AND CONTENTS:** The stomach is intact and contains approximately 100ml of partially-digested food. The gastric mucosa appears intact. No free blood or obvious ulceration observed.

18. **INTESTINES AND MESENTERY:** No contusions or perforations of the bowel or mesentery observed. The appendix is present and appears uninjured.

19. **LIVER, GALLBLADDER AND BILIARY PASSAGES:**
The gallbladder is intact and contains bile, but no stones. The biliary passages appear patent. The liver is intact and the cut surface appears unremarkable. No fatty change or nutmeg pattern observed.

20. **PANCREAS:** The pancreas is intact and the cut surface appears unremarkable. No areas of haemorrhage or abnormal fibrosis observed.

21. **SPLEEN:** The spleen is intact. The cut surface appears unremarkable.

22. **ADRENALS:** Both adrenal glands appear intact and unremarkable.

23. **KIDNEYS AND URETERS:**
Both kidneys appear intact and uninjured. The capsules strip off easily and the cut surfaces appear mildly pale. No macroscopic features of acute tubular necrosis observed. The ureters are intact and of normal calibre.

24. **URINARY BLADDER AND URETHRA:** The bladder is intact and empty. The **mucosa appears intact**

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25. **PELVIC WALLS:** No visible or palpable fractures observed.

26. **GENITAL ORGANS:** Intact male genitalia with a non-circumcised penis.

SPINE

27. **SPINAL COLUMN:** See paragraph 4. The cervical and lumbar vertebral column appears intact and uninjured.

28. **SPINAL CORD:** See paragraph 4. The cervical and lumbar spinal cord was not exposed.

29. **SPECIMENS RETAINED:**

	Nature of Specimen	Investigation	Disposal
1.	Femoral blood [Seal Nos: FA038234/5]	Alcohol	SC Mazibuko
2.	Femoral blood [Seal Nos: FA038198/9]	Drug Screen	SC Mazibuko
3	Bullet x 1	Ballistics	SC Mazibuko
4.	Clothing	Ballistics	SC Mazibuko

30. **ADDITIONAL OBSERVATIONS:**

1. History of being shot as per SAPS 180 form.
2. Owing to the lack of a working scale in the mortuary, the individual organs could not be weighed.
3. The clothing present with this body was handed over to SC Mazibuko.
4. The autopsy was attended by:
   - ✓ Inspector Soobramoney (Investigating Officer)
   - ✓ Inspector Mdlalose (Photographer from Durban LCRC)
   - ✓ Ms. Williams (Independent Complaints Directorate).
5. Radiological survey of the head, neck, trunk and upper limbs conducted prior to internal examination confirmed the presence of the single recovered bullet described in paragraphs 4 and 29.
6. Diagram in this report appended as Annexure A.
7. Scribe: SC Mazibuko.
8. The left thumbprint of the deceased was inked and imprinted onto the BI-1663 (Serial No: A08368718) in my presence at the time of autopsy.
9. This report was compiled and transcribed from contemporaneous hand-written outline notes by myself.

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GW 7/15 Phoenix PM: 301/2009

CAUSE OF DEATH:

As a result of my observations, I concluded that the cause/causes of death was/were.

GUNSHOT WOUNDS OF THE CHEST

I declare that I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.
I swear that this statement is true, so help me God.

Dated at **PHOENIX**

on this 4th **day of** JANUARY **2012**

SIGNATURE:

DR T NAIDOO

QUALIFICATIONS: **MBChB [Medunsa]**
Dip. For. Med [CMSA]
LLMMDL [UKZN]
F.C.For.Path [CMSA]

DESIGNATION: **SENIOR SPECIALIST FORENSIC PATHOLOGIST**

ADDRESS AND TELEPHONE NUMBER:
Department of Forensic Medicine (Telephone: 031-2402582)
P/Bag X16 / Inkosi Albert Luthuli Central Hospital
Dalbridge 800 Bellair Road
4014 Mayville
4058

GSM

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GW 7/15

Phoenix PM: 301/2009

I certify that the deponent has acknowledged that he knows and understands the contents of the above declaration, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

Thus signed and sworn to before me at: PHOENIX

on this 4th day of January 2012

COMMISSIONER OF OATHS, R.S.A.

Full Name: Luchman Ramjee Maidoo

Address: Phoenix Medico-legal Mortuary
177 Longcroft Drive
Phoenix
4068

Rank: Mortuary Support Officer

G S M

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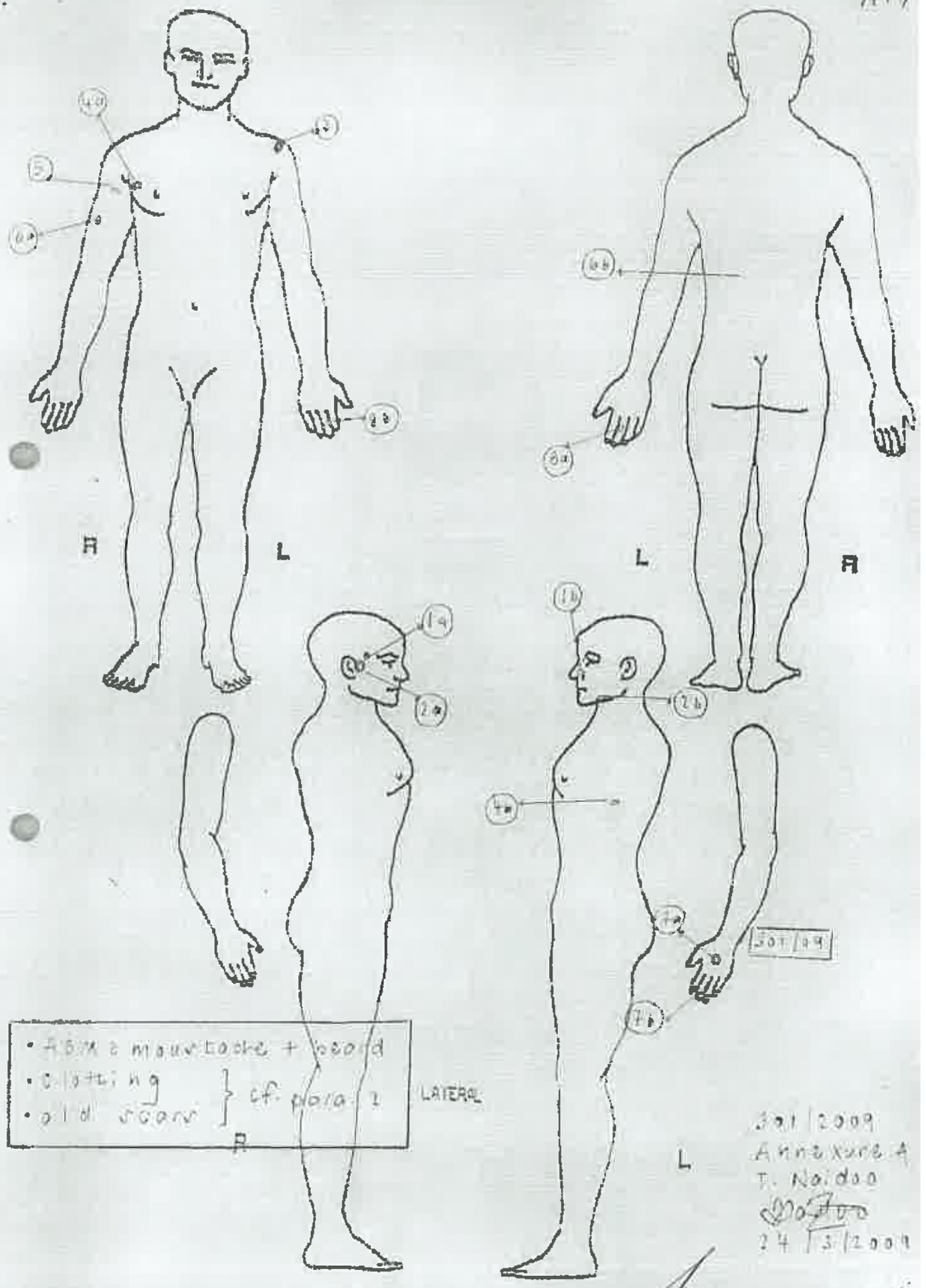
R
L
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R
L
LATERAL
• ASM c moustache + beard
• clothing
• old scars
} cf. photo 1
301/09
301/2009
Annexure A
T. Naidoo
24/3/2009

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CM61
'JB18'
ANNEXURE A3
273

A

Rajendran Sanjeevi Alyer

States in English under oath

1

I am Colonel in the South African Police Service, attached at Provincial Inspectorate Component, Kwa Zulu Natal Province.

2

During 2006 December I was promoted to the rank of Senior Superintended on the post of Unit Commander Durban Organised Crime. In January 2007 I took my post as the Unit Commander of Durban Organised Crime. In February 2007 the Serious and Violent Crime Unit were closed and the members had to be redeployed and the Serious and Violent crime unit mandate was incorporated into organised crime.

3

I was informed by the Deputy Provincial Commissioner of the support that Fifteen (15) members of the disbanded Serious and Violent Crime Unit will be deployed to Durban Organised Crime Unit, and I must ensure that they are accommodated at Durban Organised Crime from Cato Manor. At the same time the Provincial Management informed us that the new Provincial Commander of Organised Crime is Director JW Booysen, who was the former Provincial Commander of Serious and Violent.

4

Prior to the appointment of Director Booysen as the Provincial Commander Organise Crime I did not enjoy good working relationship with him. By that time I was the Provincial Project Coordinator for Detective Investigation at Kwa-Zulu Natal.

5

After his appointment as my immediate Commander I approached him and congratulated him and also suggested to him that we set aside our personal differences and work together in organised crime in the interest of the service, we then agreed.

6

During March 2007 the Fifteen (15) members of the disbanded Serious and Violent Crime Unit were appointed by Director Booysen to report to Durban Organised Crime. At the same time I received a list of members appointed to Durban Organised Crime and they were as follows: Supt Olivier, Capt Van Tonder, Capt Lockem, Capt Smith, Supt Booysen, Insp

RSA

GSM

Mostert, Insp Peter George, Insp Thabathe, Insp Mukesh Panday, Insp Dlamini, Insp Khumalo, Insp Mbatha, Insp Mc-Innes, Insp Shandu and Insp Sibisi.

7

During the same month of March 2007 I called all the above members to my office at Durban Organised Unit and introduced myself to them that I am the Unit Commander of Durban Organised Crime. I then informed them that I strictly believe in protocol and discipline of the organisation. I need to be informed of all activities that are taking place in terms of their mandate to deal with Serious and Violent Crime and to inform me of all the operations in accordance to the protocol, and I will inform Director Booysen. I then appointed supt Olivier as the Section Commander of their Section (serious and violent). I then informed Supt Olivier that he will report all incidents to me and we agreed. I also brought to the attention of all members that they are going to be relocated to Durban Organised Crime Unit at number 136 Victoria Embankment. The response of some of the members was that they are dealing with hardened criminals and the offices at number 136 Victoria Embankment were not conducive for interrogation of suspects. I explained to the members that this is a National directive that we must operate under one roof. I also explained to them the geographical policing area for Durban Organised Crime.

8

I also explained to the members not to leave the geographical policing area without prior authorisation and I further informed them that if they operate outside their geographical policing area I had to inform the relevant commander of that policing area. I further explained to them the reporting protocol, that I will report to Director Booysen and the Director will be accountable to the Provincial Head Detective Service Assistant Commissioner PT Brown (retired in 2011).

9

Shortly thereafter I received a visit by Head Office then Director Nchinga. In her interview with me, she wanted to know why the unit was operating as two Units, one at 136 Victoria Embankment and another one at Cato Manor. She then gave me instruction that all members must report to one office at 136 Victoria Embankment.

10

Shortly thereafter I received inspection report from Director Booysen regarding the visit by Director Ntshinga to attend to all outstanding queries, one of the critical queries was relocation of members from Cato Manor offices to 136 Victoria Embankment were the main Durban Organised Crime Unit was situated. I then approached Supt Olivier about relocation of members from Cato Manor to 136 Victoria Embankment and he was not happy regarding the decision to move. Since then Supt Olivier changed his attitude towards me.

A.S.A

G.S.M

I further noticed that Supt Olivier was reporting all incidents directly to Director Booysen because there were several incidents that when I reported to Director, he will indicate that Supt Olivier had already informed him. These are crime scenes such as Mbali ATM shooting, Pavilion where I found Director Booysen on the crime scene without me informing him of the incident. I also notice the hostile attitude of those members at Cato Manor office towards me. It was also brought to my attention that Director Booysen visits the Cato Manor offices n weekly basis without me being informed and it was not according to protocol.

11

During 2009 February 03 I was informed by radio control about Mkhize's (taxi boss) shooting at Umngeni Road. I was aware of the court order against Director Booysen by Mr Mkhize. I immediately contacted Supt Olivier to establish whether our members are involved. He denied involvement of our members. I then contacted Director Booysen and informed him that Mr Mkhize was shot and advised him not to attend the crime scene as I was aware that there is a court interdict against the Director by Mr Mkhize. I made further inquiries and established that our members were involved in the shooting. I then made an Occurrence Book entry and I never attended the crime scene.

12

I was merely informed afterwards or long after shooting incidents or operations had taken place by Cato Manor members. In some instances I received information of operation or activities by members of Cato Manor without me being informed. As the Unit Commander it was clear that Supt Oliver and his members were acting on their own accord.

13

This created perception that they were operating independently as Cato Manor Organised Crime Unit. I noticed the media reports (newspapers) addressing them as Cato Manor Organised Crime Unit.

14

The unit also consists of reservist members and I was instructed by Director Booysen that the entire reservist must report directly under his command. During my visit as the Unit commander at Cato Manor I noticed strange faces of members alleging to be members of Durban Organised Crime Unit. There were also reservist members who also claimed to be members of Durban Organised Crime. I also noticed Captain Eva from Durban South Area office reporting as member of Cato Manor without me being informed or without my consultation. The following members Sgt E Padaychee and Insp Ghaness were moved from the drugs section to Serious and Violent Section by Director Booysen without my

RSA

G S M

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consultation. These members at Cato Manor believe that they are not accountable to me and they reported directly to Director Booysen at the Provincial office.

15

Eventually I convened the meeting of all members at 136 Victoria Embankment and I informed them that we cannot run two offices, that is the main office (136 Victoria Embankment) and Cato Manor. I also reminded them that the National directive is that we must work under one roof. That is when I saw aggression and anger surfaced from the Cato Manor members. After the meeting Cato Manor members went directly to Director Booysen's office, shortly thereafter I was visited by Director Booysen.

16

Director came down heavily on me without consulting with me. He burst into my office with anger, pointed finger at me and he indicated that I should not interfere anymore with Cato Manor office. It was very clear that I was not in command of the Cato Manor office, because since that day Supt Olivier operated independently. They did not report to me anymore. Therefore I was continuously victimised by Director Booysen who charged me departmental continuously.

17

My cell phones were illegally and unlawfully bugged by Director Booysen and the other members of Correctional Service namely Brig Mohan, Capt Govender and an Indian male known as Donovan from the 13th floor Servamus building (Provincial Office). I have supporting documents to prove the bugging on my cell phone. I attached a copy on my statement as per **ANNEXURE RSA 1.** Due to this illegal interception of my cell phone I was informed by Maj General Ngcobo that he is being tasked by Commissioner PT Brown to investigate me for my conduct in the telephonic conversation.

18

Since I was warned by Director Booysen not to interfere with Cato Manor offices, state resources like Emails, financial authority were send from Director Booysen office to Cato Manor (vice versa). This action confirmed that I am no more in control of Cato Manor members and I reported this to senior officers in terms of the protocol. The Provincial Commissioner Ngidi and Commissioner Brown tried to intervene and the interventions failed. The more I tried to act on issues, the more I was victimised. Director Booysen tried every possible means to suspend me and to misuse departmental disciplinary procedure to target me. He eventually removed me out of my office and he even intimidated me telephonically and criminal offences were registered against me. He moved me from Durban Organised Crime and placed me at Detective and he appointed Brig Zakhali as acting Commander in my post.

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277

In November 2011 I received official notice that I being transferred with post to Provincial Inspectorate Component. The members at Cato Manor office acted under command of Director Booysen all the times. All media reports on all incidents relating to Cato Manor's involvement came from Director Booysen's office and not from me. All graphic pictures of shooting on crime scene involving members of Cato Manor were taken by journalist called Mr Anil Singh, a friend of Director Booysen of Daily Sun newspaper.

20

I am willing to clear any omission or any unclear issue when called upon to do so.

21

I know and understand the contents of this statement

I have no objection to taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

Deponent signature

I certify that the above statement was taking by me and the deponent has acknowledged that he know and understand the contents of this statement. This statement was sworn to before me and the deponent signature was placed thereon in my presence at Durban on 2013-03-13 at 15:35

Commissioner of oath

Pharasa Daniel Naube

Full name and surname

Klerksdorp organised crime unit

23 Leask Street

klerksdorp

COLONEL
SAPS

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Durban Central / Cas 185/02/2009 A98 CM62.

Patrick Thomas Brown residing at 335 Mokaba Ridge, Overport, Durban

Landline: (031) 2082678

Cell: 0798753050

E-mail: ptbrown1950@gmail.com

States under oath in English:

1.

I retired from the SA Police Service in September 2010 after 42 years of service with the rank of Major General. I held the post of Provincial Head, Detective Services of KwaZulu-Natal from 1st January 2000 until my retirement.

2.

The Detective Organigram for the Province was as follows:

I as Provincial Head was directly accountable to the Deputy Provincial Commissioner, Operations and to Provincial Commissioner. Specialized detectives in the Province who fell under General Detectives, Organized Crime, Serious and Violent Crime and Commercial Crime were under my command. In March of 2010 with the establishment of DPCI (Hawks), Organised Crime now fell under the direct command of the Deputy Provincial Commissioner responsible for the Hawks.

3.

The four components each had a Provincial Commander who reported directly to me. They were accommodated in the Provincial Headquarters. The Provincial Commanders managed their Units at different centres within the Province. Each of the Units had a Unit Commander with Section Heads to assist him/her in the management of the Unit. General Detectives were commanded by Detective Area Heads and Detective Branch Commanders.

4.

The lines of communication for reports to and from my office followed this chain of command. This would be from the station/unit member through his branch or unit commander to the Detective Area Head or Provincial Commander to my office. I would forward these onto the Deputy Provincial Commissioner Operations and him in turn to the Provincial Commissioner. Where necessary there was also communication to National Component Heads and the National Head of Detectives.

Reports on daily serious crime incidents were reported by the Unit Commanders to their respective Provincial Commanders and they in turn to me. I would then take

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Durban Central / Cas 185/02/2009 A98

Reports on daily serious crime incidents were reported by the Unit Commanders to their respective Provincial Commanders and they in turn to me. I would then take the necessary steps to inform the relevant Provincial and National authorities. These reports were also recorded at the Provincial nodal point and discussed in depth during the daily morning Provincial crime meeting.

- where are more reports

5.

"Pcm"

When the Serious and Violent Unit was formed, Major General Booysen was appointed the Provincial Commander of these units with the rank of Senior Superintendent. Copy of his promotion record attached. Annexure "A". The mandate of the Unit was to investigate cases as indicated in their mandate, a copy of which is attached. Annexure "B 1" and the job description of the then Director Booysen Annexure "B 2".

6.

Colonel RS Alyer was appointed the Unit Commander of Organised Crime, Durban on 2006-12-01 with the rank of Senior Superintendent, a copy of his SAP 96 showing his promotions attached. Annexure "C".

During January 2007 the Serious and Violent Crime units were restructured under correspondence 4/1/2 dated 2007-01-08. Some of these members were placed at General Detectives at Station level and others at various Organised Crime Units. Organised Crime was now tasked to investigate cases of a serious and violent nature which fell within their new mandate. (Copies attached). Annexure "D 1" and "D2".

7.

The disbanded Durban Serious and Violent Crime Unit had been accommodated in offices at Cato Manor Police Station. Those members who were placed at Durban Organised Crime remained at these premises due to a lack of suitable accommodation at the Durban Organised Crime offices. These offices were situated on the Esplanade in rented office accommodation. Although situated in different offices these members still fell under the command of the Durban Organised Crime Unit commander.

8.

When Serious and Violent Crime Unit was disbanded and the mandate of Organized Crime expanded to cover the investigation of violent crime, Colonel Alyer was the commander of Durban Organized Crime.

A poor relationship developed between him and the former members of SVC based on his management style and perceived lack of knowledge in respect of the

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Durban Central / Cas 185/02/2009 A98

investigation of violent crimes. This lead to strained relationship between him and Major Genl Booysen as the Provincial Commander of Organized Crime. I attempted to resolve this issue and although both parties would agree to work more closely an undercurrent of mutual mistrust continued. I approached the know late Deputy Provincial Commissioner Ntanjana to assist in counselling both members which he did. This resolved the differences on hand but subsequent events would once again lead to a breakdown mutual respect and co-operation. Complaints in respect of the conduct of Col Aiyer were addressed and are on record in his personal file.

9.

During March 2009 I received correspondence from Maj Genl Booysen under reference 3/1/5/1 dated 25 March 2009, copy of which is attached. Annexure "E". Senior Superintendent Aiyer had compiled an information note instructing members at Serious and Violent Crime at Cato Manor to relocate to the Durban Offices of Organised Crime, copy of this information note attached. Annexure "F".

I discussed the matter with Maj Genl Booysen and agreed with the sentiments expressed in his report. After discussion with Provincial Core Management it was agreed that the Serious and Violent Crime unit remain at Cato Manor. The possible relocation of Organised Crime Durban to KwaMashu was at an advanced planning stage. When this move did not materialize National Head Office also endeavoured to find more suitable accommodation for the newly formed Hawks. Correspondence in this regard is with Provincial Logistics.

10.

The allocation of vehicle resources commenced at Provincial level when Provincial Logistics would determine the purchase of vehicles for Detectives based on the Provincial budget. Each Provincial Commander would supply a needs list based on the current vehicle strength at their units.

At a meeting with me, the Provincial Commanders and Col Odendaal the Provincial Fleet manager would present a complete breakdown of each units vehicle needs according to their manpower.

He also indicated the cost of each type of vehicle which determined the number and type of vehicle which could be purchased. The terrain in which each unit operated was considered eg 4 X 4 vehicles or high performance vehicles. The final allocation of the new vehicle was at the discretion of the Unit Commander. He/she was entrusted to ensure that the vehicle was allocated to members where it would be optimally used.

National Logistics would from time to time allocate more vehicles in addition to those approved in the Budget. The allocation of these vehicles would be discussed by the Provincial Core Management. The Provincial Commissioner would then use his

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Durban Central Cas 185/02/09 A 48

discretion and allocate these vehicles to stations or units where they were most needed.

11.

When the interdict court papers of Mr FE Mkhize were received at Provincial Headquarters the matter was dealt with by Legal Services. I became aware of the interdict when it was discussed at the daily crime meeting.

Provincial Commissioner Ngidi gave direction as to how the matter would be dealt. Major General Booysen was tasked to supply a founding affidavit and the matter was to be opposed through the offices of the State Attorney. The matter was subsequently resolved through an order of the High Court.

12.

On the 30 October 2009 I received correspondence from Mason Incorporated acting on behalf of their client FE Mkhize. Her husband was deceased and the case was under investigation vide Durban Central CAS 185/02/2009. A correspondence file was opened and I dealt with the matter. I requested the case docket and on 5 November 2009 I issued specific guidelines in the investigation diary. The investigation and this case were later taken over by the local ICD. (Copy of my guidelines attached). Annexure "G".

The investigation of taxi related crimes in the Province were conducted under the guidelines in POCOC instruction 5/2000 and Transport Violence and Law Enforcement Contingency plan in POCOC instruction 5/2001.

Transport Violence Investigation Task teams were established in each police Area. The activities of the teams were co-ordinated the Provincial co-ordinator Lt Col EG van Rensburg. The Provincial chairman of the Provincial Priority Committee for Transport Violence was Maj Genl Booysen. On 2005-01-09 the POCOC instruction was amended to reinforce measures to combat Transport Violence. Copies of these plans are contained in the Provincial TVPC Archer file.

A Provincial team of Detectives stationed at Umhlanga Rocks was formed to deal specifically with the cases arising from the conflict between Kwa Maphumulo and Stanger Taxi Associations. The investigation in these cases was monitored by Lt Col van Rensburg and Maj Genl Booysen. Feedback on the cases was provided to the Provincial Crime Combatting Forum (PCCF) and Provincial Joints meetings. Weekly overviews on the violence compiled by Lt Col Peroo were provided by Crime Intelligence. The PCCF would task ACCU for additional deployments at the taxi rank and the disputed routes used by both associations.

These measures met with limited success as violence flared up when police presence was withdrawn.

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Durban Central / CAS 185/02/09

A 98

Stanger until his murder. Lt Col Nyuswa, the Unit Commander at Port Shepstone was appointed to lead a team of investigators to investigate the murder of Col Chonco.

The correspondence relating to the PTCC was co-ordinated by Col Makhanya and kept on file.

13.

I know and understand the contents of this statement.

I have no objective in taking the prescribed oath.

I considered the prescribed oath to be binding on my conscious.

.....

DATE: 2013-05-08

I certify that the deponent has acknowledged that he knows and understands the contents of this statement.

This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on ...2013-05-08..... at ...14:45

.....

COMMISSIONER OF OATH

FULL NAME AND SURNAME: Ntombizodwa Hope Mokoena

RANK: Brigadier

ADDRESS: Provincial Office

Sechaba Building Durban Central

Bulmarcher Road

GSM

CM62 2
JB19
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V164043323

Durban Central Cas 188/02/09

Supplementary statement of Patrick Thomas Brown

States under oath:

1.

The poor relationship between maj General Booysen, the members of Cato Manor Organised Crime office and Colonel Alyer as the Commander had a direct impact on the management style of Maj Genl Booysen. He adopted a hands on approach in respect of matters involving this unit. Col Alyer's perceived lack of knowledge on SVC matters and the culture of SVC Units led to a breakdown in their communication. This meant that Maj Genl Booysen was more operationally involved in matters at this unit than at other units in the Province. He also used the services of Col Zikhali at Provincial level to co-ordinate the activities of the units. He would visit the Cato Manor weekly on a Tuesday for the Greed meeting. His management style ensured that the unit continued to function optimally.

2.

The relationship between Maj Genl Booysen and Lt Col Olivier was one of complete trust and respect. They had both served at Amanzimtoti during their formative years in the police. They also worked very closely when the Project office was stationed at Rossburgh. This contributed to easy communication between him and Maj Genl Booysen.

3.

The accepted protocol for conducting Organised Crime investigations or Operations outside the units boundary would be to inform the unit commander of the unit where the investigation or operation would be conducted.

The same would apply to investigations or operations conducted outside the Province when the Provincial Commander of the other Province and the local unit commander would be informed. This was not necessarily followed when information was at hand which indicated that secrecy was essential due to local police involvement with the suspects sought. For trips outside the Province prior approval would be required on the trip itinerary from the Unit Commander, Provincial Commander and the Provincial Head of Detectives.

4.

When a death in custody as a result of police action occurred the member responsible was required to have the matter reported to the local area duty officer who would despatch a duty officer to the scene and ensure that the Independent Complaints Directorate member on call was informed to enable their attendance at the scene. The required ICD form and the shooting incident report had to completed and the duty officer would report the matter to the Provincial Nodal Point for inclusion in the daily crime report. During the daily morning crime meeting the core

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management of the Province would be presented with a crime report by Crime Intelligence. When Organized Crime members were involved, Maj Genl Booysen would confirm the contents of the shooting incident report and provide additional information which had been provided to him or from his own personal observation at the scene. The commander of the unit would also be informed of the incident by his members from the scene.

Depending on the decision of the ICD official a case would be registered for investigation either by themselves or by the local detective with them monitoring the investigation. Progress in the investigation would be reported to Area and Provincial level.

5.

I know and understand the contents of this statement.

I have no objective in taking the prescribed oath.

I considered the prescribed oath to be binding on my conscious.

.....

DATE: 2013-05-09.

I certify that the deponent has acknowledged that he knows and understands the contents of this statement.

This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Durban on 2013-05-09 ..... at 1.50

.....

COMMISSIONER OF OATH

FULL NAME AND SURNAME: Ntombizodwa Hazel Makhoba

RANK: Brigadier

ADDRESS: KZN Provincial Office Serpentus Building Bloemfontein Street Durban Central

93
Cm 63

IN THE HIGH COURT OF SOUTH AFRICA

DURBAN AND COAST LOCAL DIVISION

CASE NO: 13759/08

In the matter between:-

BONGANI ELPHAS MKHIZE	Applicant
and	
MINISTER OF SAFETY & SECURITY: SOUTH AFRICA	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL: KZN COMMUNITY SAFETY & LIAISON	Second Respondent
SAPS PROVINCIAL COMMISSIONER: KZN	Third Respondent
COMMISSIONER J. BOOYSEN	Fourth Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

BONGANI ELPHAS MKHIZE

do hereby make oath and state:-

B.E.M.

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94

1.

I am the Applicant herein. I am an adult male, taxi owner currently residing at No. 7 Kotecha Place, Effingham Heights, Durban, KwaZulu-Natal.

2.

The facts hereinafter deposed to are, unless otherwise stated within my personal knowledge and understanding and are, to the best of my belief, both true and correct.

3.

The First Respondent is the MINISTER OF SAFETY & SECURITY, a national Minister responsible for safety and security in the Republic of South African, who is cited herein in his capacity as such and whose address for the purpose of the present proceedings, is c/o The State Attorney, 6th Floor, Metropolitan Life Building, 391 Smith Street, Durban, KwaZulu-Natal

4.

The Second Respondent is the MEMBER OF THE EXECUTIVE COUNCIL FOR COMMUNITY SAFETY & LIAISON: KWAZULU-NATAL, responsible for safety and security in the Province of KwaZulu-Natal, who is cited herein in his capacity as such and whose address for the purpose of these proceedings, is c/o The State Attorney, 6th Floor, Metropolitan Life Building, 391 Smith Street, Durban, KwaZulu-Natal

B.E.M.

G.S.M.

95

5.

The Third Respondent is THE PROVINCIAL COMMISSIONER for the South African Police Services in the Province of KwaZulu-Natal who is cited herein in his capacity as such and whose address for the purpose of these proceedings is c/o The State Attorney, 6th Floor, Metropolitan Life Building, 391 Smith Street, Durban, KwaZulu-Natal.

6.

The Fourth Respondent is COMMISSIONER J. BOOYSEN who is the Head of the Organised Crime Unit within the South African Police Services in the Province of KwaZulu-Natal who is cited herein in his capacity as such and whose address for the purpose of these proceedings is c/o The State Attorney, 6th Floor, Metropolitan Life Building, 391 Smith Street, Durban, KwaZulu-Natal.

7.

THE APPLICATION

This is an application for an interdict restraining the above four mentioned Respondents and those employed through them from in any way authorising or mandating the members of the South African Police Services to execute the warrant of arrest on the Applicant, unless it is through or in keeping with the method ordered by this Court. This Application is also to seek an Order restraining the Respondents or their servants from in any way killing, injuring, assaulting, threatening, harassing or intimidating me as well as restraining them from interrogating me unless in the presence of my legal representative.

B. E. M.

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96

8.

It has become necessary to bring this application on an urgent basis for the reasons contained hereinafter.

9.

BACKGROUND TO THE APPLICATION

As stated earlier I am a businessman and taxi owner and also Chairman of the KwaMaphumulo Taxi Association, operating various routes between:-

(a) Stanger to Maphumulo and back;

(b) Stanger to Doringkop and back;

(c) Stanger to Durban and back;

(d) Stanger to Eshowe and back;

(e) Stanger to Empangeni and back;

(f) Stanger to Lusikisiki and back;

(g) Stanger to Kranskop and back;

(h) Stanger to Madundube and back;

(i) Stanger to Matubatuba and back;

(j) Stanger to Ngwavuma and back;

(k) Stanger to KwaMxhosa and back.

I have been a member of this Association since 1990.

B.E.M

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97

10.

I am married with four children, viz:-

(a) Zamambo, a girl 21 years of age;

(b) Nkosiphile, a boy 19 years of age;

(c) Siphathelwe, a boy 15 of age; and

(d) Phakeme, a girl 14 years of age.

11.

The house I live in is mine and I have been living there since 2001. The value of the house is approximately R1.5 000 000-00. I am married to Fakazile Ellen Mkhize who is self-employed as a Fashion Designer. My eldest daughter, Zamambo is a student at UNISA / Varsity College reading for Psychology degree and is currently busy with her third year of studies; Nkosiphile is doing matric; Siphathelwe is doing grade 10 and Phakeme is doing grade 8.

12.

I am involved in other business interests; I am a director of a company called East of Eden with business interests around the Kwazulu Natal.

13.

I have been the Chairman of KwaMaphumulo Taxi Association from 2004 to date. I own and operate five (5) taxis with a total value of R1.4 million. I generate an income of approximately R31 000-00 per week I also own a Toyota Prado 2007 model valued at

B.E.M.

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R470 000-00 and Toyota Corolla 2004 model valued R130 000. I employ about ten (10) people in my business.

14.

Since 2003 there have been overwhelming tensions between my Association and the Stanger Taxi Association which has resulted in numerous Court applications between our Associations. There has also been a lot of violence emanating therefrom with about 35 members of the Association being killed. This tension and violence increased to such level that one stage the Second Respondent shut down the operations of both Associations in an endeavour to ameliorate the position.

15.

FACTS

As a result of the violence and unrest as mentioned above between the two Associations, the members of SAPS under the control of the First, Second, Third and Fourth Respondents got to be involved in the investigations surrounding criminality that had taken place as a result of these tensions and violence.

16.

Superintendent Chonco was one of the policemen tasked to investigate the unrest between the two Associations. He was a senior policeman stationed at Kranskop police station. He was the Station Commissioner at Kranskop police station and also Head of the Unit investigating taxi violence in the area and more particularly within our

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Associations. I knew Superintendent Chonco at a distance. I personally met him once when I was called to a meeting of the Amakhosi to discuss taxi violence in their areas.

17.

Superintendent Chonco was violently murdered on the 27th August 2008 whilst travelling between Kranskop and Stanger. He had been part of the convoy transporting certain suspects to Stanger Court when the convoy was waylaid by groups of unknown men who fired at the vehicles with high-calibre rifles. Superintendent Chonco was killed during that attack and another policeman by the name of Khanyile was injured. One of the alleged attackers was shot and killed and a firearm was allegedly found lying next to his corpse. It is understood that this suspect was shot and killed by members of SAPS who had been part of the convoy. The aforementioned information has been gleaned from newspaper reports and I cannot vouch for the correctness thereof.

18.

At that time, the KwaMaphumulo Taxi Association had engaged the services of Taxi Violence Protection Unit, a Security Company that provided security services to the taxi association. The owner of Taxi Violence Protection Unit was Warren Jullie. At that time I was personally being protected by one of the members of the aforementioned security company. I had engaged the services of a personal body guard as I was of the view that my life was in danger from members of the Stanger Taxi Association.

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After the shooting of Superintendent Chonco I learned that the members of SAPS investigating Superintendent Chonco's murder had suspected that members of Taxi Violence Protection Unit referred to above were involved and had approached Mr. Jullie to hand over all firearms to conduct forensic investigation on them.

20.

There was also a rumour which had been circulating thereafter within the Taxi Association to the fact that I had orchestrated the attack on Superintendent Chonco and that I was being sought in respect thereof. I was subsequently telephoned by a member of the SAPS stationed at KwaMaphumulo police station and informed that the rumours were in fact correct. I am not prepared to divulge the name of this policeman as he had given me this information on an off-the-record basis.

21.

Nevertheless, on the day following the murder Superintendent Chonco one of the security officials employed to protect members of the KwaMaphumulo Taxi Association was arrested by the members of the SAPS. He was interrogated about the death of Superintendent Chonco and during such interrogation he was excessively assaulted by them.

22.

I annex hereto marked "A" an affidavit deposed to by Moses Dlamini in respect of a matter unconnected to this one. I understand the reason for deposing to this affidavit in question was because he was seeking the intervention of the Independent Complaints Directorate to investigate reasons for his arrest and assault.

B.E.M.

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101

23.

I subsequently had occasion to speak to Moses Dlamini who informed me that during his interrogation the SAPS members were in possession of a list of names which included mine. The names on the list are allegedly those contained in paragraph 9 of Annexure "A", i.e. myself, Mthembu, Kopolota, Magojela and Buthelezi. All these people were members of my Association and were indeed taxi owners. Moses Dlamini further informed me that during his interrogation he was told by police involved therein that I, together with the other people mentioned on the list, had been the people directly implicated in the killing of Superintended Chonco and that they, whilst assaulting him, were bragging that they were going to kill him as well as all the people on the list. He further cautioned me to be absolutely careful as it appeared that my name generated the most vexation amongst the police in question.

24.

Moses Dlamini was released after it was found that he could not be inculpated with the murder of Superintendent Chonco. As a result of the information I received from Moses Dlamini I became concerned for my wellbeing and approached the Associations Attorneys, Hlapane Attorneys, and instructed Nkosinathi Hopewell Shozi, a practising attorney of this Honourable Court to intercede in the matter on my behalf. I annex hereto marked "B" a copy of a letter written by Mr. Shozi in this regard, wherein I am specifically mention in paragraph 11 thereof.

B.E.M.

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102

25.

All of the people whose names appeared on the list referred to above have since been killed by the Police. It was alleged that they were being arrested for the murder of Superintendent Chonco and were killed whilst allegedly threatening members of the SAPS during or shortly after such arrest. All of these deaths have occurred under questionable and suspicious circumstances and I have been reliably informed by certain members of SAPS who are close to the investigating team that the policy being adopted by the investigating team is to kill or eliminate all members of my Association suspected of involvement in the murder of Superintendent Chonco.

26.

I pause at this stage to state categorically that I was not involved in the planning or execution of the plan to murder Superintendent Chonco and was surprised as every body else when his death was publicized. I was of the view that Superintendent Chonco was doing sterling work in order to arrest the violence and restore a situation of normality within the Association's working environment and his death was viewed as a great loss by me for this reason. I, however, believe, because I have been told as much by a policeman close to the investigating team, that the investigating team in the murder of Superintendent Chonco have taken a view to falsely implicate prominent members of the KwaMaphumulo Taxi Association in the murder of Superintendent Chonco and thereafter to eliminate them. Rumour is that they have taken sides with the Stanger Taxi

Association in weakening the KwaMaphumulo Taxi Association in the dispute. One of the methods employed in weakening KwaMaphumulo Taxi Association is to kill its leaders.

27.

As a further confirmation of the existence of the list mentioned by Moses Dlamini is that on or about the first week of October 2008, a meeting was held with Second Respondent at Truro House, Durban which was called specifically to discuss the murder of Superintendent Chonco. It must be noted and emphasized that the Second Respondent is on record as publicly stating that members of SAPS should not hesitate to arrest suspects and ***"take them to the nearest police station or nearest mortuary"***. By this, he had bluntly told or given members of SAPS carte blanche to kill troublesome individuals. During that meeting the Second Respondent was questioned about the existence of a list of names referred to by Moses Dlamini. The motivation behind this was to establish the factual existence of this list and to arrange that people mentioned on the list hand themselves over to the police. The Second Respondent confirmed the existence of this list. He also confirmed that the list emanated from the interrogation of the two suspects who were being conveyed by Superintendent Chonco to Stanger Court on the day he was killed.

28.

THE KILLINGS

MAGOJELA NDIMANDE AND TEMBE

B. E. M.

G. S. M.

On Friday the 29th August 2008 Magojela Ndimande, who was a member of my Association and whose name appeared on the list mentioned by Moses Dlamini, was arrested in the Mtunzini area together with his body guard, Tembe, and taken to the Mtunzini police station where they were severely assaulted. They were subsequently released on the same day and Magojela returned to his homestead in or around the KwaMthethwa area in Empangeni. Several days after his release Magojela, who goes by the surname of Ndimande, was waylaid by police in the Merrivale area. He was shot and killed. Tembe, who had also been arrested with him on the 29th August 2008 was also killed. Tembe was a security guard employed by Taxi Violence Protection Unit and was the personal body guard of Magojela. I annex hereto marked "C" a copy of the communiqué issued by police after the death of Magojela and Tembe:

I also wish to annex hereto marked "M" an article front page of the Daily Sun relating to the death of Magojela Ndimande.

29.

It is widely believed that the deaths of Magojela and Tembe had been in keeping with the information I had received about the elimination of prominent members of my Association under the guise of them being sought for the murder of Superintendent Chonco. We have engaged the services of various entities in order to investigate these shootings. It is also questionable to say the least that these two individuals who were sought by the Police (See Annexure "C") had been arrested by them and released shortly thereafter and within a few days of their release they are shot and killed on a quite back-road and allegedly to be ***"dangerous criminals"*** in possession of dangerous weapons.

30.

B. E. M.

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105

LINDELANI BUTHELEZI

I must hasten to add that before the death of Magojela and Tembe, Lindelani Buthelezi whose name had also been on the list in question had already been killed by police under spurious circumstances. Lindelani Buthelezi was known as a prominent member of my Association.

31.

On the 3rd September 2008 Lindelani Buthelezi was confronted in his rented house at Stanger by a large group of policemen. He was killed by them during such "arrest". I annex hereto marked "D" a copy of an affidavit by Lindelani Buthelezi's common law wife who was present when he was killed in which she relates the disturbing circumstances under which he was killed. It is my belief that his death is consistent with the information I had received about the existence of a list of names and the elimination of the people mentioned therein.

32.

KOPOLOTA NTULI AND NKOSINATHI MTHEMBU'S

Kopolota Ntuli and Nkosinathi Mthembu, whose names were also on that list, were killed by members of the SAPS at Mandeni whilst at Kopolota's fiancé's homestead, also under questionable circumstances. Prior to the killing of Kopolota and Mthembu, the attorney representing the Association had offered to surrender any member of the Association suspected of the murder of Superintendent Chonco should they be sought. I annex hereto marked "E" a letter dated 5th September 2008 and refer this Honourable Court specifically to paragraphs 18 and 19 thereof. Despite this offer, the SAPS

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106

proceeded to shoot and kill the two individuals once again in circumstances that lead me to believe the correctness of the information referred to above. Once again the police version is that they acted in self-defence.

33.

MDU MKHIZE

On Saturday the 18th October 2008 Mdu Mkhize who was a member of my Association was arrested at a funeral service at KwaMaphumulo by members of the South African Police Services. He was handcuffed and led away and we later heard that he was killed. I annex hereto marked "F" a copy of the Daily Sun newspaper article wherein his death is being mentioned. Whilst Mdu Mkhize's name was not on the list mentioned by Moses Dlamini, I have been privy to information that he was also being sought for elimination by police.

34.

It is disturbing to note from article of Daily Sun dated 21st October 2008 annexed hereto as "F", the police are already plotting a reason for any action taken against me by them. They suggest to the reporter in question that I am on the run or fugitive from justice and that I intend to flee the country. I deem this as an apparent attempt by them to later justify why they would have killed me. As can be seen from the contents of my affidavit, I am an established businessman with entrenched roots in South Africa. I am also a family man who is committed to the well being of my wife and children. I do not, and have never attempted, to flee the country or to escape justice. I view this article with concern

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as I would be shot and then the story would be put out to the public that I had been attempting to escape. If this was ever my intention, I would not be appealing to this Honourable Court for assistance in protecting my rights to life. I am a member of South African Airways Voyager Programme and have such qualified for the free tickets issued after spending a certain amount of money. As a consequence thereof, I have applied for a passport so that I can utilize the two acquired tickets to go on holiday with my wife. The content of the article is mischievous in that it gives the impression that I will be fleeing the country and it is apparent that the police leaked this information to the media. I annex hereto marked "F1" copy of the letter from South African Airways Voyager confirming the issue of such tickets and "F2" as proof of application for a passport.

35.

Of the people whose names are mentioned on the list, I am the only one who remains alive. However, on Sunday the 19th October 2008 I was telephoned by my source from the KwaMaphumulo police station and informed that a concerted effort is now being waged by policemen investigating Chonco's murder to eliminate me. To this end, I was informed further that a warrant for my arrest has been obtained, a precusor to justify taking me into *"custody"*. Thereafter the plan is to kill me and to allege that I had been killed whilst threatening the lives of the policemen involved in my arrest.

36.

I have no doubt about the veracity of this information received from my source at the KwaMaphumulo police station. This is so because he is close to the investigating team and also because the information I have received from him in the past has turned out to

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G S M

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35.

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36.

I have no doubt about the veracity of this information received from my source at the KwaMaphumulo police station. This is so because he is close to the investigating team and also because the information I have received from him in the past has turned out to

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108

be reliable and credible. Besides that, the objective evidence of the deaths of my colleagues whose names appeared on the list mentioned by Moses Dlamini and whose existence was confirmed by the Second Respondent, affords compelling evidence to support his information as well as my fears.

37.

As a result of my concerns and fears I immediately approached my instructing attorney, Mr. Moloi of SD Moloi & Associates Inc. and asked him to verify the existence or otherwise of the warrant of arrest. A letter was written to the Third Respondent this morning (20th October 2008) a copy of which is annexed hereto marked "G", contents of which speaks for themselves. My instructing Attorney has not received a response thereto despite requesting the Third Respondent to do so by a certain time failing which an Application would be made to this Honourable Court on an urgent basis for relief.

38.

I verily believe that my life is in danger from members of the South African Police Services and further believe that should I be arrested by them in any circumstances other than those referred to in my Notice of Motion, I will be killed by them.

39.

I wish to reiterate that I have not been involved in the planning or execution of the plan relating to Chonco's death and wish to reiterate that I know nothing about his death and can therefore, not assist the police with any of their investigations.

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40.

I, however, understand that the police have an obligation to investigate whatever information they might have and that it might be *contra bonos mores* for this Honourable Court to interfere with such investigation. I however wish to state that I am not averse to being arrested in pursuance of that investigation but would only wish that this Honourable Court intervenes to regulate the conduct of such arrest and further investigation. As I do not know anything about the murder of Superintendent Chonco, I would be unable to assist the police in any of their investigation. I therefore would not be in a position to make any statements outside of a warning statement wherein I intend to deny my involvement. I would also not be in a position to point out any matters relevant to the investigation by the police. Nor would I be prepared to make any confession before a Magistrate or anybody else for that matter relating to such investigation.

41.

As there is a warrant already issued for my arrest, I am of the view that it has been issued because of an alleged *prima facie* case implicating me in the murder of Superintendent Chonco. That fact implies that their investigations are completed and ties in with my averment that I do not intend assisting the police in any way with their investigation and as such eliminates, absolutely, the need for them to want to take me out of the police cells under the ruse or guise of wanting to conduct further investigation. I mention this because I believe that if I am not killed during the arrest stage, I have been informed or verily believe that I will be taken out of my holding cells allegedly for further investigations and shot.

B.E.M.

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110

42.

I do not intend putting my life at risk by threatening any policemen and wish to state categorically that it is not in my nature to do so.

43.

It is for this reason that I approached this Honourable Court on an urgent basis in an endeavour to ensure that my life is not threatened or harmed. I have offered to hand myself over to the members of the investigating team under controlled circumstances, and in the presence of my legal representatives. I am also prepared to be subjected to interrogation in the presence of my legal representatives and members of the Independent Complaints Directorate and to answer whatever questions posed to me. I believe that if I was approached by the police in circumstances under which my colleagues were approached, I would most definitely be killed. There is ample evidence above that supports my fears and contentions.

44.

I have no other remedy accept this application to protect my rights to life and to ensure that I am not harmed by members of the South African Police Services. The Third Respondent has been aware of our concerns regarding the death of members of our Association as various correspondences have been entered into between our Association and himself. I annex hereto marked "H" a response received from the Third Respondent indicating his awareness and involvement in this matter. The Fourth Respondent who is directly in command of the unit investigating Superintendent

B.E.M.

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Chonco's murder is also aware of our concerns as certain communications and concerns have been directed to him as well. I annex hereto marked "J" a response received from him in respect of this matter. Swayo Mkhize and Gedwana Mhlongo mentioned in Annexure "J" are members of our Association.

45.

The Fourth Respondent or his members have, in the recent past, made headlines for various killings of suspects in circumstances not too dissimilar to those under which members of my Association mentioned herein have been killed. I wish to refer specifically to the incident involving the killing of suspects fingered in the killing of Naren Sham and his family no more than two months ago. Naren Sham was a prominent Attorney of this Honourable Court. He, together with his wife and son, were found murdered in their home in Morningside. Two suspects allegedly implicated therein were shot and killed and the explanation given therefore was that they were shot and killed for allegedly threatening to attack police during further investigations. I annex hereto marked "K" and "L" two (2) newspaper articles which are relevant to this incident.

46.

The aforementioned information does, in my view, indicate that the balance of convenience favours the granting of this interdict for the following reasons:-

(a) I am prepared to hand myself over to the police in the presence of my legal representatives;

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112

(b) I am prepared to assist the police with their investigation as far as I can within controlled environment and in the presence of my lawyers and if possible, members of Independent Complaints Directorate. I say this because I do not know what else the police require to know from me. As a warrant of arrest has been issued, it stands to reason that investigations had been completed and what is outstanding is to arrest me as the evidence is deemed to be sufficient for that purpose as well as the purpose to arraign me for trial.

(c) An arrest under these controlled circumstances will not prejudice the police investigations. Instead it will eliminate any possibility of them alleging that I had threatened their lives.

47.

It is respectfully submitted that the granting of the order I seek will not be in any way prejudicial to the interest of the Respondents in carrying out their investigations. However, it is submitted that there is overwhelming prejudice to my right to life if the Honourable Court does not grant this order in the terms requested as it will open the way for the opportunity on the part of the police to carry out their threats of killing me.

48.

I am of the view that this application is urgent and that this Honourable Court should condone non-compliance with the rules relating to service. I am prepared to hand myself over at any time or place as would be ordered by this Honourable Court in the presence of my lawyers, members of the Independent Complaints Directorate and be interrogated in their presence as well.

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113

WHEREFORE I humbly pray that I be granted the order in terms of the Notice of Motion prefixed hereto.

DEPONENT

I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this Affidavit which was sworn to and signed before me at Durban this 21 day of October 2008, the Regulations contained in Government Notice No. R1258 dated 21st July 1974, as amended, having been complied with.

JONATHAN EDWARD GEORGE KIRBY
COMMISSIONER OF OATHS
98 CATO ROAD, DURBAN, 4001
PRACTISING ATTORNEY, R.S.A.

114

COMMISSIONER OF OATHS

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Durban Central CAS 185/02/2009

A923/
Cm64

IN THE HIGH COURT OF SOUTH AFRICA
DURBAN AND COAST LOCAL DIVISION

CASE NO. 13759/2008

In the matter between:

BONGANI ELPHAS MKHIZE	Applicant
and	
MINISTER OF SAFETY & SECURITY: SOUTH AFRICA	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL: KZN COMMUNITY SAFETY & LIAISON	Second Respondent
SAPS PROVINCIAL COMMISSIONER: KZN	Third Respondent
COMMISSIONER J. BOOYSEN: HEAD OF THE ORGANISED CRIME UNIT – SAPS: KZN	Fourth Respondent

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RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

JOHAN WESSEL BOOYSEN,

do hereby make oath and state :-

1.

I am an adult male, a member of the South African Police Service, and am also the Provincial Commander: Organised Crime for the Province of KwaZulu-Natal.

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Durban Central Cas 185/02/2009

A92(3)

2.

The facts stated herein are, unless where indicated to the contrary, within my personal knowledge and belief, alternatively have been obtained by me from files and documents under or in the control of the South African Police Service. I am the Fourth Respondent in these proceedings.

3.

All of the Respondents oppose this application. It is convenient that I depose to the principal Opposing Affidavit with the other Respondents providing Confirmatory Affidavits and/or additional Affidavits as they might see fit.

4.

I have read the Notice of Motion herein, the Founding Affidavit of the Applicant and the other documents and Affidavits annexed thereto.

5.

Before responding to the Applicant's Affidavit it is pertinent for me to point out that the relief sought by the Applicant in paragraphs (b) (ii), (iii) and (iv) is not warranted by the matters disclosed in the founding papers but, more importantly, constitutes an unwarranted and unjustified limitation of the powers, rights, obligations and duties vested in and imposed upon the South African Police Service in terms of the Constitution and more specifically in terms of the Criminal Procedure Act, 51 of 1977. As such that relief constitutes an improper interference with the duties of the Police to investigate and combat crime.

GSM

Durban Central CAS 188/12/2009

A 92/37

6.

Apart from that the relief sought in paragraph (b) (i) constitutes nothing more than mere lip service couched in interdictory language enjoining the Police to do exactly that which is their duty to perform.

7.

In seeking that relief, and as a general statement, the Applicant relies on nothing more than innuendo, hearsay, unconfirmed rumour and generalized unconfirmed reports made in the popular press.

8.

I turn now to deal with the specific allegations made in the Applicant's Affidavit.

9.

AD PARAGRAPH 1

I admit the identity of the Applicant and that he is an adult male taxi owner. I have no knowledge as to his place of residence.

10.

AD PARAGRAPH 2

Having regard to that set out in this Affidavit I dispute the contents of paragraph 2.

GSM

Durban Central Cas 188/02/2009

A92/3

11.

AD PARAGRAPH 3

I admit these allegations.

12.

AD PARAGRAPH 4

I admit the Identity of the Second Respondent. However, the Second Respondent is responsible for the portfolio of community safety and liaison. I refer further to his Affidavit filed evenly herewith.

13.

AD PARAGRAPH 5

I admit these allegations.

14.

AD PARAGRAPH 6

Save to state that I am the Provincial Commander: Organised Crime for the Province of KwaZulu-Natal I admit these allegations.

15.

AD PARAGRAPHS 7 AND 8

I note what the Applicant intends to do as described in these paragraphs. The manner in which the Police are authorized to carry out their functions and duties is set out with precise clarity in the Criminal Procedure Act 51 of 1977

Durban Central CAS 188/02/2009

A92(3)

("the Act"). In my respectful submission this Court is enjoined to ensure that the Police comply with their duties and obligations as set out in the Act. It is imperative that right at the outset I make it abundantly clear that as matters presently stand a Warrant of Arrest has not been sought or issued with regard to the Applicant and, at present, he has no reason absolutely to fear arrest. However, as the investigation into the matters generally described in the Founding Affidavit progresses further I am unable to state with any certainty whether that position will change. If it does and there indeed arises a situation where it becomes necessary to either question or detain or arrest the Applicant, those functions will be carried out strictly in accordance with the law. If and when that happens, the Applicant has available to him all of his constitutional and other rights which the Police are obliged to respect and observe.

16.

AD PARAGRAPHS 9, 10, 11, 12 AND 13

I have no knowledge of the allegations contained in these paragraphs, question their relevance to this application and, to the extent that the Applicant contends that they are indeed relevant, put him to the proof thereof.

17.

AD PARAGRAPH 14

While there has certainly been tension between the two associations mentioned by the Applicant, the violence in the taxi industry is not limited to those two alone. Violence in the taxi industry is endemic, rife and spreads

G Sm

Durban Central Cas 185/02/2009

A.92B

across all associations. There have been members from all associations that have been killed but at present I am unable to say how many and from which particular association such people have emanated.

18.

AD PARAGRAPH 15

The Police are investigating violence whenever and wherever it occurs. This includes all the associations that are involved and not just the two referred to by the Applicant.

19.

AD PARAGRAPH 16

I admit that at a point in time Superintendent CHONCO was the Station Commissioner at Kraanskop Police Station. However he was assigned to deal with all taxi conflicts as a co-ordinator of that investigation in the Province of KwaZulu-Natal. He was not the head of any unit and there is no particular unit as described by the Applicant. I have no knowledge as to whether or not the Applicant did indeed meet with CHONCO.

20.

AD PARAGRAPH 17

I admit that CHONCO was murdered on 27 August 2008. On that day he and another member of the South African Police, one KHANYILE, were in a motor vehicle when they were set upon. In the exchange of gun fire CHONCO was killed, KHANYILE was injured and one of the assailants was shot dead at the

GSM

Durban Centre | Ces 185/02/2009

A 92(3)

scene. This assailant was found in possession of an AK47 rifle.

21.

AD PARAGRAPH 18

Although I am aware of the fact that the services of a security company were retained by the association, I am not aware of the remaining allegations contained in this paragraph. To the extent that the Applicant contends that they are relevant I put him to the proof thereof.

22.

AD PARAGRAPH 19

I dispute the allegations contained in paragraph 19. The forensic investigation into the firearms of the security company was only done much later under different circumstances. I deal with those later in this Affidavit.

23.

AD PARAGRAPH 20

I deny the allegations contained in paragraph 20. To the extent that the Applicant seeks to rely on rumour and the unsubstantiated evidence of an unknown person who claims to be a policeman, I cannot deal with same.

24.

AD PARAGRAPH 21

I admit that a person was detained and questioned. I deny that that person was in any way assaulted. In any event these allegations constituted hearsay and ought to be struck out.

G S M

Durban Central Cas 188/02/2009

A92D

25.

AD PARAGRAPH 22

I note the contents of the document purporting to be an Affidavit by MOSES DLAMINI. It is improper for that Affidavit to be put up by the Applicant unless and until MOSES DLAMINI puts up an Affidavit in this matter. That Affidavit was not designed for the purposes for which the Applicant intends to employ it and is therefore, in the context of this application, hearsay, and ought to be struck out. In any event, MOSES DLAMINI was never assaulted and I refer to the Affidavits of PANDAY and MAHARAJ filed evenly herewith.

26.

AD PARAGRAPH 23

The information received from MOSES DLAMINI is hearsay and ought to be struck out. In any event I deny the existence of any list that is referred to by the Applicant and deny that DLAMINI was assaulted.

27.

AD PARAGRAPG 24

I admit that MOSES DLAMINI was released. Any information received by the Applicant from MOSES DLAMINI as referred to in the Founding Affidavit is hearsay and ought to be struck out. I have no knowledge as to why the Applicant became concerned for his wellbeing and deny that he had any reason to be so afraid. The letter, annexure "B" needs to be placed in

GSM

Durban Central | Cas 188/02/2009

A 92.B

context. On 05 September 2008 Hlapane Attorneys addressed, *inter alia*, the Provincial Commissioner. A copy of that letter is annexed hereto marked "JWB1". That was responded to on 11 September 2008, a copy of which is annexed hereto marked "JWB2". Annexure "B" to the founding affidavit was then received. In any event, in the absence of an affidavit from the author of the letter the contents thereof are hearsay.

28.

AD PARAGRAPH 25

I deny the allegations contained in this paragraph. It is not the intention of the Police to kill anyone. It is certainly the intention of the Police to properly investigate all crime and to bring the persons responsible therefor to book.

29.

AD PARAGRAPH 26

I deny the allegations contained in this paragraph. It is not the intention of the Police to falsely implicate anyone in any of the crimes concerned. Again the unsubstantiated hearsay referred to in this paragraph is not a basis for the grant of the interdicts sought and ought to be struck out.

30.

AD PARAGRAPH 27

No list existed and therefore there was no list that could have been supplied to the Second Respondent. In this regard I refer to the Affidavit of the Second

GSM

Durban Central Cas 185/02/2009

A92

Respondent filed evenly herewith.

31.

AD PARAGRAPH 28

NDIMANDE and TEMBE were arrested and questioned. They were subsequently released. On 16 September 2008 information was received which necessitated NDIMANDE and TEMBE to be questioned again. Information was also received that the two individuals were in the process of fleeing the Province of KwaZulu-Natal, making their way to the Free State. On the busy N3 freeway between Pietermaritzburg and Merrivale an attempt was made to apprehend them. Police vehicles employing their sirens and appropriate flashing lights attempted to stop them. They resisted and shot at the Police. The Police returned fire and they were killed. Two hand guns, a Lugar assault rifle and an AK47 assault rifle were recovered by the Police. To the extent that the information contained in paragraph 28 is at odds with what I say here, I deny same. I also deny the contents of the press report from The Daily Sun to the extent that it is at odds with what I say. TEMBE was an employee of the security company referred to by the applicant in paragraphs 18 and 19 of the founding affidavit. As a consequence of this incident, and when he was discovered in possession of assault weapons, and because he was involved in an incident where he was party to the Police being fired upon, the forensic investigation into the firearms referred to in paragraph 19 of the founding affidavit was commenced.

GSM

Durban Central Cas 185/02/2009

A920

32.

AD PARAGRAPH 29

There is simply no basis for what the Applicant contends is "widely believed". I have no knowledge of what services the Applicant has engaged and who or what the "various entities" are. I have already explained that NDIMANDE and TEMBE were again sought as a result of new information received. There is nothing untoward about that. In any event, why the Applicant refers to the N3 highway as a "quite (sic) back-road" escapes me unless it is nothing more than a thinly veiled attempt to colour the information (whether true or not) placed before this Court.

33.

AD PARAGRAPHS 30 AND 31

I have already said that there was no list in existence. On 3 September 2008 an attempt was made to arrest BUTHELEZI. He resisted arrest and attempted to shoot at the members of the South African Police Services who returned fire in self-defence. BUTHELEZI was killed in that exchange of fire. His firearm, a CZ 7.65 automatic was recovered at the scene. Whether or not BUTHELEZI was a prominent member of the Applicant's association is unknown to me. I accordingly deny the allegations contained in paragraphs 30 and 31 to the extent that theirs are at odds with what I say here. The Affidavit put up from SOKHULU is hearsay and must be struck out. It was not obtained or put up for the purposes of this application and she has not confirmed those facts for the purposes of this application. In any event I deny

G S M

Durban Central | Cas 185/02/2009

A92 B)

the allegations contained in that Affidavit to the extent that they are at odds with what I say herein. BUTHELEZI was killed while he resisted arrest and shot at the Police.

34.

AD PARAGRAPH 32

Information was received that implicated NTULI and MTHEMBU in taxi violence related incidents. On 18 September 2008, as a result of that information, members of the South African Police Service attempted to arrest NTULI and MTHEMBU. The Police were fired upon and had to return fire. As a result both NTULI and MTHEMBU were killed. Their firearms, a Z88 and a CZ 75 were recovered from the scene. I accordingly deny the allegations contained in paragraph 32 to the extent that it differs from what I say herein.

35.

AD PARAGRAPH 33

MKHIZE was arrested on 18 October 2008 in Pietermaritzburg. He was attending a funeral at the time. He was transported to Scottburgh for questioning. After questioning, during which he had agreed to effect a pointing-out, he was again transported for that purpose. Whilst in the vehicle he attempted to overcome the driver and was shot in the process. This was in self-defence. I accordingly deny the allegations contained in paragraph 33 where they are at odds with what I say herein.

G S M

Durban Central Cas 185/02/2009

A 92(3)

36.

AD PARAGRAPH 34

I am surprised to note that the Applicant identifies himself with the unnamed person referred to in the unsubstantiated newspapers article. How the Applicant concludes that the report suggests that he is intending to flee the country is a mystery. I accordingly deny the allegations contained in paragraph 34 to the extent that they are relevant to this application.

37.

AD PARAGRAPH 35

I have repeatedly said that the list referred to is simply a figment of the Applicant's imagination. The Applicant is not a suspect at present and neither has a warrant of arrest been contemplated or sought with regard to him. However it is interesting to note that the Applicant has a "source" within the Police services. Why he would need such a "source" is food for interesting speculation. There is no plan to kill the Applicant. I accordingly deny the allegations contained in paragraph 35.

38.

AD PARAGRAPH 36

I deny these allegations.

G Sm

Durban Central | Cas 188/02/2009

A92(3)

39.

AD PARAGRAPH 37

This application has been engineered to ensure that the Applicant approach the Court without any response from the Respondents being placed before the Court. If regard is had to annexure "G" it will be noted that it called for a response by 11H00. The absence of a response was coupled with an assumption that there was indeed no response that would be forthcoming. However, if regard is had to the telefax transmission slip annexed to that letter it would be seen that it was only telefaxed at 11H21 that morning. By that stage the response time has past considerably. I have no doubt that that discrepancy was not brought to the attention of the learned Judge who heard this matter in the urgent circumstances engineered by the Applicant. In any event, it came to my attention shortly after noon that day that the third respondent had received an identically worded letter, but which instead called for a response by 12h00 that same day. I was informed that the third respondent's office was preparing a response. The third respondent's reply is annexed hereto marked "JWB3". It is also to be noted that very little of the relief claimed in the Notice of Motion is foreshadowed in the letter, annexure "G". I accordingly deny the allegations contained in paragraph 37.

40.

AD PARAGRAPH 38

The Applicant's belief is wholly unfounded. I otherwise deny the allegations

GSM

Durban Central Cas 185/02/2009

A92(3)

contained in paragraph 38.

41.

AD PARAGRAPH 39

I note the allegations contained in paragraph 39.

42.

AD PARAGRAPH 40

I note that the Applicant states that he has no information whatsoever that could assist the South African Police Service in its ongoing investigation into the issues of taxi violence. If that is indeed the Applicant's position then he has nothing to fear. Even if the Police conclude otherwise and determine, at some point in the future, that the Applicant might well be a suspect and liable to detention, the Applicant is well within his rights to refuse to respond to any questions put to him. He is also well within his rights, at that point in time, to demand that he has his legal representative present when being questioned. All those rights the Police Services are obliged to respect and will respect. I also note that the Applicant's stated intention is never to make any confession before a Magistrate or anyone else relating to the investigation into taxi violence. I accordingly deny the allegations contained in paragraph 40.

43.

AD PARAGRAPH 41

I have already said that no warrant for the arrest of the Applicant has been

G S M

Durban Central Cas 185/02/2009 Page 16 A92B

contemplated or sought. The investigation is ongoing and is nowhere near completion at this stage. The Applicant's averments are simply no basis for the relief sought. I deny the allegations in paragraph 41.

44.

AD PARAGRAPH 42

I note these allegations.

45.

AD PARAGRAPH 43

There is simply no basis for the alleged urgency and the matters dealt with are entirely of the Applicant's own making, based on untested rumour, innuendo and hearsay. There is simply no evidence whatsoever to support the Applicant's alleged "fears and contentions". It is a well known fact that the taxi industry is beset with the corruption and violence as the competing associations and competing members seek to protect their respective interests. The mere fact that people being investigated have sought to turn on the Police and are killed in circumstances where the Police are forced to defend themselves cannot and must not be construed to mean that the Police is conducting a campaign against them.

46.

AD PARAGRAPH 44

There was no need to bring this application. I acknowledge that the Applicant

G.S.M

Durban Central Cas 188/02/2009

A 92B

has indeed been corresponding with the Police Services. However, and with specific reference to annexure "H", it is disingenuous for the Applicant to put up the response from me without putting up his letter of 29 August 2008. This is yet another indication of why I say the Applicant has crafted together this application to suit his own purposes because the Applicant does not see fit to put up his letter, obviously considering it to be relevant, I will refrain from doing so.

47.

AD PARAGRAPH 45

The references contained in this paragraph are scurrilous and inflammatory. This paragraph and the newspaper articles referred to have no bearing whatsoever on the matter at hand and ought to be struck out.

48.

AD PARAGRAPHS 46, 47 AND 48

I deny the allegations contained in these paragraphs.

WHEREFORE I pray that it may please this Honourable Court to dismiss the application with costs.

G Sim

Durban Central Cas 188/02/2009

A923

DEPONENT

The terms of Regulation R.1258 published in Government Gazette No. 3619 of the 21st July, 1972, as amended, having been complied with, I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this Affidavit, which was signed and sworn to at on this day of 2008.

MARGARET-ANN MARAIS
64 SELATI STREET
ALPHEN PARK, PRETORIA
COMMISSIONER OF OATHS EX OFF
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA

COMMISSIONER OF OATHS

(Full names)

(Bus. Address)

Capacity:

Area:

Minister Mkhize AnsAff

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A-35 (1)

CM65

CASE NO. 13759/2008

IN THE HIGH COURT OF SOUTH AFRICA

DURBAN AND COAST LOCAL DIVISION

BEFORE THE HONOURABLE MR JUSTICE NTSHANGASE

AT DURBAN ON 14TH NOVEMBER 2008

In the matter between:

BONGANI ELPHAS MKHIZE		Applicant
And		
MINISTER OF SAFETY & SECURITY: SOUTH AFRICA	1st	Respondent
MEMBER OF THE EXECUTIVE COUNCIL: KZN COMMUNITY SAFETY & LIAISON	2nd	Respondent
SAPS PROVINCIAL COMMISSIONER: KZN	3rd	Respondent
COMMISSIONER J. BOOYSEN: HEAD OF THE ORGANISED CRIME UNIT – SAPS: KZN	4th	Respondent

UPON the Motion of Counsel for the Applicant and upon reading the *NOTICE OF MOTION* and the other documents filed of record,

IT IS ORDERED [BY CONSENT]

1. That the respondents are interdicted from unlawfully killing, injuring, threatening, harassing or in any way unlawfully intimidating the applicant.

2. That the rule nisi is in all other respects discharged.

CERTIFIED A TRUE COPY
GESERTIFISEER 'N WARE AFSKRIF
HOF VAN SUID-AFRIKA
DURBAN

G Sm

3. That each party to pay its costs.

BY ORDER OF THE COURT

E. NTSHANGASE
ACT. ASST. REGISTRAR

DURBAN 4000
REGISTRAR OF THE HIGH COURT OF S.A.

S.D. MOLOI & ASSOCAITES
/jd

G sm

Cm66

Draft statement by Aris Danikas

Contact details : technotronic@on.gr

To whom it may concern:

1.

I Aris Danikas age of 41 years old ex owner of technotronic electronics in S.AFRICA would like to make the following draft about criminal acts by members of the Cato Manor organized crime unit that I witnessed as a police reservist attached to the unit from 1999 to 2008. I would like to stress that I am very concerned that making this draft outlining the criminal acts I have witnessed could put my life and that of my immediate family, including my wife's relatives in South Africa, in danger, and I make this draft on the understanding that the South African authorities will do everything in their power to ensure the safety of my immediate family and myself. Moreover, I am also very concerned that outlining these acts will make me a target of false accusations and being implicated in the crimes by the Cato Manor unit members that I witnessed but did not participate in. It must also be stressed that these falsehoods aimed at attacking my credibility and discrediting my character will be orchestrated by the very people I witnessed committing these crimes who are also seasoned police officers fully capable and in possession of the means to manipulate evidence against me. I therefore also make this draft on the understanding that I will be legally protected and indemnified from any of these efforts to falsely implicate in any crimes.

2.

During the week of 15 October 2001 I had lunch with Johan Booysen at the News Café in Musgrave shopping centre in Durban. Booysen showed me a photograph of an escaped crime suspect who he alleged had faxed threatening material to senior justice officials that had convicted the suspect previously for various crimes. Booysen told me if I saw the man in the photo I should put a bullet in his head.

On 15 October 2001 at 12.30am (see my duty register annexed PAGE ONE) I drove to Cato Manor police station and drove in a car with Booysen to a township, I believe it was KwaMashu, followed by several Cato Manor members in unmarked vehicles. Booysen stayed in the car and I joined the members conducting house to house penetration searching for the suspect. We found a relative of the suspect, who took us to a house. I saw Jeremy Martin kick the door in, and I saw the suspect dragged outside by Martin.At the time of his arrest i was positioned close to the entrance of the house and could see a female and childrent lying in a bed. Martin dragged him out of the house into the rain in his underpants and we stood around him in a circle while Martin was trying to handcuff him. The suspect was unarmed. The suspect then slid down a 2 meter slope out of the circle. At that point another officer, I believe his name was Eddie van Rensburg, told me in abusive language to "get the fuck out of here". Then I heard

GSM

shots and the suspect was dead. The members claimed later that the suspect had produced a firearm hidden somewhere in the vicinity, a claim I seriously doubt as he was surrounded by more or less 12 police officers armed with assault rifles.

2.

On 26 February 2004 I called Cato Manor officers to come to my shop Technotronic in Smith Street to arrest a man who came to collect a stolen laptop. He was taken to Cato Manor police station. I accompanied them. At the offices of the serious and violent crime unit at Cato Manor they stripped the suspect of his clothes, tied him to a chair, and proceeded to torture him by choking and hitting the suspect. I recall that members present included RC Maharaj and Varesh Panday. I recorded the event secretly and showed it to Booysen soon afterwards. He just laughed and said "that's how things are done to get results." He also warned me not to show it to anybody or I would get into trouble and requested a copy and a colour photo of a specific frame showing Varesh Panday, which he told me he wanted to use to incriminate Panday, with whom he was in a personal dispute. To my knowledge he never took disciplinary action against his members, but I believe he warned them against the possibility of my taking recordings future torture because they henceforth avoided taking me to interrogations. In 2008, after I left South Africa, I place clippings of the recordings on YouTube REFF CASE NO 297/02/04 (FILE "torture in office")

NO CASE

3.

On 30 March 2004 a drunk man was harassing the owner of the Pie Shop next door to my shop in Smith Street. Booysen happened to be in my shop and went to grab the suspect and dragged him through my shop, with my help (FILE workshop blood VIDEO 1). Booysen took the suspect to the back of my shop where I saw Booysen assault the suspect with his fists and knock him down unconscious, leaving a lot of blood on the floor. Later on police members arrived and under Booysen's direction collected the suspect. Soon afterwards, it may have been the next day, Booysen either dictated or gave me a statement, I don't recall which. This statement falsely stated that the suspect had attacked one of us and tried to murder one of us – I don't recall whether it was me or him – with a screw driver in my workshop. This never happened, but I had to sign it because Booysen ordered me to in order to justify his use of unnecessary and excessive force.(reference 30-03-04 15:45 30-03-04 1900 SUSPECT ARRESTED AT BROAD STR POLICE STATION)

↓

ABN CONTROL – NO Cases reported.

4.

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On 21 January 2006 Booysen came to my shop and I related a story to him of being in a car with Willie Olivier and Eugene van Tonder, senior members of the Cato Manor unit. They were driving around Smith Street in a black Lumina, a state unmarked car used by the unit, with tinted windows. Van Tonder wound down the window and started shooting with a handgun sized airgun at pedestrians, specifically targeting black pedestrians for entertainment, laughing as he shot them. I recall he knocked down a man on a bicycle and wounded a few others, including females. When I related this to Booysen, he described in detail how he and his colleagues had frequently done this, and that he participated in this himself, laughing while telling this story. He also said that a civilian who was injured had opened a case and provided the registration number of the vehicle where the shots were fired from, that I was in, and that this number had been traced to the Cato Manor unit. Booysen said the complaint was sent to his office and he said he "took care of it". By that I understood that he had covered it up (see video 2)

5.

On 27 October 2006 at around 9am four suspects were arrested by Cato Manor members at Durban airport arrival lounge. Some of the members I rememberd who were present during this arrest, were: Booysen, Mostert, Van Tonder, Vick Panday, Peter George, Shane Naidoo, Mukesh Panday, Anton Lokum, Sgt R Lee and Adele Sonnekus took part in this arrest too, at Booysen's invitation. They were taken to Cato Manor police station and interrogated one by one. I was present during this interrogation. Other members of the unit I recall being present were Booysen, Mostert, Van Tonder, Vick Panday, Peter George, Shane Naidoo, Mukesh Panday, Anton Lokum. I witnessed one being questioned and subsequently tortured in my presence and in the presence of Booysen. After a short while he said he could not be seen there and left with me. Booysen later told me Mostert shot two of the suspects dead after one tried to hit him with a spade. Furthermore he told me that he arrived at the scene soon afterwards and that one suspect was still alive, waiting for the paramedics to arrive. He told me that he then leaned down to the dying suspect's ear and whispered: "I told you I'm going to kill you if you come back." (REGISTRATION OB 1 2 /10/2006)

6.

On 9 April 2007 I was visited by Booysen and Adele Sonnicus at my residence when he received a call from one of his members to inform him of a shootout in Melvern area. We proceed to the crime scene where I saw various members of the cato manor unit (operation greed). I found two African males lying within a residential garage. One was shot dead inside a car and the other one was wounded and still alive but in great agony and bleeding heavily. Booysen told me that they will only call the paramedics and the ICD once the second suspect had also dead, so everyone was waiting around for the second suspect to pass away due to his injuries. I managed to use a camera and recorded some video material of the crime scene in the presence of Booysen and the rest of the officers involved in the shooting. I was also instructed by Mosterd and Olivier to pick up various large caliber spent police cartridges and after I

GSM

placed them to my pocket I handed over to Mosterd and Olivier as per their request.(REGISTRATION OB 11-12 ,04/2007))Ilie Malvin suspect dying.

The suspect died after a few minutes, and three times I asked the director to call an ambulance.

Later on I was told by Booysen that the driver of the police getaway car of the robbers was a police informer and had tipped off the Cato Manor office about the planned burglary, and that he had driven away after dropping the suspects at the house they intended to burgle.The suspects were then shot dead by the unit.

When we left the crime scene and returned to my residence with Booysen I played the video to him and he specifically instructed me to get rid of the video material or else I would get into serious trouble. I chose to keep it and placed it on YouTube in 2008.

7.

→ MOSIAFDA – ICD.

On 15 November 2007 robbers who were part of a gang that stole jewels and watches shot an off duty policeman at Pavilion shopping mall in Durban. (REGISTRATION OB 18-19 , 11/2007)) I attended the scene with Booysen. Other members of the unit who I recall were present were Booysen, Mostert, Olivier, Van Tonder, Peter George, Rakesh Maharaj, Mukesh Panday and Shane Naidoo.

→ Mo

On 23 November 2007 a Greek national Costas Svourakis was arrested at OR Tambo airport aboard an Olypic Airways flight to Athens in possession of several watches later identified as the ones stolen at the Pavilion Mall. The suspect was brought to Cato Manor that night and interrogated for about two hours. I was called by Booysen to attend the scene to act as an interpreter. Other members of the unit who I recall were present were Booysen, Mostert, Eugene van Tonder and Vic Panday and Mukesh Panday.

I witnessed the suspect being stripped of his clothes and tied on a chair naked. Soon afterwards he was tortured and beaten by the members of the cato manor unit by placing a bag over his head and choked until he confessed to various crimes that he was accused of. ((registration OB 22 23 ,11/2007))

8.

→ ICD.

On the 24 May 2008 I received a call from Mosterd to assist at a crime scene at 5th Avenue at Morning side Durban where a suspect was shot and also fell to his death while Mosterd and members of the Cato manor unit tried to arrest him. When I arrived at the scene I was shown a dead body on the ground and I was refused entry to the crime scene by Olivier. I was told later by Mostert that he himself shot the suspect while he was falling to his death.

REFF OB MAY 2008 24-25 1100 TO 0100

The draft was prepared and handed over ~~to me at S.A. Embassy on 2012-04-18~~ at 16:50 by Mr Dimitrios of Athens - Greece.

GSM

HP LASERJET

ANNEXURE

E.J
Cm67

SAP 21

SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

136 Victoria Embankment
Durban, 4000

Verwysing Reference	12/18/2
Navrae Enquiries	S/Supt Alyer Supt W Olivier
Telefoon Telephone	(031) 333 8045 (031) 203 7323
Faksnommer Fax number	(031) 203 7318 ( )

OFFICE OF THE
TACTICAL COMMANDER
ORGANIZED CRIME
DURBAN

2008-10-14

THE PROVINCIAL COMMANDER
ORGANIZED CRIME
KWA-ZULU NATAL

ATT: DIR BOOYSEN

MONETARY AND NON-MONETARY AWARDS

MAPHUMULO CAS 99/08/2008: MURDER AND ATTEMPTED MURDER ON SAPS MEMBERS SUPT CHONCO AND INSP M KHANYILE

1. Details of candidates:

0070031-2	Dir JW Booysen
0057260-8	Supt W Olivier
0425495-3	Capt SJ Smith
0410381-5	Capt N Eva
0426991-8	Capt Lockem
0066633-5	Capt JJE Van Tonder
0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0615350-0	Insp MW Thabethe
0450710-0	Insp Tarigo
0464815-3	Insp BA Magwaza
0429170-1	Insp E Nel
0638209-6	Insp Mdlalose
0413171-1	Insp A Stolz
0603646-5	Insp M Panday
0173585-3	Insp PW George
0523900-1	Insp B Zondi
0608191-6	Insp RC Maharaj

G Sm

0492770-2 Sgt Mkhwanazi
0536844-8 Cst S Naidoo
0443522-2 Capt V Auerbach (Brighton Beach SAPS) Proven: 2008.07.01

(21)

Each of the above candidates played a role in the successful apprehension of the suspects. Some of the candidates played a role in the apprehension of the suspects whilst others assisted at the scene.

2. **Summary of events:**

On Wednesday 2008/08/27 at approximately 10H00, Supt Chonco was in the company of Insp Khanyile, they were attached to the Provincial Taxi Task Unit. The same day they were on route from SAPS Kranskop to KwaDukuza Court. Ahead of them was a marked police vehicle with two accused also on route to take the two accused to KwaDukuza Court.

Whilst Supt Chonco travelled along the R74, approximately 20 kilometers before KwaDukuza on a detour along the R74, he was led into an ambush and was accosted by armed males armed with AK47 and R4 – R5 rifles. He was fatally shot and killed behind the steering of the police vehicle whilst Insp Khanyile, who was in his company, also sustained gunshot wounds but miraculously managed to fight off the suspects, shooting the one about six meters from him. Insp Khanyile was later removed and taken to Umhlanga Hospital by helicopter.

The scene was attended by Supt Minaar, the Station Commissioner of Kranskop SAPS as well as other members of nearby police stations. The same day at 11H00, members of Organised Crime, Cato Manor, was summoned and tasked to the scene and took over from Supt Minaar. The scene was thoroughly secured and a thorough investigation was done at the scene with extensive enquiries made by the members on the scene. Statements were obtained from the local community and other persons nearby.

The same day 2008/08/27, the investigation team which at this stage consisted of Supt W Olivier, Capt S Smith, Capt N Eva, Capt Van Tonder, Insp Mostert, Mdlalose, Zondi, Makhanya; P George, Thabethe, Panday, Stolz and Sgt Mkhwanazi, concluded their investigation at the scene. At the time the deceased, who was shot at the scene by Insp Khanyile, was removed and possession was taken of his cell phone. Capt Eva, Insp Mostert and Cst Naidoo extracted vital information from the phone. It was during this time that Insp Mostert contacted Crime Intelligence and requested immediate assistance. Supt Olivier, Capt Eva, Van Tonder, Stolz and Panday returned to the office whilst Insp Mostert, Mdlalose, Makhanya, Zondi and Mkhwanazi remained at the scene to conduct further enquiries. Later the members departed to Kranskop and Greytown areas and the same day at 23H00 the investigation team still consisting of the above members met at Greytown. From Greytown the above investigation team proceeded to the area called Matimatolo near Maphumulo, however it proved to be a fruitless exercise. The team then returned to the office.

During this time all avenues were utilized to gather the intelligence that was analysed and on 2008/09/03 the first breakthrough was made by the investigation team with the assistance from Crime Intelligence. The investigation team now consisting of Supt Olivier,

G.S.M

Capt Eva, Smith, Van Tonder, Lockem, Insp Mostert, Panday, Nel, Makhanya, Mdlalose, Magwaza, RC Maharaj, Zondi, Sgt Mkhwanazi and Cst Naidoo as well as Capt V Auerbach of SAPS Brighton Beach, proceeded to the KwaDukuza area. The informer pointed the house out to the investigation team which was situated next to the R74 at 59 Rose Avenue, KwaDukuza. The same evening at 23H30, the same investigation team proceeded to 59 Rose Ave. The following members penetrated the house:

0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0536844-8	Cst S Naidoo
0443522-2	Capt V Auerbach (Brighton Beach SAPS)

whilst the remaining members took guard outside the house. As the above members entered the house a gun fight ensued and the first suspect, Lindani Buthelezi, was fatally shot and found next to him was a 9mm pistol with the serial number erased. The case is being investigated by KwaDukuza SAPS vide CAS 150/08/08. The investigation team then returned to the office.

Insp Mostert continued to gather information with the assistance of Crime Intelligence.

3. **The Apprehension of two more suspects**

Details of candidates:

0070031-2	Dir JW Booysen
0426991-8	Capt Lockem
0066633-5	Capt JJE Van Tonder
0410381-5	Capt N Eva
0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0429170-1	Insp B Nel

Summary of events:

On Monday 2008/09/15, Dir Booysen, the Provincial Commander, contacted Insp Mostert and informed Insp Mostert that he had information pertaining to the suspect that had organized the hit on Supt Chonco. He was hiding in Virginia in the Orange Free State and was on route to Pietermaritzburg to collect some cash in Pietermaritzburg. During this time the informer remained in contact with Dir Booysen who continued to relay the information over to the investigation team.

On Tuesday 2008/09/16 at 06H20, Dir Booysen contacted Insp Mostert again re the movement of the suspect who was near the Pietermaritzburg area in a Hyundai Tuscon 4X4 with registration NRB3904 and that he was armed and dangerous. The investigation team consisting of the above members immediately departed to Pietermaritzburg.

The same day at 08H30, the investigation team still consisting of the above same members who were in the Pietermaritzburg area, continued to receive further information from Dir Booysen and at 10H10 information was received that the above vehicle was en route on the N3 towards the Orange Free State. The vehicle was spotted near the Cedara turn off by the

GSM

investigation team, the occupants being two persons, a driver and a passenger seated on the back seat of the vehicle. The investigation team, which at this stage consisted of Insp Mostert, Nel and Makhanya in one vehicle while Capt Van Tonder, Lockem and Eva whom followed in a separate vehicle. Insp Mostert managed to catch up to the vehicle and in an attempt to get the suspects to pull over, the official blue light and siren was used. A shootout then took place between the passenger of the suspects' vehicle and the investigation team resulting in the driver of the vehicle being injured in the process which resulted in the vehicle stopping. The passenger in the suspects' vehicle, during the shootout, made an attempt to flee from the moving vehicle which resulted in him being flung out of the moving vehicle. Both the suspects were fatally injured in the shootout. The driver was positively identified as Timson Magojela Ndimande and was the main brain behind the assassination of Supt Chonco, the other suspect was his body guard. The following firearms were found in the vehicle; one AK47 Rifle with loaded magazine, one Ruger Mini 14 Automatic Rifle and two magazines as well as two 9mm Norinco Pistols, both with loaded magazines.

The following cases were opened:
Howick CAS 106/08/08: Attempted Murder and possession of unlicensed firearms
Howick CAS 107/08/08: Inquest

The above members returned to the office and continued to gather further information.

4. **Apprehension of two more suspects**

Details of candidates:

0426991-8	Capt Lockem
0410381-5	Capt N Eva
0084512-4	Insp P Mostert
0621413-4	Insp Makhanya
0638209-6	Insp Mdlalose
0413171-1	Insp A Stolz
0523900-1	Insp B Zondi
0492770-2	Sgt Mkhwanazi
0536844-8	Cst S Naidoo

Summary of events:

On 2008/09/18 at 13H00, Insp Mostert received information about the hideout of two more suspects in the Mandini area. The investigation team consisting of the above members proceeded to Mandini where the house was pointed out by the informer to Insp Mostert. Insp Mostert returned and briefed the members and at 15H10 the investigation team proceeded to 4 Oribi Place, Mandini. The following members entered the house:

0084512-4	Insp P Mostert
0413171-1	Insp A Stolz
0536844-8	Cst S Naidoo

whilst the remaining members stood guard outside the house. At the door, Insp Mostert found a black male and while in the process of identifying himself to this person, this male ran into the house. Insp Mostert, Stolz and Cst Naidoo then entered the house and

GSM

systematically proceeded through the house starting in the lounge area and proceeding down the passage. Turning left into the next passage a young school child was found standing in the one doorway who pointed to a closed door and informed Insp Mostert that "they are hiding there". The child was asked to depart from the house for his own safety. Once the investigation team reached the closed door, they found it to be locked and proceeded to announce themselves stating "It is the police, open up". This was repeated several times but no response was received. The door was then kicked in by Insp Mostert and at the same time a shot was fired from the room towards the investigation team and the sound of glass breaking was heard. The team then entered the room and a shootout took place between the police and the suspects, fatally wounding two suspects. The two suspects were positively identified as Nathi Mthembu and Mdu Khopoloto Ntuli. Found in the room was one Z88 9mm Pistol loaded with the serial number erased and one CZ75 9mm Pistol also loaded with the serial number intact. Insp Mostert was in possession of a warrant of arrest for the suspect Mdu Khopoloto Ntuli vide Maphumulo CAS 2/02/05: Murder which was being investigated by Supt Chonco.

During the investigations it was clear that Supt Chonco was a thorn in the side of these criminals who did not hesitate to take the law into their own hands. Investigations also revealed that the following suspects were directly involved in the assassination of Supt Chonco:

Dumisani Ndlovu who was shot by Insp Khanyile, one of Supt Chonco crew
Lindani Buthelezi who was shot by the investigation team
Nathi Mthembu who was shot by the investigation team
Mdu Khopoloto Ntuli who was shot by the investigation team and who was also wanted on Maphumulo CAS 02/02/2005: Murder (Attached, find J50 Warrant of arrest)
Timson Magojela Ndimande and his body guard, Sibusiso Tembe, who were shot by the investigation team and who orchestrated the hit on Supt Chonco.

Attached find newspaper clippings from the Daily Sun, The Natal Mercury and the Daily News as well as statements of members who were involved in the individual scenes.

As depicted in this report, it is clear that several members contributed and played an important role of which some members were continuously confronted with the dangers of the apprehensions of the suspects whilst other members played their individual roles which contributed to the success. These members should receive a benefit.

Comments: Recommended that members receive a certificate of commendation by the national commissioner and a voucher of R10 000.

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PROV HEAD: DET SERVICES: KWAZULU-NATAL
PROVINCIAL COORDINATOR: ORGANIZED CRIME
ASST. COMM. P.T. BROWN
DIRECTOR J.W. BOOYSEN

Provincial Head Detective Service KZN.

5 Award Options:

5.1 Monetary Awards

5.1.1 South African Police Service Gold Cross for Bravery
R35 000.00 (plus applicable tax)

5.1.2 South African Police Service Silver Cross for Bravery
R30 000.00 (plus applicable tax)

5.1.3 South African Police Service Commendation Medal
R25 000.00 (plus applicable tax)

5.1.4 Certificate of Commendation by the Minister for Safety and Security
R15 000.00 (plus applicable tax)

5.1.5 Certificate of Appreciation from the Minister for Safety and Security
R15 000.00 (plus applicable tax)

5.1.6 Certificate of Commendation by the National Commissioner
R10 000.00 (plus applicable tax)

5.1.7 Certificate of Appreciation from the National Commissioner
R10 000.00 (members of the public : tax not applicable)

5.2 Non-Monetary awards

5.2.1 Commendation by the Divisional Commissioner or Provincial Commissioner

5.2.2 Certificate of Appreciation from the Divisional/Provincial Commissioner

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'JB20'
478 (MB8

ANDREW CARSEN PATRICK COCHRANE SAID
under oath in English

2

I am an adult male, 40 years old, ID no: 7107185148083, resides at 48 Pine Wood Gardens, Glenmore, Durban, am employed as an Airborne Law Enforcement Officer, at Flyne, Hanger no: 8 Virginia Airport, Durban my cellphone no: 084 688 7488 and work tel no: 031 563 6881

3

On the 16 September 2008 I was still employed by SAPS as a Inspector and attached to SAPS Airwing, Durban.

4

On the said day in question I was officially on duty as a pilot crew and the pilot was Captain R. Ledwaba while busy executing our duties we received a call out that Members of Serious Violent Crime unit members were in pursuit of armed suspects and the assistance of Helicopter was needed as it was reported SVC members were under fire. The information was that the pursuing vehicle was travelling on an N3 road heading towards the direction of Howick.

5

By then we were at Durban North helicopter service centre and we were instructed to join Director Boo-Seng and Supt Oliviers at our unit, Durban SAPS Airwing.

Gsen

4

I would like to clarify that Durban Airwing unit is at the old Durban international airport. On our arrival at the airport Director Booyens and Supt Olivier jumped inside the helicopter and we headed to the N3 highway near ~~airport~~ Howick.

2012/09/20

5

When approaching the scene we received information that the pursuit was terminated with the suspect being shot dead on the N3 roads near Howick. We landed on the scene which was already cordoned off and Director Booyens and Supt Olivier alighted. Thereafter we positioned the helicopter to a nearby park where we landed to be on standby to render assistance by aerial photography if it was need. At no stage did we participate in the chase or in the shooting that ensued.

6

I hereby further state that we landed at the scene at about 11H30 and at about 13H00 we departed from the scene back to the unit (Airwing Durban-SAPS). The aircraft that we used was Eurocopter B3 Squirrel with registration number ZS-RWK.

7

That is all I can declare.

GSM

486

I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

Recorded

I certify that the deponent has acknowledge that he knows and understand the contents of this statement which was made before me and his signature was thereon placed in my presence at

Aurthur Mosten
2012/05/16
10:00

Commissioner of Oaths
Det Mokoena
FCS - Mosten
2012/05/16

GSM

ANNEXURE "JB17"

Z 16 (81/1/223)

283

SIMPHIWE CYPRIAN MAZONSI makes
State under oath in English

1

I am an adult male 33 years old. Residing at KwaDukuza municipality district KwaZulu-Natal with contact number known to the investigators.

2

Year 2004 I was employed by Executive Vip protection guarding fasci rank of Stanger fasci association (KwaDukuza fasci association) my mandate was to guard the rank. Owner of the company was Mr Andre Vander Bijl. The contract expired year 2005. The contract was given to Perfager Vip protection and owner of the company was Mr Anwar Khan. my mandate was to give protection to Mr Ngcobo (Maphona) who was a Vice chairman of Stanger fasci association. Chairman of the association was Mr Khanyile I gave protection in the year 2005

3

Sometimes I was also given task to guard Mr B.B Gwala. I was closed to all executive member of the association.

G.P.-S. 08/02

GSM

I was a trustee to all executive members of the association. Even when they plan to do something wrong like to hire hitman to kill someone they will discuss in my present.

Some of the members of the association were close to the unit called Cato manor unit. Those members were Sanele Zondi and Bongiswe mthlongo. Sanele Zondi was a younger brother of Bongekeni Zondi. Bongekeni Zondi was a member of Cato manor unit.

4

Bongekeni Zondi had fascis within Stanger fasci association (KwaDukuza). The fascis were under or registered under his younger brother Sanele.

5

Somewhere 2007 I accompanied Sanele Zondi and Bongiswe mthlongo to meet Mr Morsley and new general Boosten. The meeting place was near gate way shopping mall by the Shell garage behind private hospital. After the meeting I heard they conversation about what was the meeting.

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all about. Sarele and Bongiswe
Wanted Mosiep and Booysens
to cover up if police want
to arrest members of stange
fenci association. Sarele and
Bongiswe were informed of
before they had senior officer
on their side. The day after
meeting Sarele said the executive
have to pay money to Cato
manor until senior officer
returning to Mosiep and
Booysens that they met

After a week I was called
to accompany Sarele and
Bongiswe. We went to
gale way shopping mall at
Mac Donald parking. Bongiswe
had envelop contained money
I was notes inside. Upon
arrival we met now general
Booysen and Mosiep. Two
senior officers were travelling
in a grey BMW 5 series.
The driver was Mosiep.
Booysen was a passenger
sitted left front. They were
two in the BMW car.

Bongiswe and Sarele got
out and went straight

GSM

to the B.M.W. Bergi's we had the same envelop confirmed Capt. C did not know how much it was and if was lot. Sarele and Bergisue remained in the car for about 45 minutes to an hour waiting

8

In the process there was a conflict between Sfange (Kwadwuza) Pasi association and Maphumulo Pasi association. According to my knowledge during these years I was there, nobody from Sfange Pasi association was either arrested or killed by Cofa manor unit.

9

The only police officer who was a threat to Sfange Pasi association was then Superintendent Cfonco. According to the association Cfonco did not take side. Cfonco was a straight police officer. Cfonco did not take bribery from either Sfange or Maphumulo Pasi association if somebody committed murder relating to Pasi he would go out and arrest the suspect without involving Cofa manor.

Cafo manor unit was not happy with superintendent Afonco. Sanele and Bongiwe were not happy too with Afonco. I heard them Sanele and Bongiwe saying Afonco was a trouble and they will talk to senior officers referring to Boy Zeni and Mofet to sort him (Afonco).

10

I heard them talking about the plan to kill superintendent Afonco Sanele and Bongiwe arranged with someone who was a member of Mapumalo fosu association, to organised hitman for Afonco. Sanele and Bongiwe did not want to arrange or be at hitman themselves. They (Sanele and Bongiwe) wanted it to be seen as Mapumalo are they one who planned the killing of superintendent Afonco. Hitman for Afonco were Kopolofa, Lee, Mthembu, Swayo and others. SD

11

Cafo manor unit was also part of the plan. Afonco was gunned down just after the killing of Afonco, Cafo manor started to kill girls

GSM

the man behind the killing of Chief Ca I heard Sanele saying he had a list of all people that need to be killed by Cafo manor. Bongani Mthize was a chairman of Mapumulo Jesi association. he was also on the list and he was the last person to be killed. I was angry for Cafo manor to get Mthize because of the reporting by Mthize said to the authorities.

12

During my time I was told that at Minga home stead of Sanele and his brother Nicos Chief Bongelene Zondi there was Hope Game reserve. The park around their home stead was named after Bongelene Zondi. I think even today the park named after Bongelene Zondi. Bongelene was an acting Chief. Bongani was about to be given the position to be the full time Chief. Sanele was not happy with that. Sanele used to compliment to me that, he

GSM

not happy because Bongeleni was about to be given the position to be the chief.

13

The chief Bongeleni Zondi was gunned down. Swayo was arrested and granted bail. Within short period Swayo was gunned down too. I heard Sanele saying "Ngayi shaya ukuba ya kwa Emtondolo" meaning I hit the hitman and ended inside the shack referring to Swayo who was killed inside the shack.

14

Money was collected at the rank Stanger Kosi rank to pay Cato Manor until Sanele orchestrated the killing of Bongani Mkhize. Somebody was given the task to phone Brigadier Madansela that Bongani Mkhize was planning to kill Mandla Ngcaba and Bheki Cele. Sanele wanted the police to think that Bongani Mkhize was a trouble maker who killed Ford CO now was planning to kill Mandla Ngcaba and Bheki Cele.

15

G.P.-S. 06/02

GSM

290

Within short period Bongani Mkhize was killed by Capo Manor unit. Money was collected and Capo Manor was paid for job well done. I was not there when the money was paid to Capo Manor. I heard that Capo Manor paid. Bongani Mkhize should have been killed long time back, he was a difficult person. Among most of the time Capo Manor will phone people and give report that they missed him.

16

That is all for now.

17

I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

I certify that the deponent has acknowledge that, he knows and understand the contents of this statement. This statement is true as he and the deponent signature was put that on in my presence at

Q.F.-S. 06/02

291

Pietermaritzburg on 2013/05/15 at 11:28

Ramsu/COL Lt-Col
Commissioner of Oath
Richard Ramsu/COL
1 Ocelse Street
Kwazulu Natal
Lt-Colonel

G.P.-S. 08/02

GSM

(mbt.2

Simphiwe Cypran Mathonsi states under oath in English.

1.

I am an adult male 33 years old residing at Kwa Dukuza Municipality District Kwa Zulu natal with contact no known to the investigator.

2.

Year 2004 I was employed by Excalibur VIP Protection guarding taxi rank of Stanger. Taxi Association (Kwa Dukuza Taxi Association). My mandate was to guard the Rank. The owner of the company was Mr Andre Van Der Bill. The contract expired year 2005. The contract given to Pentagor VIP Protection and the owner was Mr Anwal Khan. My mandate was to give protection to Mr Ngcobo (Mapholoba) who was the Vice Chairman of Stanger Taxi association. Chairman of the association was Mr Khanyile (I gave protection in the year 2005.

3.

Sometimes I was also given task to guard Mr BB Gwala. I was closed to all executive member of the association. I was a trustee to all executive members of the association. Even when they plan to do something wrong like to hire a hitman to kill someone. They will discuss in my present. some of the members of the association were close to the unit called Cato Manor unit. These members were Sanele Zondi and Bongeleni Zondi was a member of Cato Manor Unit.

4.

Bongeleni Zondi had taxi within Stanger Taxi association (Kwa Dukuza). The taxi were

GSM

I states under oath in English.

1.

I am an adult male 33 years old residing at Kwa Dukuza Municipality District Kwa Zulu natal with contact no known to the Investigator.

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Sometimes I was also given task to guard Mr BB Gwala. I was closed to all executive member of the association. I was a trustee to all executive members of the association. Even when they plan to do something wrong like to hire a hitman to kill someone. They will discuss in my present. some of the members of the association were close to the unit called Cato Manor unit. These members were Sanele Zondi and Bongeleni Zondi was a member of Cato Manor Unit.

4.

Bongeleni Zondi had taxi within Stanger Taxi association (Kwa Dukuza). The taxi were

under or registered under his younger brother Sanele.

5.

Somewhere 2007 I accompanied Sanele Zondi and Bongiswe Mhlongo to meet Mr Morster and now General Booysen. The meeting place was near Gateway Shopping mall by the Shell Garage behind Private hospital. After the meeting I heard their conversation about what was the meeting all about. Sanele and Bongiswe wanted Morstert and Booysen to cover up if Police want to arrest members of Stanger Taxi Association. Sanele and Bongiswe were untouchables because they had Senior Officer on their side. The day of the meeting Sanele said the executive have to pay money to Cato Manor Unit Senior Officer referring to mostert and Booysen that they met.

.6

After a week I was called to accompany Sanele and Bongiswe. We went to the Gateway Shopping Mall of Mc Donald Parking, Bongiswe had envelope contained money it was notes inside upon arrival. We met now General Booysen and Mostert two Senior Officer were travelling in a grey BMW 5 series. The driver was mostert, Booysen was the passenger sited left front. They were two in the BMW car.

7.

Bongiswe and Sanele got out and went straight to the BMW. Bongiswe had the same envelope contained cash. I did not know how much it was and it was lot. Sanele and Bongiswe remained in the car BMW for about 45 minutes to an hour.

8.

In the process there was a conflict between Stanger (Kwa Dukuza) Taxi association and Maphumulo Taxi association. According to my knowledge during those years I was there nobody from Stanger taxi Association was either arrested or killed by Cato Manor Unit.

G Sm

9.

The only Police officer who was a threat to Stanger Taxi association was the Superintended Chonco. According to the association Chonco was a straight Police Officer. Chonco did not take bribery from either Stanger or Maphumulo Taxi Association. If somebody committed murder relating to taxi he would go out and arrest the suspect without involving Cato Manor Unit was not happy with Superintended Chonco. Sanele and Bongiwe were not happy too with Chonco. I heard them (Sanele and Bongiswe saying Chonco was a trouble and they will talk to senor officer referring to Booysen and Mostert to sort him (Chonco)

10.

I heard them talking about the plan to kill Superintended Chonco. Sanele and Bongiswe arranged with someone who was a member of Maphumulo Taxi Association to organised a hitman for Chonco. Sanele and Bongiswe did not want to arrange or hire a hitman themselves. They (Sanele and Bongiswe) wanted it to be seen as Maphumulo are the one who planned the killing of Superintended Chonco. Hitman for Chonco were Kopolota, Lee, Mthembu, Swayo and others.

11.

Cato Manor Unit was also part of the plan, Chonco was gunned down. After the killing of Chonco, Cato Manor started to kill all hitman behind the killing of Chonco. I heard Sanele saying he had a list of all people that need to be killed by Cato Manor. Bongani Mkhize was a Chairman of Maphumulo Taxi association, he was also on the hit list and he was the last person to be killed. It was difficult for Cato Manor to get Mkhize because of the reporting he (Mkhize) did to high authorities.

12.

During my time I was told that at Msinga home stead of Sanele and his brother Nkosi Chief Bongeleni Zondi there was a Hotel, Home Affairs and Game Reserve. Office park around their home stead was named after Bongeleni Zondi. I think even today the office named after Bongeleni Zondi. Bongeleni was the acting Chief. Bongeleni was was about to be given

GSM

the position to be the full time chief. Sanele was not happy with that. Sanele used to complaint to me that, he was not happy because Bongeleni was about to be given the position to be the Chief.

13.

The Chief Bongeleni Zondi was gunned down. Swayo was arrested and granted bail. Within short period of Swayo was gunned down too. (I heard saying "ngayi shaya inkabi ya khala emjondolo") meaning hit the hitman and cried inside the shack referring to Swayo who was killed inside the shack.

14.

Money was collected at the rank Stanger Taxi Rank to pay Cato manor Unit. Sanele orchestrated the killing of Bongani Mkhize. Somebody was given task to phone Brigadier Madonsela that Bongani Mkhize was planning to kill Mandla and Ngcaba and Bheki Cele. Sanele wanted the police to think that Bongani Mkhize was a trouble maker who killed Chonco now was planning to kill Mandla, Ngcaba and Bheki Cele within short period Bongani Mkhize was killed by Cato Manor Unit. Money was collected and Cato manor was paid for job well done. (I was not there when the money was paid to Cato Manor. (I heard that Cato manor paid. Bongani Mkhize should have been killed long time back he was most of the time he escaped. Cato Manor will phone Sanele and give report that they missed him.

16.

That is all I can say for now.

I know and understand the content of this statement.

I have no objection in taking the prescribed oath.

G Sm

I do consider the prescribed oath to be binding in my conscience.

Date: 2013-05-09

.....

I certify that the deponent has acknowledged that he knows and understand the content of his statement which was sworn to him signature was placed thereon in my presence on this day 2013-05-15 at 11:28 at Pietermaritzburg.

COMMISSIONER OF OATH
Richard Ramukosi
1Oucerse Street
Krugersdorp
Lt Colonel

A90
CM70

G P-8. 01/02

P. 21 (81/143198)

Bhekinkosi Mthiyani "Dlondlo"
States under oath in English

1

I am an adult male with I.D. no 8006156029083, 32 years old residing at No: 4734 Melville Stanger with cellphone 0823988165. I am taxi owner at Stanger taxi association.

2

Sometime year 2007 Vella Mkhize was killed at Kwamaphumla cemetery. Vella Mkhize was killed by Sanele Zondi and Nkosi Zondi was also present during the killing of Vella Mkhize. Plan of killing of Vella happened in this way. Nkosi Zondi went to Vella Mkhize pretending to buy Venture from Vella Mkhize. On his arrival he told Vella that he had only R20000 and Vella was asking R25000. Nkosi Zondi promise to bring R5000. Vella was promised to meet them at certain spot to be paid the whole amount of R25000.

3

At the spot they agreed, Vella was kidnapped by people who introduced themselves as police officers. Vella was taken on land cruiser to Kwamaphumla cemetery and Sanele Zondi and

* Bmthiyane GSM

2012 Aug 01 8:27AM HP Fax

Nicos Zondi was met there. Sanele first hit Vella with open hand. Sanele then took out gun and fired shot at Vella who was on hand cuff. Vella was found in Durban Ethekwini and taken to the cemetery.

4

I would also like to state that after the death of well known provincial commander or fasci violent crime Mr Chonco, I was one of the trustee at stanger fasci association. I was a chairman of disciplinary department within the association. I knew every secrets that the members do not have to know.

5

I always have a secretly meeting with the following members in the association Mr Khanyile who was the chairman, Mr Ngcobo who was the vice chairman and also the treasurer Bongizwe Mthlongo who was a P.R.O and Sanele Zondi who was an additional member.

6

Bonthuzane

GSM

Our meeting was so sensentive even to discuss the people who must be killed. Borgizwe was a close friend of Mr Cthondo. Mr Cthondo would always make favour to the kitanon of stanger in order to arrest Kwamaphumulo fasci association. If there was something against stanger fasci association Borgizwe would organised payment to Mr Cthondo.

7

The cause of Mr Cthondo's death he was investigating and arrested Maphumulo fasci association members. Mr Cthondo was killed by Maphumulo fasci association. Nicosi Zondi was a policeman working for Cato manor unit. Information was taken to Nicosi Zondi and Nicosi Zondi arranged with his unit Cato manor and also Booysens his commander.

8

The first member of Maphumulo fasci association to be assassinated was Lindelani Buthelezi. Lindelani Buthelezi was killed by Cato manor unit. As one of the trustee was there when the money was arranged to pay Cato manor for well job done. It was a lot of money. Sanele and Borgizwe

Bmthiyane GSM

were send to see Nkosi Zondi and paid him the money. We were told geed back that Nkosi Zondi was paid the money. I cannot recall how much it was

9

The second people to be killed by Cato manor unit was Mpolofa Ntuli and Nati mthembu nickname mangomlotwane. Two were killed at Mandeni. Both were killed inside the same house. Five of us been Mr Khanyile, Mr Ngcobo, Sanele, Bongizwe and I took out. I cannot remember how much it was but it was a lot of cash. Sanele and Bongizwe were tasked to go and pay Cato manor. I heard that Cato manor unit was met at Tongaat toll plaza and paid money, also for Tobi well done.

10

The third person was Mdu Mkhize. Mdu Mkhize was killed by the police and money paid to those police officers.

11

The fourth incident was the killing of Mr Ndimande. Mr Ndimande was killed in Howick area.

Amthiyane GSM

Mr Nhlanhla was killed by Cato Manor unit. All three of us sat down and had a secret meeting to arrange payment to Cato Manor unit for amount of R750 000 was raised. money was given to Sanele Zondi and Bongizwe to go and pay Cato Manor. Always when Sanele and Bongizwe left with money, they would tell us that the money was going to be given to the Boss referring to Mr Booysens and they would say, we have connection and we pay Booysens at head

12.

The last person to be killed on Mapham was Taxi association was Bongani Mthize. Bongani Mthize was the chairperson. Bongani Mthize was killed by Cato Manor unit. Money about R1 million was raised and given to Sanele and Bongizwe to pay Cato Manor. Sanele told us that R1 million would be paid to Booysens by boss of Cato Manor unit.

Bmthizane G Sm

Always when payment was done Sanele would say he was going to pay Captain Big Boss / Mr Booysens. Sanele was a registered informer of Booysens. I was a registered informer of Mr Mosfert. Mosfert used to pasted me and in return I would give him information

13

That is all for now and what I would recall I would call the police.

14

I know and understand the content of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience

X Bmthizyane

I certify that the deponent has acknowledge that he knows and understand the content of this statement. This statement is sworn before me and the deponent's signature was placed thereon in my presence at Richardsbay air port on 2012-07-31 at 21:54

Bmthizyane

Cr Sim

G.P.-8. 01/02

P. 21 (81/143198)

Bmthijane

Commissioner of Oaths
Richard Ramuhali
1 Oldevie Street
Pollsmoor Bridge
Tel-1010/0

SEQ 29/2021-793

RNI

Durban Central / CAS 185/12/2009

CM71 8

Bongani MABULA states under oath in English:

I am an adult male with I.D. 7403165712082, 35 years old residing at 2nd Road Rocky Road Durban Central and my number 0763932264. I am presently unemployed.

During year 2008 I was working at Global body guard. The company was giving protection to security of Shangani Fence and also at Mandlenkosi Fence. Also at Global company gave protection to Shangani Fence also.

During the time of the conflict one police officer was killed and from other was that Mdlolwane Fence also was responsible for his killing. Also the owners of Shangani called some people, they came and supplies guns orders to take natural land, they are responsible for affordable deaths.

Gsm

Lurgan Central Cos 18/02/2009

One victim on the list was
Kapuofa and otherwise I was
always giving preference to one
called Bongiwe Mthenge.
I was false to him. Bongiwe
Mthenge was a P.F.O a
Spanish flat also action
5
Cato manor unit had operation
to pull people and
patrol. I remember that
day I was with Bongiwe
Bongiwe received photos on
his cell phone. And according to
him Bongiwe told me that
most of the Cato manor
unit sent photos on
his cell phone to Bongiwe's
cell phone. Bongiwe Mthenge
was happy with the action
of the same action
6
Bongiwe Ellen said he will
delete those photos because
it was one and he does
not want people to find
him with those photos
7
After to showed us photos
that his cell phone he said to
his chief manager of the people
and we don't care anything
Gsm

Brixton Central Cas 18/6/2009

he (Borgiswe) was found he
he he came over needs
Nice send photos on we call.
That photos were dipped
we released from copaye
and motorbike.

8

I was a body guard and we
got into the car and drove
forwards for a coat hall place.

9

Upon arrival of Borgate
hall place we found two
white men I recognised
the Malik off Malik
was lifted from the
freezing water, Malik was
a Gated footballer in a
Gilet B.W. Off was a big
Brown Bear and Malik
ill to come to Langley
for associated offices
dealing the case B.W.

10

Borgiswe offange got out
and open his coat front
Borgiswe took out plastic
and I could see that it
was money on notes and
Malik was sent passport
was a lot of money

G Smith

Durban Central CAS 188/02/2009

Bongiwe offenge got into motor bus and sitting in passenger seat the left rear back seat. motor was stopped with another white male inside.

12.

Bongiwe then alighted to motor and his colleague for about five minutes. Bongiwe got out walking towards traffic with money. Bongiwe left the motor 23 car.

13

While we were driving back Bongiwe offered some work, that those people gave him money and start sleep.

14

He spent the rest of the night in the house with my sister to guard them until the police.

15

That is all I can say for now.

16

I know and understand the contents of this statement I have no objection to signing it.

Esm

Durban Central / CAS 185/02/2007

12

the receipt of one
copy of the prescribed oath
to be taken on my conscience

Witness to
Captain [illegible] the deponent
that administration of the
oath and the contents of the
[illegible] of his statement and
that the statement is sworn
before me and the deponent
signature was placed thereon
in my presence at Bellville
on 1 [illegible] 08 at 18:25

Commissioner of Oaths
RICHARD [illegible]
[illegible] STREET
[illegible] DOP
[illegible]

G Sm

CM72

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case no. 23576/2015

DELETE WHICHEVER IS NOT APPLICABLE
1. REPORTABLE : YES/~~NO~~
2. OF INTEREST TO OTHER JUDGES: YES/~~NO~~
3. REVISED
15/9/16
DATE SIGNATURE
GAUTENG DIVISION, PRETORIA

15/9/2016

IN THE MATTER BETWEEN:

THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA	Applicant
and	
NOMCGOBO JIBA	1st Respondent
LAWRENCE SITHEMBISO MRWEBI	2ND Respondent
SIBONGILE MZIYATHI	3RD Respondent

JUDGMENT

LEGODI J:

HEARD ON: 30 May - 1 June 2016

JUDGMENT HANDED DOWN ON: 15 September 2016

GSM

[1] 'An important requirement for admission as an attorney or advocate is to be a 'fit and proper' person. Lawyers are also struck from the respective rolls of advocates or attorneys if they cease to be "fit and proper". The requirements of being "fit and proper" person is not defined or described in the legislation. It is left to the subjective interpretation of and application by seniors in the profession and the ultimately the court. In the apartheid years, this requirement was applied arbitrarily, but today the question may be asked why some lawyers who have been found to be a "fit and proper" do not act as such. The pre-admission character screening of lawyers seems not to be effective any more. Post admission moral development is imperative'[1].

[2] A successful practitioner, an attorney or an advocate, should possess and display certain qualities, most of which cannot be acquired through learning. Having these qualities could indicate that a person is indeed a "fit and proper" person for the profession. An appropriate academic training may, however, play a vital part in improving them- as they are "by nature at least latent."

[3] The following are listed as the least of qualities a lawyer should possess:

'Integrity- meaning impeccable honesty or an antipathy to doing anything dishonest or irregular for the sake of personal gain,

- Dignity- practitioners should conduct themselves in a dignified manner and should also maintain the dignity of the court.
- The possession of knowledge and technical skills,
- A capacity for hard work,
- Respect for legal order and
- A sense of equality or fairness'[2].

[4] This case is about whether the respondents, Ms Nomgcobo Jiba (first respondent),referred to in these proceedings as "Jiba", an advocate who currently holds the position of Deputy National Director of the Public prosecutions, Mr Lawrence Sithembiso Mrwebi (second respondent), referred to in these proceedings as "Mrwebi", an advocate who holds the position of special director of public prosecutions and head

[1] M slabbert, Professor Department of Juris prudence, University of South Africa (Slabbm @ Unisa.ac.).
[2] Du Plessis, " The Ideal legal practitioner" (from academic angle) 1981 De Rebus at 424-427.

GSM

of the crime unit within the prosecuting authority and Mr Sibongile Mzinyati, third respondent (Mzinyathi), an advocate and a director of public prosecutions North Gauteng, are "fit and proper" persons to remain on a roll of admitted advocates in terms of Admission of Advocates Act no 74 of 1964.

[5] The application has been instituted by General Council of the Bar of South Africa ("GCB"), a voluntary association with legal personality functioning in terms of its constitution with its constituent members comprising of 10 societies of advocates throughout South Africa. GCB wants this court to consider acting against the respondents as contemplated in section 7(2) of Admission of Advocates Act. The section provides as follows:

> *"(2) Subject to the provisions of any other law, an application under paragraphs (a) (b) (c) or (d) of subsection (1) for the suspension of any person from practice as an advocate or for the striking off the name of any person from the roll of advocates, may be made by the General Council of Bar of South Africa, by the Bar , or Society of Advocates for the division which made the order for his or her admission to practice as an advocate or is ordinarily resident, and, in the case of an application made to a division under paragraph(c) of subsection (1) also by the State attorney referred to in the State Attorney Act 1957 (Act no 56 of 1957)".*

[6] During August 2014 and following the handing down of a judgment by the Supreme Court of Appeal on 1 April 2014 in the matter of Freedom Under Law v National Director of Public Prosecutions and others[3] (Mdluli's case), GCB received a request from the office of the National Prosecuting Authority (NPA) to consider bringing an application against the three respondents in terms of section 7 (2) of the Admission of Advocates Act quoted in paragraph 5 above. At a scheduled meeting in November 2014, GCB considered the request and decided to proceed to prepare the present application which was instituted on 1 April 2015 coincidentally exactly a year after the SCA's judgment in Mdluli's case.

[7] The gist of the complaints against the three respondents is based on their conduct in the handling of Freedom Under Law v National Director of Public Prosecutions and Others 2014 (1) SA 254 254 GNP; NDPP v Freedom Under Law (see footnote 3) a case referred to in this proceedings as Mdluli or FUL case and adverse

[3] 2014(4) SA 298 SCA.

GSM

remarks made by both the high and supreme courts in that case. Other complaints are levelled against Jiba only and are founded on her handling of the following reported matters and adverse remarks made therein:

7.1 *Democratic Alliance v Acting National Director of Public Prosecutions, [2013] 4 All SA 610 (GNP), Zuma v Democratic Alliance and Others [2014] 4 SA 35 (SCA), a case which ultimately became to be known as a "Spy Tape" case and will be referred to as such in these proceedings.*

7.2 *Booysen v Acting National Director of Public Prosecutions and Others [2013] 3 All SA 391 KZD."*

[8] The structure of this judgment will be as follows:

8.1 *The test*

8.2 *Constitutional imperative and legislative frame-work,*

8.3 *Points in limine,*

8.4 *Reasons for the order refusing Jiba's fourth affidavit,*

8.5 *Booysen case,*

8.6 *Spy tapes case and*

8.7 *Mdluli case.*

THE TEST

[9] Section 7 (1) (d) of the Admission of Advocates Act authorises a court to remove an advocate from the roll of advocates, if satisfied that he or she is not a "fit and proper" person to continue to practice as an advocate. The test is a contemplation of three-staged inquiry, as is also the case in applying the provisions of section 22 (1) (d) of Attorneys Act 53 of 1979. First, the court must decide if the alleged conduct complained of has been established on a preponderance of probabilities. This is a factual inquiry. Secondly, it must consider if the person concerned is in the discretion of the court not a

GSM

fit and proper person to continue to practice. This involves a weighing up of the conduct complained of against the conduct expected of a fit and proper person to practice. This is a value judgment consideration. Thirdly, the court must inquire whether in all of the circumstances the person in question is to be removed from the roll or whether an order of suspension from practice would suffice. This is also a matter for the discretion of the court. In deciding on what course to follow, the court is not first and foremost imposing a penalty. Rather, the main consideration is the protection of the public[4].

CONSTITUTIONAL IMPERATIVE AND LEGISLATIVE FRAME WORK

[10] It is important to start by mentioning that all the complaints raised against the respondents arise from the handling of three review proceedings instituted against the National Prosecuting Authority, in terms of which certain decisions, two of which, that is, in Mdluli and Spy Tapes cases related to the withdrawal of criminal charges and the other decision in Booysen case related to the institution of criminal proceedings. It is for this reason that a brief outlay of the legislative-frame work governing the authority and operation of the prosecuting authority is necessary.

[11] There is a single national prosecuting authority established in terms of section 179 of the Constitution as determined in National Prosecuting Authority Act[5] (the Act). The prosecuting authority has the power to institute criminal proceedings on behalf of the state and to carry out any necessary functions to institute criminal proceedings.[6] National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice[7]. The National Director of Public Prosecutions must issue policy directions which must be observed in the prosecution process, may intervene in prosecuting process when policy directives are not complied with, and may review a decision to prosecute or not prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period determined by the National Director of Public Prosecutions from the following: the accused, the

[4] Malan and Another v The Law Society, Northern Provinces 2009 (ALL) SA 133 (SCA) para [7].
[5] Section 2 of Act no 32 of 1998, s 179 (1) of the Constitution 108 of 1996.
[6] S 179 (2) of Constitution
[7] S 179 (4).

G SM

complainant, any other person or party whom the National Director considers to be relevant[8].

[12] The "Act" is the brain-child of section 179 of the Constitution, in particular subsection (4) which requires of a national legislation to be enacted to ensure that members of the prosecuting authority exercise their duties without fear, favour or prejudice. Chapter 4 of the Act deals with powers, duties and functions of members of the prosecuting authority. Of relevance to the present proceedings, they have the power to institute and conduct criminal proceedings on behalf of the state and have the power to discontinue criminal proceedings[9]. On the other hand, and in accordance with section 179 of the Constitution, the National Director may review a decision to prosecute or not to prosecute, after consulting the relevant Director and after taking and considering representations from the accused, the complainant, any other person or party whom the National Director considers relevant, within the period specified by the National Director[10]. This is a replica of what is provided for in section 179 of the Constitution. The hierarchy in the exercise of powers, duties, and functions under Chapter 4 runs from the national director, deputy national director, directors, deputy directors and down to the prosecutors[11]. Section 21 is also important as it obliges and authorises the National Director to determine prosecution policies, and issue policy directions which must be observed in the prosecution process.

[13] A special director should exercise the powers, carry out the duties and perform functions considered or imposed on or assigned to him or her by the President, subject to the directions of the national director: Provided that if such powers, duties and functions include any of the powers, duties and functions referred to in section 20 (1), they should be exercised, carried out and performed in consultation with the director of the area of jurisdiction concerned[12]. In the present case, the second respondent was such a "special director" and the third respondent such "director" concerning the withdrawal of the fraud and corruption charges against Mdluli. (My emphasis as it would appear later in this judgment).

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[8] S 179 (5) (b) (c) and (d).
[9] S 20 (1) (a) and (c) of Act 32 of 1998.
[10] S 22 (2) (c) Act 32 of 1998.
[11] Sections 22 to 25 of Act 1998.
[12] S 24 (3) of the Act.

GSM

[14] In terms of the legislative power to make or determine prosecution policies and to issue policy directives, the National Director of Public Prosecutions issued code of conduct inter alia, dealing with professional conduct, independence and impartiality by each member of the prosecuting authority in the exercise of their powers, duties and functions.

[15] Because of its relevance to the "fit and proper" person requirement, I find it necessary at the risk of prolonging this judgment, to repeat some of the directives contained in the code of conduct:

"Prosecutors must-

(a) Be individuals of integrity whose conduct is objective, honest and sincere

(b) Respect, protect and uphold justice, human dignity and fundamental rights as entrenched in the Constitution.

(c) Protect the public interest;

(d) Strive to be and seen to be consistent, independent and impartial;

(e) Conduct themselves professionally, with courtesy and respect to all, and in accordance with the law and the recognized standards and ethics of their profession;

(f) ...

(g) At all times maintain the honour and dignity of their profession..."

<u>Independence</u>.

"The prosecutorial discretion to institute and to stop criminal proceedings should be exercised independently, in accordance with the prosecution policy and the policing directive and be free from political, public or judicial interference."

<u>Impartiality</u>

"The prosecutor should perform their duties without fear, favour or prejudice. In particular they should-

(a) Carry out their functions impartially and not become personally involved in any matter;
(b) Avoid taking decisions or involving themselves in matter where a conflict of interest existent or might possibly exist;

G Sm

(c) Take into consideration the public interest as instinct from media or part as an interest and concerns, however vociferously these may be presented;

(d) Avoid participation in political or other activities which may prejudice or be perceived to prejudice their independence or impartiality;

(e) Not seek or receive gifts, donations, favour or sponsorships that may comprise or may be perceived to compromise or may be perceived to compromise their professional integrity;

(f) Act with objectivity and pay due attention to the constitutional right to equality;

(g) Take into account all relevant circumstances and ensure that the reasonable inquiries are made about evidence irrespective of whether these inquiries are to the advantage or disadvantage of the alleged offender;

(h) Be sensitive to the needs of victims and do justice between the victim, the accused and the community according to the law and the dictates of fairness and equity ; and

(i) Assist the Court to arrive at a just verdict and in the event of conviction, an appropriate sentence based on the evidence presented."

[16] Three points summarised hereto were raised as preliminary issues. First, alleged failure to afford Jiba a fair hearing, second, that the application and relief sought offend against separation of powers and lastly that the present application is pre-mature. Counsel for Jiba was asked at the start of the hearing of this application as to whether he was persisting with the three issues. The response was that preliminary issues are not abandoned.

<u>Alleged lack of affording Jiba proper hearing and separation of powers</u>

[17] The preliminary issues are introduced in the Jiba answering affidavit as follows:

"13. Before dealing with my response to the allegations against me, set out in the founding affidavit, I wish to raise the following as points in limine. First, the appropriateness of bringing an application such as this against the National Director of Public Prosecutions in the office of the NPA. This raised an important constitutional issue involving the interpretation of the NPA Act and the inter-relationship between section 7 of the Admission of Advocates Act. Secondly, the issue of bringing this application, where there is no urgency and none has been alleged in the founding affidavit, without affording me the opportunity to be heard by the applicant. Both issues are interlinked in the circumstances of this matter"

[18] In what I believe to be an elucidation of the statement above, Jiba in paragraphs 18 and 19 of her answering affidavit in these proceedings proceeds as follows:

GSM

"18. Thus, for the court to make an order striking my name from the roll of advocates, it has to make a finding first that I am not a fit and proper person to continue to practice as an advocate. Normally, with regard to practicing advocate at the bar an enquiry is conducted by the applicant with regard to the latter issue. The affected party is normally afforded a right of hearing. Oral evidence is led and witnesses cross-examined. Only if is the applicant is satisfied through the fair enquiry process that the affected party is indeed not fit and proper, would it bring an application to strike the name from the roll of advocates.

19. In this instance applicant has opted to roll the two processes into one through a motion application, based on an affidavit which replete with hearsay and innuendo, which is prejudicial to me, without having afforded the opportunity to be heard. I wish to state that much of the prejudice hearsay and innuendo would have been eliminated if applicant had followed the normal process at least of conducting an investigation and first granting me a hearing to determine the truthfulness of the allegations that are being made against me and if indeed I am not a fit and proper person to practice as an advocate."

[19] To put the gist of Jiba's criticism in perspective, it is necessary to refer to sections 12 and 7 of the National Prosecuting Authority Act and Admission of Advocates Act respectively. Her criticism is further articulated as follows in paragraph 28 of her answering affidavit in these proceedings:

"An order by this Honourable Court that my name be struck off the roll of advocates would with respect, undermine the process for the removal from office of a Deputy National Director provided for by the NPA Act by essentially disqualifying me from holding the position of Deputy National Director and rendering the enquiry moot. This is in circumstances where the question of whether I am fit and proper person to hold the office would already have been determined on the basis of affidavits and, in this case, hearsay evidence. This, with respect, would infringe the doctrine of separation of powers and my right to a fair hearing."

[20] Section 12 of the Act deal with the term of office of National Director and deputy National directors of Public Prosecutions and subsections 5, 6 and 7 of section 12 deal with the removal or suspension thereof. Because of their importance, subsections are repeated hereunder:

"(5) The National Director or a Deputy National Director shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).

(6) (a) The President may provisionally suspend the National Director or a Deputy National Director from his or her office, pending such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office-

(i) for misconduct;

(ii) on account of continued ill-health;

(iii) on account of incapacity to carry out his or her duties of office efficiently; or

(iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.

(b) The removal of the National Director or a Deputy National Director, the reason therefor and the representations of the National Director or Deputy National Director (if any) shall be communicated by message to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) Parliament shall, within 30 days after the message referred to in paragraph (b) has been tabled in Parliament, or as soon thereafter as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of the National Director or Deputy National Director so removed, is recommended.

(d) The President shall restore the National Director or Deputy National Director to his or her office if Parliament so resolves.

(e) The National Director or a Deputy National Director provisionally suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the President.

(7) The President shall also remove the National Director or a Deputy National Director from office if an address from each of the respective Houses of Parliament in the same session praying for such removal on any of the grounds referred to in subsection (6) (a) , is presented to the President."

[21] There is a distinct difference between removal or suspension under section 12 of the Act and removal or suspension under Admission of Advocates Act. Subsection (2)

G SM

of section 7 of the latter Act was quoted earlier in paragraph 5 of this judgment. Subsection (1) provides as follows:

> *"(1) Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates -*
>
> *(a) in the case of a person who was admitted to practise from the roll as an advocate in terms of sub-section (1) of section three or is deemed to have been so admitted -*
>
> *(i) if he has ceased to be a South African citizen; or*
>
> *(ii) in the case of a person who is not a South African citizen, other than a person contemplated in sub-paragraph*
>
> *(iii) if he has failed to obtain a certificate of naturalization in terms of the South African Citizenship Act, 1949 (Act No. 44 of 1949), within a period of six years from the date upon which before or after the commencement of this sub-paragraph he was admitted to the Republic for permanent residence therein or within such further period as the court either before or after the expiration of the said period for good cause may allow; or*
>
> *(Section 7(1)(a)(ii) substituted by section 2(a) of Act 60 of 1984)*
>
> *(iii)*
>
> *(b) ..*
>
> *(c) in the case of a person who was admitted to practise as an advocate in terms of section jive, if it appears to the court that he has ceased to reside or to practise as an advocate in the designated country or territory in which he resided and practised at the time of his admission to practise as an advocate of the Supreme Court or that that country or territory has ceased to be a designated country or territory for the purposes of the said section; or*
>
> *(d) if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate; or*
>
> *(e) on his own application."*

G S M

[22] The process under section 12 of the Act and section 7 of the Admission of Advocates Act, whilst overlapping, the distinction is sharp. In terms of the Act, the National Director or deputy National Director may be removed or suspended as such. That would not necessarily mean that such a person is automatically removed from the roll of advocates. For any such removal from the roll of advocates one has to follow the process envisaged in section 7 of the Admission of Advocates. However, the National Director or deputy National Director who is removed from the roll of advocates cannot continue to be a National Director or deputy National Director of Public Prosecutions because of the provisions of section (9) of the Act which provides:

> *"9. (1) Any person to be appointed as National Director, Deputy National Director must-*
>
> *(a) possess legal qualifications that would entitle him or her to practice in all courts in the Republic ; and*
>
> *(b) be fit and proper person, with the regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibility of the office concerned.*

[23] So, if you cease to be a fit and proper person under section 7 of Admission of Advocates, and you are removed from a roll of advocates, you cannot be entitled to practice in all courts in the Republic as contemplated in paragraph (a) of section 9 (1) of the Act. These processes can sometimes run parallel to each other but any choice of the two would not render the process unfair.

[24] The premature and or separation of powers contention should therefore be seen in the context of the above legislative framework and there can be no merit to the contention. Any suggestion that the proceedings should have been preceded by an inquiry instituted by the President as contemplated in the Act, should also be seen in context. It is worrying that Jiba or her counsel still found it necessary to persist with the argument despite the fact that the President had already put it on record in the matter between Democratic Alliance (DA) and Jiba instituted and recently finalised in the Cape High Court. In that case DA wanted court to suspend Jiba, but the President stated inter alia, as follows in a letter dated 1 September 2015 written on his behalf:

> *"...The President was subsequently been apprised of the matter by the Minister and has asked me to draw your attention to the following:*

GSM

- *That he is of the view that none of the jurisprudential grounds exists which warrant the suspension of advocate Jiba;*
- *That the process initiated by General Council of the Bar of South Africa ("the GCB") will result in a definitive outcome expressed in a court judgment ruling, as opposed to the hosting of an inquiry which will culminate in a recommendation to the President which will then require further processes to be implemented before a definitive decision;*
- *That the GCB in its wisdom has not sought suspension of Advocate Jiba in its application, pending the final determination of the matter, whilst this approach is not resolutive on the question of suspension, it indeed gives a particular insight from a professional body charged with the duty of upholding the conduct of Advocates in general;*

The President is equally of the view that the judgment of the Supreme Court of Appeal are replete with instances where the Court has expressed its approval with the nature of the proceedings as well as the test to be applied in examining the conduct of legal professionals. It must follow that the investigative acumen and process of the GCB, matched with the judicial process provides a better guarantee for ensuring the constitutional safeguards of all concerned.

In the circumstances, whilst the President remains concerned by the seriousness of the allegations, he cannot accede to your request, at this time. Lastly, the President as Head of the Executive has always resisted the invitation to comment on decisions taken by the NDP where there are either unhelpful or unwise…[13]»

[25] This must have sent a clear message to Jiba, who must have been aware of the President's response as quoted above long before the judgment was handed down on 23 May 2013 by Dolamo J. That being so, persistence with the premature and or separation of power point, in my view, displays unwillingness on the part of Jiba to concede to anything. She is fully aware that the President had pleaded in the Cape High Court that the matter in that court was premature in the light of the present proceedings. Despite this, she too wanted to suggest that the present proceedings are pre-mature for not allowing inquiry to take place as envisaged in section 12 of the Act or GCB for not instituting a disciplinary inquiry before approaching the court directly for removal or suspension contemplated in section 7 of the Admission of Advocates Act.

[13] See Democratic Alliance v President of the Republic of South Africa and Others (17782/15)2016 ZAWCHC66 (23 May 2016) at Para 40

GSM

Persistence in this regard seems to be consistent with Jiba conduct in the handling of cases where she is involved as it would appear later in this judgment.

[26] Coming back to GCB's alleged failure to afford Jiba a fair hearing, it is important to mention that motion proceedings differ from action proceedings or disciplinary proceedings where oral evidence is heard and the opportunity to cross-examine witnesses afforded. With motion proceedings, which are often referred to as application proceedings, evidence is placed before the court in the form of affidavits sworn to by witnesses. The proceedings are commenced by way of a notice of motion accompanied by a founding affidavit setting out facts on which a claim is based, with all the supporting documentation being annexed to the affidavits. Motion proceedings are appropriate when the issue or issues to be resolved is purely a dispute of law and there is no material dispute of fact. One cannot proceed by way of motion proceedings where there is a material dispute of fact. In essence therefore, a party who is sued by way of motion proceedings can only complain if there are material issues which cannot be resolved on affidavits. When that happens, the court is better placed to decide whether there is real dispute of fact that cannot be resolved on affidavits. In the event of a dispute of fact that cannot be resolved on papers, the court may either dismiss the application; refer specific issues for oral evidence or for trial. The risk is on the party who elected to proceed by way of motion proceedings. In my view, neither of this finds application in the present case.

[27] It is not Jiba's case that there is a dispute of fact. The closest to this is that GCB's case is based on hearsay evidence. There is no merit to this. In any event, even if there was, this court is better placed to decide on which evidence to give a probative value.

[28] I am actually unable to understand Jiba's contention of the alleged failure by GCB to afford her proper hearing. For example, in paragraph 12 of her answering affidavit to these proceedings, she states:

> *"12 I am advised that applications of this nature are sui generis and that I am required to assist the court in ascertaining the truth. I intend to do so..."*

Having said this, Jiba then indicated that in order to properly place her defence before this court, she will at all times refer to various documents, which she had been able to

GSM

access through her position as a Deputy National Director, stating that she is fully aware that the grounds upon which GCB relies for the relief sought, arise out of her conduct in her capacity as Acting National Director of Public Prosecutions.

[29] Clearly, Jiba cannot rely on failure to be afforded a proper hearing simply because an inquiry was not followed where oral evidence could be led and cross examination allowed. She had everything at her disposal to deal with the allegations against her and no form of prejudice can be claimed to have occurred. For this, the so called *points in limine* are destined to fail. Before I turn to deal with the complaints raised in respect of each case mentioned in paragraphs 8.2, 8.3 and 8.4 of this judgment, I hereunder give reasons for the order refusing leave to file further answering affidavits.

REASONS FOR THE ORDER REFUSING FOURTH AFFIDAVIT

[30] On 18 August 2015 GCB filed a replying affidavit in these proceedings. Subsequent thereto on 15 September 2015 Jiba filed the fourth affidavit referred to as a supplementary answering affidavit. It is this affidavit which formed the subject of the leave to file additional affidavit. For two reasons, the fourth affidavit was filed and Jiba states the reasons as follows:

> *"4. ...First, in order to supplement any response to the founding affidavit of Adv. Idris Jeremy Muller SC ("ADV Muller") deposed to on behalf of the General Council of the Bar ("the GCB") the applicant in these proceedings, in the light of certain information which has come to hand subsequent to the filing of my answering affidavit. Secondly, in support of the notice of application to which this affidavit is attached, for leave to file supplementary answering affidavit."*

[31] Effectively, the suggestion is that new information came to light post the filing of the answering and replying affidavits respectively. It is in the interest of the administration of justice that well known and well established general rules regarding the number of sets of proper sequence of affidavits in motion proceedings be ordinarily observed. That is not to say that these general rules must always be lightly applied. Some form of flexibility controlled by the presiding judge exercising his discretion in relation to the facts of the case before him, must also necessarily be permitted. Where

GSM

an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking not a right, but an indulgence from the court. He or she must both advance his explanation for why the affidavit it is out of time and satisfy the court that, although the affidavit is late, it should, having regard to all the instances of the case, nevertheless be received. Attempted definition of the ambit of discretion is neither not desirable... It is sufficient for the purposes - to say that on any approach to the problem, he inadequately or otherwise of the explanation for the late tendering of the affidavit will always be an important factor of enquiry[14].

[32] The rule of practice that an applicant must generally speaking, stand or fall by his founding papers, is not one cast in stone but has been bent from time to time, because of the existence of a judicial discretion which permits the filing of further affidavits so as to give effect to a solitary practice and fundamental consideration in the administration of justice, that a matter should be adjudicated upon all the facts relevant to the issues in dispute. Despite the cogency of this rule of practice, it has been frequently stated that it does not operate to preclude the introduction of further affidavit when consideration of fairness and justice to both parties dictate that this should be done. The rule remains subject to the discretionary power of the court and mere fact that the matter sought to be introduced in the new affidavits should properly have been included in the founding affidavit and not in reply, does not negative the existence of that discretionary power[15].

[33] The principle enunciated in the preceding case law, should apply to a respondent who wishes to file further affidavit in response to replying affidavit or new information discovered thereafter. Most importantly, all facts sought to be introduced should be relevant to the issue in dispute. In the present case, relevant facts must speak to the issue whether the first respondent (Jiba) or any of the respondents for that matter, is fit and proper to remain on a roll of advocates. Bearing this in mind, it is important to have regard to the facts which Jiba wanted to introduce in the fourth affidavit.

New information

[14] James Brown v Hamer (Pty) Ltd (Previously named Gilbert Hamer & Co Ltd v Simmons No 1963 (4) SA 656 A at 660 D-H

[15] Tranvaal Racing club v Jockey Club of South Africa 1958 (3) SA 599 (W); Dawood v Maharmed 1979 (2) SA 361 (D).

G SM

[34] What Jiba refers to as "new information", is a letter dated 23 July 2013, marked as Annexure NJIA to her "supplementary affidavit". The essence of the letter is articulated by Jiba as follows:

> "25. *As appears from the correspondence it concerns all alleged agreement by NPA to pay through the office of the State Attorney, 75% of the applicant's attorney and client cost of instituting and prosecuting this application. There are also several demands from the applicant's attorneys of record to Mr Matubatuba in the office of the State Attorney to settle the accounts of counsel who are acting on behalf of the GCB in this application.*
>
> 26. *As a matter of professional courtesy to the individual counsel involved, the amounts of these accounts referred to in the letter from the applicant's attorney of record dated 30 June 2015, have been blocked out. I also do not attach the copies of these accounts but they can be made available to this Honourable court if necessary. Suffice to state the amounts involved are substantial.*
>
> 27 *The content of this correspondence is extremely concerning and I respectfully submit, makes it clear that this application forms part of a direct attempt by certain members in the NPA to remove me for political reasons...*"

[35] The removal from a roll of advocates "for political reasons" appears to be Jiba's theme in introducing the letter in question. This appears from the preceding paragraphs of her affidavit in which she states inter alia:

> "7. *Adv. Muller was at pains in the founding affidavit expressly to state that notwithstanding the applicant is aware of reports of disputes and political manoeuvring between different factions within and outside the NPA, that this application for the striking off my name from the roll of advocates, is not part of any campaign to remove me from the NPA. I refer the court to paragraph 7.7 of the founding.*"

[36] 'Political manoeuvring' in the quotation above appears to be borrowed words from paragraph 7.8 of the founding affidavit wherein GCB states:

> "7.8 *The GCB is also alive to allegations which have been reported in the media to the effect that some or all of these developments are a manifestation of political manoeuvring by factions or individuals within and outside of the NPA. Beyond what has been reported in the media, the GCB has no knowledge of these allegations or their veracity.*"

G SM

[37] So, right at the onset, GCB made it known that it was aware of the allegations of in-fighting within the National Prosecuting Authority and GCB continues in its founding papers by clarifying its position as follows:

"7.9 I mention these matters, because this application may be characterised by some as another facet of the developments which appear to be taking place both within and outside the NPA. It is not, and it should not be viewed as, any such thing. As indicated, the application was indeed prompted by a request from the NPA. Having considered the NPA's request then GCB formed the view that, on the evidence available to it, the respondents' conduct obliged it to act in terms of section 7 (2) of the Admission of Advocates Act and bring these facts to this court's attention, so that the court could consider whether one or more of the respondents is a fit and proper person to continue to practice as an advocate as contemplated in section 7 (1) (d) of the Act. It is for this reason that the GCB resolved to prepare this application."

[38] What is referred to as "new information" should have been viewed in this context by Jiba. Properly considered, there was never a need to seek to introduce the letter of 25 July 2015. It was common cause or put differently, it was not in dispute that there was in-fighting within the NPA. The agreement to pay 75 % of GCB's attorney and client costs in instituting and prosecuting the application has no material relevance to the question whether the complaints forming the subject of the application are established and if so, whether the complaints are of such a nature that they make any of the respondents unfit persons to continue to practice or remain on a roll of advocates.

[39] The statement '*this correspondence and the alleged agreement between the NPA and the GCB and or its attorneys of record, further confirm my suspicions that this forms part of a political agenda to remove me from the NPA. I submit that <u>this new information</u> is highly material for the placing of this application by GCB in its proper context*', is irrelevant to the factual findings this court has been called upon to pronounce on. The question in the present proceedings is whether any of the complaints made against the respondents, if proved, would make any one of them to cease to be fit and proper persons to remain on a roll of advocates. It is on the basis of this that leave to file further answering affidavit was refused.

[40] However, one could not turn a blind eye on the fact that public funds might have been improperly utilized by paying 75% of GCB's legal costs for having instituted the present proceedings as if it was doing the national prosecuting authority a favour. GCB instituted the present proceedings as is entitled to do so in terms of section 7 of the

G SM

Admission of Advocates Act. Counsel for GCB was quizzed as to why the agreement and expenditure thereof if any should not be referred to the Audit-General to investigate possible contraventions of Departmental Financial Instruction (DFI) and the provisions of Public Finance Management Act. To this enquiry, the court was assured by Adv. Burger SC on behalf GCB that no cent of public funds was spent or is intended to be spent or recouped by GCB for having instituted the present proceedings based on the alleged agreement with the NPA. Consequently, the intended referral to the Audit-General will not be made. I now turn to deal with the complaints raised as the basis for the present proceedings.

BOOYSEN CASE AND COMPLAINTS AGAINST JIBA IN CONNECTION THERETO

[41] '...Court should discourage preliminary litigation that appears to have no purpose other than to circumvent the application of section 35(5) of the Constitution. Allowing such litigation will often place prosecutor between a rock and a hard place. They must, on the one hand, resist preliminary challenges to investigations and to the institution of proceedings against accused persons; on the other hand, they are simultaneously obliged to ensure that prompt commencement of trials. Generally disallowing such litigation would ensure that the trial court deciding the pertinent issues is best placed to do, and would ensure that trials start sooner rather than later. There can be no absolute rule in this regard; however. The courts' doors should never be completely closed to litigants... But in ordinary course of events, and where the purpose of the litigation appears merely to be avoidance of the application of section 35(5) or the delay of criminal proceedings, all courts should not entertain it. The trial court would then step in and consider together the pertinent interest of all concerned. If that approach is generally followed the state would be sufficiently constrained from acting unlawfully by the application of section 35(5) and by the possibility of civil and criminal liability'[16].

[42] The office of the National Director of Public Prosecutions is closely related to the functions of the judiciary broadly to achieve justice and is located at the core of delivering criminal justice[17]. Courts are not overly eager to limit or interfere with the legitimate exercise of prosecuting authority. However, a prosecuting authority's

[16] Thint (Pty) Ltd v National Director of Public Prosecution & Others 2009 (1) SA 1 CC para 64.
[17] Democratic Alliance V President of the Republic of South Africa & Others 2013(1) SA 248 (CC) at [26]

G SM

discretion is not immune from the scrutiny of a court which can intervene where such discretion is improperly exercised[18].

[43] Courts have on rare occasions expressed their disapproval of the fact that a prosecution was instituted[19]. Courts do not interfere with the prosecuting authority's bona fide exercise of its discretion because prosecuting authority has the power to decide to prosecute and, once the accused is on trial, he or she will have the fullest opportunity to put his defence to the court, cross-examine prosecution witnesses and to reply on his right not to be convicted unless the prosecution can prove his guilt beyond reasonable based on admissible evidence and prevented in terms of a regular procedure[20]. Courts can intervene where mala fide is alleged, or where it is alleged that the prosecuting authority never applied its mind to the matter or acted from ulterior motive [21]. (My emphasis).

[44] The complaints against Jiba, in her capacity as the then Acting National Director of Public Prosecutions in Booysen case, arose from the exercise of her statutory power to authorise the charging of Major-General Booysen (Booysen) with contravention of section 2(1) (e) and (f) of the Prevention of Organised Crimes Act no.121 of 1998 ("POCA"). A person shall only be charged with committing an offence contemplated in subsection (1) of section 2 POCA if prosecution thereof is authorised in writing by the National Director[22]. Any person who whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity, manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participated in the conduct, directly or indirectly, of such enterprise affairs through a pattern of racketeering activities shall be guilty of an offence[23].

[45] On 18 August 2012 Jiba, Acting as a National Director of Public Prosecutions, issued written authorisation to have Booysen charged with contraventions of section 2(1) (e) and (f) referred to in paragraph 44 above. Booysen successfully challenged the

[18] Minister of Police & Another V Du Plessis 2014 (1) SACR 217 (SCA) at [31]
[19] S v F 1989 (1) SA 460 (ZH), S v Bester 1971 (4) SA 281(T)
[20] Commentary on the Criminal Procedure Act by Du Tiot, De Jager, Paizes, Skeen and Van Der Merwe at 1-29.
[21] Mitchell V Attorney-General, Natal 1992 (2) SACR 68 (N)
[22] Section 2(4) of POCA
[23] Paragraph (e) and (f) of the section 2(1) of POCA.

G S

authorisation in Kwa-Zulu Natal Division before Govern J. In his replying affidavit, before Govern J, Booysen stated that Jiba was: *"mendacious" when she asserts in paragraph 21 of the answering affidavit that she considered the statements together with the other information in the 'docket' before making the impugned decisions. She could not have considered the statements referred to in her answering affidavit. She is invited to explain how she could have taken into account information on oath that objectively did not exist at the time of taking the decision".*

[46] What is quoted above is the gist of the complaint against Jiba in the handling of Booysen case. In its founding papers, GCB articulates the conduct complained of as follows:

> *"On the evidence of her conduct in the Booysen matter as (with respect, correctly) described by Govern J in this judgment, Jiba signally failed to comply with the NPA's Code of Conduct. More pertinent to this application, the statements made by Jiba under oath is seeking to justify her decision to issue the POCA authorisations, were evidently untruthful. As such her conduct indicates that she is not a fit and proper person to practice as an advocate."*

[47] These averments seem to be based on the finding by Govern J which inter alia, included:

> *"[30] This leaves the four annexures to the answering affidavit mentioned above. These are the only documents not contained in the dockets. [Jiba] says that they are all statements made under oath. [Jiba] says in addition that they implicate Mr Booysen in one or more of the offences in question".*

[48] Then in paragraphs 31 and 34 of his judgment, Govern J made adverse remarks against Jiba as follows:

> *"[31] The submissions of Mr Booysen in his replying affidavit can be summarised as follows: two of the annexures are sworn statements made under the name of one Colonel Alyer. They are annexures NJ2 and NJ4 respectively. Mr Booysen described these statements which concern 'office politics and submit that they in no way implicate him in any of the offences with which he has been charged. The second of these in addition to not implicating him in any of the offences in question, was deposed to on 31 August 2012, some two weeks after the first impugned decision was taken. The documents referred to as a statement by Mr Danikas annexure NJ3 is not a sworn statement. It is not even signed by anyone. It is not dated. Even if it could be attributed to the named person and even if it was sworn statement as claimed by the NDPP, the contents do not cover the period clearly in the indictment except for one event which does not relate to Mr Booysen…*

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[34] Mr Booyen was clearly within his rights to deal with in reply with the inaccurate assertions by the NDPP in her answering affidavit and to issue the challenge and invitation in question. He had not seen the statements until they were annexed to the answering affidavit. As regards the inaccuracies, the NDPP is after all an officer of the court, she must be taken to know how important it is to ensure that her affidavit is entirely accurate. If is shown to be inaccurate and thus misleading to the court, she must also know that it is important to explain and if appropriate correct any inaccuracies. Despite this, the invitation of Mr Booysen was not taken by the NDPP by way of a request or application to deliver further affidavit. In response to Mr Booysen's assertion mendacity on her part, there is deafening silence. In such circumstances the court is entitled to draw an inference adverse to the NDPP. The inference in this case need go no further than that, on her own version, the NDPP did not have before her annexures 4 at the time. In addition it is clear that annexure NJ3 is not a sworn statement. Most significantly the inference must be drawn that none of the information on which she says she relied linked Mr Booysen to the offence in question..."

[49] Before dealing with information placed before Jiba for written authorisation in terms of section 2(1) of POCA, it is important to reflect whether the invitation by Booysen and the adverse remarks by Govern J were based on correct evaluation and understanding of Jiba's answering affidavit. The challenge or invitation by Booysen to Jiba, was contained in the replying affidavit and at the risk of prolonging this judgment, I repeat the contents thereof in part:

> *"...She is invited to explain how she could have taken into account information on oath that objectively did not exist at the time of taking the decision."*

[50] The invitation was made after having made allegations of 'mendacity' in the same paragraph with reference to paragraph 21 of Jiba's answering affidavit in Booyesen matter and because of the relevance thereto, paragraphs 16.6, 16.7 and 17 of Jiba's answering affidavit in that case are repeated hereunder:

> *"16.6 The information under oath which was placed before me also indicated that the applicant knew or ought to have known that his subordinates were killing suspects as aforesaid instead of arresting them.*
>
> *16.7 The information further revealed that unlawful activities of killing suspects and/or civilians were, in certain instances motivated by the Applicant's and members of his Unit's desire to enrich themselves by means of State monetary award and/or*

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certificates for excellent performance. In this regard, I annex a copy of an example of such a monetary award claim document as "NJ1" in which inter alia, the Applicant is recommended for such an award resulting from the death of suspects.

17. Particular reference is made in this regard to the statement made by Colonel Rajendran Sanjeevi, Mr Aris Danikas and Mr Ndlondlo from which it is apparent that the applicant is well aware of the information that the Respondents have in their possession relating to the murder of at least 28 people and the monetary and non-monetary awards claimed by him (the Applicant) for the instrumental part that he played in these crimes. Additionally, Mr Danikas has revealed some of the information that he has provided to the Respondents and to the press and even posted video footage thereof on You-Tube. I annex copies of these statements as NJ2, NJ3, NJ4 and NJ5, respectively."

[51] Having regard to what is quoted above, it does not seem the statement: *"Jiba says that they are all statements made under oath"*, is correct. Nowhere in Jiba's answering affidavit did she make such a statement, neither did she say any of annexures, NJ2, NJ3, NJ4, and NJ5 were under oath. 'Under oath' statements or information were made only in paragraphs 16 and 16.6 of the answering affidavit without suggesting that all of the annexures referred to in paragraph 17 of the answering affidavit in Booysen matter were made under oath. Therefore the statement: '*The documents referred to as a statement by Mr Danikas, annexure NJ3, is not a sworn statement*', as stated in paragraph 31 of Govern J's judgment, has to be seen in context insofar as it was understood that Jiba averred that NJ3 was a sworn statement. The truth is, she never said NJ3 was a sworn statement and it could not reasonably have been so inferred particularly reading in the context of paragraph 16.7 of her answering affidavit in Booysen case quoted in paragraph 50 above.

[52] The fact that Jiba did not avail herself to the invitation to deal with the allegation of being "mendacious", meaning "not telling the truth", should also be seen in context. The allegation was made in the replying affidavit. This too, Govern J was mindful of. For the purpose of these proceedings, the criticism by Govern J should be seen in the context of what Jiba now has to say in these proceedings.

[53] When it was discovered that Booysen has raised certain issues in his replying affidavit, the prosecution team felt that it needed to respond thereto. On 14 August 2013 a meeting of the prosecution team was held. Subsequent to the meeting, a

GSM

memorandum was prepared and forwarded to the defence team led by Hodes SC, in terms of which it was expected that supplementary affidavit would be filed to explain the criticism against Jiba with regards to the annexures. On 19 August 2013 an email by Adv Mosing of NPA was sent to Adv Chauke Director of Public Prosecutions Johannesburg, enquiring what progress had been made with regard to filing of further affidavit to deal with Booysen's allegations. Subsequently, Jiba was advised by Adv. Mosing that counsel had indicated that no further actions were necessary.

[54] Based on the explanation above, it is clear that Jiba did not ignore the serious allegations of "mendacious" made by Booysen. By seeking to file further affidavit to explain the annexures after the replying affidavit was filed, is a clear indication that she was mindful of the need 'to explain and correct any inaccuracies' created by Booysen in his replying affidavit. Therefore the statement: '*Despite this, the invitation by Mr Booysen was not taken up by the NDPP by way of a request or application to deliver a further affidavit, in response to Mr Booysen's ascertain of mendacity on her part, there is a deafening silence*', made by Govern J in paragraph 34 of his judgment ought to be seen in the context of what is explained in paragraph 53 above.

[55] Similarly, the statement that '*as regards the inaccuracies, the NDPP referring to Jiba), is after all an officer of the court, she must be taken to know how important it is to ensure that her affidavit is entirely accurate…*', should be seen in the context of what is stated in paragraph 53, but even most importantly, in the context of her explanation now offered in the present proceedings.

[56] On 17 August 2012 Jiba approved the application for authorisation in terms of section 2(4) of POCA for contravention by Booysen of section 2(1)(e) and (f) of POCA. The provisions of section 2(1) (e) and (f) were referred to in paragraph 44 of this judgment. The information and advice that was placed before Jiba for the purpose of granting or refusing authorisation was prepared and compiled by Adv. Raymond K Mthenjwa and Adv. Gladstone Sello Maema, both deputy directors of public prosecutions, Adv Anthony Mosing, a senior deputy director of public prosecutions and the head of the special Projects Division, who acted as the liaison between Jiba and the prosecuting team.

[57] At the time Jiba deposed to the answering affidavit in Booysen's matter, the facts and the evidence against Booysen had been presented to her on many occasions and

GSM

she was acquainted with the case against Booysen. In her affidavit during proceedings before Govern J she referred to annexure NJ5, being the statement of Mr Ndlodlo and Annexure 6 being the statement of Booysen. These annexures apparently did not form part of the papers before Govern J and Jiba was not aware why that was not done. I revert to the essence of annexures NJ5 and NJ6 later when dealing with whether Jiba had information implicating Booysen when she issued the authorisation on 17 August 2012. NJ3 was the statement of Ari Danikas, which was obtained round about 18 April 2012 by General Mabula who led the Hawks investigation team against Booysen.. The drafted statement of Danikas was handed over to the prosecution team during June 2012 and formed part of the information she considered in authorising the prosecution of Booysen. Danikas was a police reservist in the Durban Organised Crime Unit based in Carto Manor and was at that time in Greece. He had security concerns and was unwilling to come on his own to South Africa. On or before 11 July 2012 Adv Maema asked General Mabula to leave the statement unsigned so that the information process outlined in the mutual legal assistance legislation, that is, sections 2 and 3 of International Cooperation in Criminal Matters Act 75 of 1996 be followed to formalise the statement, although the witness was willing to have it signed at the South African embassy. The prosecution was confident that the statement would ultimately be signed through the process outlined as contemplated in Act 75 of 1996, but it formed the basis of the briefings to be considered by her in issuing the authorisation. However, the process of signing the statement could not be finalised since the incumbent (Mr Mxolise Ntasana) at the time of deposing to the answering affidavit in the present proceedings, had instructed to halt the process.

[58] Whilst the statement in question did not relate to the specific incident covered in the indictment, it was however intended to corroborate the evidence in possession of the prosecution team that Booysen was involved in the various activities giving rise to the charges against him of similar facts evidence which is admissible in racketeering prosecutions.

[59] An explanation stated above is offered in these proceedings to set the record straight. Therefore the statement, *'the document referred to as a statement by Mr Danikas annexure NJ3... is not even signed by anyone. It is not dated. Even if it can be attributed to the named person and even if it was sworn statement as claimed by the NDPP the contents do not cover the period dealt with in the indictment except for one event which does not relate to Mr Booysen'*, as

GJM

stated by Govern J ought to be seen in the context of the explanation given by Jiba in these proceedings and the fact that Jiba never said annexure NJ3 was a sworn statement as stated earlier in this judgment. I need to caution. I should not be understood as seeking to review or upset Govern J's judgment. At the time, he did not have Jiba's responses as this court now has.

[60] Regarding the question how Jiba could have taken into account information on oath that objectively did not exist at the time the authorisation was made, the explanation by Jiba in these proceedings is as follows:

> *"217. There were also two statements by Colonel Alger (reference to as Annexure NJ2 and NJ4). One was taken on 3 August 2012 setting out Booysen's managerial responsibilities, participation and interferences in the activities of a section of Durban Organised Crime Unit. The statement was obtained before 17 August 2012, being the date on which the authorities were granted by me. A second statement of Colonel Alger was taken on 31 August 2012 following a consultation with the prosecution team during early July 2012. However the content of the statement was information already relayed to the prosecution team by Colonel Alger at the consultation."*

[61] Therefore the statement: '*The second of these in addition to not implicating him in any of the offences in question, was deposed to on 31 April 2012, some two weeks after the first impugned decision was taken*', in paragraph 31 of Govern J's judgment, inasmuch as GCB seeks to rely on it for the complaint levelled against Jiba, should be considered in the light of explanation quoted in paragraph 60 above. I am unable to find any conduct on the part of Jiba that justifies an application contemplated in section 7 of the Admission of Advocates Act.

[62] As far as the allegation of lack of information implicating Booysen is concerned, an understanding of the applicable legislature framework, what was placed before Jiba and the core function of the prosecuting authority is necessary. The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions relating to offences contemplated in subsection (2) of section 2 of the Act notwithstanding that such evidence might otherwise be inadmissible, provided that such

G.S.M

evidence would not render a trial unfair[24]. This should be seen in the context of the Preamble under POCA which inter alia, reads:

> *"AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular case, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of and related conduct in connection with enterprises which are involved in the pattern of racketeering activity.*
>
> *AND WHEREBY THE SOUTH AFRICAN common law and statutory law fail to deal effectively with organised crimes ... criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime ... and criminal gang activities.*
>
> *AND WHEREAS pervasive presence of criminal gangs in many communities is harmful to well-being of these communities, it is necessary to criminalise participation in or promotion of criminal activities."*

[63] In my view the provisions of section 2(1) (e) and (f) referred to in paragraph 44 of this judgment are meant for the criminalisation of such activities. The point I am making is this: Courts for the purpose of an exercise of its discretion in terms of section 2(2) referred to in paragraph [62] of this judgment, may rely on hearsay evidence, information and or documentation collected by the police and presented to it by the prosecution. If that is so, and courts are entitled to have regard to hearsay evidence during trial, so too should the National Director of Public Prosecutions (Jiba in Booysen's case) be entitled to rely on hearsay and similar facts evidence for the purpose of authorisation as contemplated in subsection (4) of section 2 of POCA. Otherwise, pervasive presence of criminal gangs will continue to rule with impunity and fear in many of our communities and resultantly pose harm to the well-being of many communities.

[64] As I said, one needs to be careful not to be understood as upsetting Govern J's judgment for having reviewed Jiba's decision to prosecute Booysen. That is not an issue before this court. The issue however is whether in granting authorisation in terms of section 2(4), Jiba was mala fide or had ulterior motive, in which event, the requirements of "*fit and proper person*" to remain on a roll of Advocates becomes relevant. For this purpose, further provisions of POCA are necessary to consider, also taking into account offences under section 2(1) (e) and (f).

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[24] See section 2 (2) of POCA

G SM

[65] 'Pattern of racketeering activity' means 'the planned, on-going, continues or repeated participation or involvement in any offence referred to in Schedule 1 and included at least two offences referred to in Schedule 1'. On the other hand, "enterprise" 'includes any individual partnership, corporation, association or other juristic person or legal entity, and any union or group of individuals associated in fact'[25].

[66] The essence of the information before Jiba, can be summed up as follows: In addition to what is stated in paragraphs 56, 57 and 60 of this judgment, Booysen was the head of Carto Manor Organised Crime Unit in the South African Police Services. Members of the police in his unit and under his command had allegedly committed crimes of serious nature including murders against suspects who were sometimes framed in the commission of offences. Booysen knew, approved and or ought to have known of the commission of these offences. In reward to the members' unlawful activities, Booysen motivated for incentive of R10 000.00 for each of the 26 members of the Carto Manor Crime Unit including Booysen himself. Booysen was also commended for outstanding services rendered in that he 'was part of a team, who through their commitment and dedication, arrested several crime and dangerous suspects for the murder of a police officer'.

[67] I cannot find any mala fides and or ulterior motive in the authorisation by Jiba as contemplated in POCA. POCA is like a cry out loud for declaration of war against serious, continuous and organised crimes. That needs specialised investigation and prosecution. Most importantly, POCA requires the freedom and space to be given to the members of the prosecuting authority in the exercise of their legislative power to investigate through members of their investigating Directorate and under the watchful eye of a special director so appointed to prosecute without fear, favour and prejudice those implicated in the commission of serious crimes. Anything short of this, or anything which tends to impede on this constitutional and legislative imperative, for example, hauling Jiba to the proceedings in terms of Section 7 of the Admission of Advocates Act, ought to be based on very cogent, serious and exceptional circumstances.

[68] You do not want members of the prosecution authority to unduly watch their backs for fear of being dismissed or removed from the roll of advocates every time when they make mistakes in prosecuting and presenting cases in court, or every time when an

[25] See definition under Section 1 of POCA

GSM

application for authorisation is made in terms of section 2(4) of POCA. An overriding factor for them for consideration should be to adhere to the rule of law and the Constitution. It suffices for now to conclude on Booysen matter by stating that no case has been made for removal or suspension from the roll of advocates. I now turn to deal with the other matter and basis of complaints thereto against Jiba.

SPY TAPES CASE

[69] The listening of telephone conversation recorded on tapes between Bulelani Nqcuka, the then National Director of Public Prosecutions and Mr McCarthy, the then Director of Public Persecutions for Durban and withdrawal on 1 April 2009 of several of criminal charges against Mr Jacob Zuma, (currently the President of the Republic of South Africa), became to be known in South Africa as a "Spy tape case." It was a case instituted by Democratic Alliance Party against the National Prosecuting Authority in terms of which the latter's decision to withdraw several charges against Mr Zuma was challenged. It is the handling of that case by Jiba in her capacity as the then Acting National Director of Public Prosecutions which forms the basis of the application and dispute in these proceedings. The case in question is also referred to in these proceedings as a "Spy tapes case."

[71] On 6 April 2009, the then acting National Director of Public Prosecutions, Adv. Mokotedi Mpshe, after having listened to the conversation aforesaid recorded on tape publicly announced the withdrawal of corruption and other several related charges against Mr Zuma.

[72] During April 2009 and subsequent to the withdrawal of the charges, the Democratic Alliance (DA), a registered political party and official opposition in South African national parliament instituted review proceedings in the North Gauteng High Court for an order reviewing, correcting and setting aside the decision to discontinue the prosecution against Mr Zuma and declaring the decision to be inconsistent with the Constitution of the Republic of South Africa. DA further required Mr Zuma and NPA to deliver to the registrar of the High Court, in terms of rule 53(1) of the Uniform Rules, the record on which the impugned decision was based, which included representations made by Mr Zuma for the withdrawal of the charges. The prosecuting authority, as the

GSM

decision maker refused to deliver the record contending that the record contained the said representations which had been made on confidential and without prejudice basis. It was further pointed out that Mr Zuma had declined to waive the conditions under which he had submitted his representations. Lastly, it was contended that the decision by the national prosecuting authority to discontinue a prosecution was not reviewable.

[73] In terms of Rule 53 (1) of the Uniform Rules,

> *"...all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions, shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-*
>
> *(a) Calling upon such person to show cause why such decision or proceedings should not be reviewed; and corrected or set aside and*
>
> *(b) Calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch within fifteen days after receipt of the notice of motion to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he has done so."*

[74] Jiba as acting National Director of Public Prosecutions at the time or her predecessor failed to despatch the record of the decision. This led to an application to compel in the high court Pretoria before Ranchod J. DA failed in its application to compel. However, on 20 March 2012 the SCA on appeal by DA, made an order of relevance, as follows:

> *"1.3 In the Rule 6(11) application, the first respondent (referring to NDPP) is directed to produce and lodge with the Registrar of this court the record of the decision. <u>Such record shall exclude the written representations made on behalf of the third respondent (referring to Mr Zuma) and any consequence memorandum or report prepared in response thereto oral representations if the production thereof would breach any confidentiality attaching to representations (the reduced record)</u>. The record shall consist of the documents and materials relevance to the review, including the documents when making the decision and any documents informing such decision."(My emphasis).*

GSM

[75] The order was not complied with. Instead, on 12 April 2012 the state attorney on behalf of NPA headed by Jiba at the time wrote to DA's attorneys two days after the expiry of the 14 days set by the SCA and indicated that they were in the process of preparing copies of the reduced record as indicated in the order of the SCA, that a list of documents was supplied, which it was alleged, constituted the reduced record and that the list was not in breach of the confidentiality. Then in paragraphs 4 and 5 of the letter, it was recorded:

> "4. *Other material considered by the Acting NDPP at the time is subject to the confidentiality obligation and therefore cannot be discovered, unless it may transpire that Mr Zuma's team may at a later stage be willing to consent to a relaxation of the confidentiality in respect of particular documents or particular contents, in which event we will advise you accordingly.*
>
> 5. *There are in addition certain tape recordings which are in the process of being transcribed, but that process has not been completed as yet, and will take some additional time. On completion thereof, we are obliged to give an opportunity to Mr Zuma's legal team to consider whether there is any objection to disclosure of such transcripts. On completion of that process, if there is no objection to disclosure, they will be made available as a supplement to the record."*

[76] During May 2012 the State Attorney supplied certain documents to DA's attorneys. On 9 May 2012 State Attorney then wrote again to DA's attorneys and informed them that Mr Zuma's legal representatives required a period of two to three weeks to consider the tape transcripts, but that they were not consenting to the release thereof pending further consultation with their client.

[77] The delay in not fully complying with the order quoted in paragraph 74 above led to DA approaching this court for an order, inter alia, directing that the record be produced and lodged with the Registrar of this court in terms of the SCA order which should include a copy of electronic recording and a transcript thereof as referred to by the Acting NDPP in the announcement of his decision of 6 April 2009, internal memoranda, reports, minutes of meetings dealing with the contents of the recording and or transcripts itself, insofar as these documents do not directly refer to written or oral representations. In addition, the DA sought an order that Jiba be held in contempt of the order of the SCA referred to in paragraph 74 above.

GSM

[78] The application was heard before Mathopo J who made an order in favour of the DA except for the contempt of the court relief. Mr Zuma appealed to SCA against Mathopo J's order. The latter's order inter alia, read:

> *"1. The First Respondent is directed to comply with the order of the Supreme Court of appeal in case no: 268/2011 dated 20 March 2012 ("the SCA order"), within five days of the date of this order.*
>
> *2. The record to be produced and lodged by the First Respondent with the Registrar of this court, in terms of the SCA order, shall include a copy of the electronic recordings and a transcript thereof referred to by the first respondent in the announcement of the first respondent's decision of 6 April 2009 as well as any internal memorandum, reports or minutes of meetings dealing with and or transcript itself, insofar as the SCA documents do not serve to breach the confidentiality of the thereof of respondents' written or oral representations."*

[79] On appeal to the SCA, its order of 20 March 2012 and that of Mathopo J were varied by additions as follows:

> *"1. ...*
>
> *2. ...*
>
> *3. With regard to memoranda, minutes and notes of meetings, referred to by the first respondent in paragraph 26 of her answering affidavit (the internal documentation):*
>
> *3.1 Within five days of this order, the first respondent shall cause to be delivered to the Honourable Mr Justice NV Hurt (Justice Hurt) copies of the internal documentation;*
>
> *3.2 On the copy of each document forming part of the internal documentation, Justice Hurt shall mark or order that part of the document which he considers the reveal the contents of third respondent's written or oral representations(the representations) to first respondent;*
>
> *3.3 The exercise referred to in paragraph 3.2 above shall be performed in accordance with any directives with any directives which the Honourable Justice Hurt may prescribe in order to fulfil his mandate;*
>
> *3.4 The ruling of Justice Hurt shall be final and binding on the parties; and*
>
> *3.5 Should Justice Hurt, for whatever reason, be unable to commence or complete the exercise referred to in this paragraph, the applicant and the third respondent shall attempt to reach agreement on another independent and impartial person to replace*

GSM

him and, if no agreement can be reached within five days of Justice Hurt becoming unavailable, then the chairperson of the General Council of the Bar of South Africa shall be requested to appoint such."

[80] Additions to the order were apparently initiated by the parties. It is the conduct of Jiba complained of in not complying with the order of 20 March 2012 and adverse remarks made by the Supreme Court of Appeal that GCB approached this court seeking the order to remove Jiba from a roll of Advocates. GCB having referred to specific paragraphs in the SCA's judgment, to which I refer later in this judgment, concluded in paragraph 17 of its founding affidavit as follows:

"17. In my submissions these observations by the SCA were, with respect, warranted and Jiba's conduct in the Zuma matter falls well short of the conduct required of an advocate of this Honourable Court and as contained in the Code of Conduct for members of the NPA. She did not assist the court at arriving at a just verdict, and she did not perform her duties as Acting NDPP fearlessly and vigorously in accordance with the highest standard of the legal profession; as the Code of Conduct requires. Moreover, the answering affidavit deposed to by her, and the attitude she evinced towards the High Court and the SCA, was less than objective, honest and sincere."

[81] Jiba in her answering affidavit to these proceedings correctly in my view articulated the essence of the complaints attributable to her in the Spy Tapes case as follows:

"241. The complaints against me in relation to the Democratic Alliance matter are as follows:

241.1 That I adopted a supine attitude to the SCA's directive;

241.2 That in my answering affidavit (in the contempt application) I did not adopt a position to the confidentially of the tapes or the transcripts but "resorted to a metaphorically shrugging of the shoulders"

241.3 That the SCA referred to my approach in the answering affidavit, in not taking a stance on the confidentiality of the material sought, as disingenuous;

241.4 That I did not take an independent view about confidentiality in the face of the order of the SCA, and that this conduct is not worthy of the office of the NDPP;

GSM

241.5 That I did not assist the court at arriving at a just verdict, and my attitude was less than objective".

[82] Very often when adverse remarks are made in legal proceedings, the person against whom the remarks are made is not given the opportunity to state his or her case to the impeding adverse remarks. It is for this reason that courts do not easily make adverse remarks. This is one of those cases. However, as I deal with each of the complaints levelled against Jiba in the "Spy Tapes case", I will also refer to her responses thereto and this will happen unfortunately at the risk of prolonging this judgment but, it is necessary to do so. Courts are of course willing to reconsider adverse remarks afresh given the responses by the person against whom they were made.

<u>Supine attitude</u>

[83] "Supine" is an English word which according to South African Concise Oxford Dictionary means "lying face upwards- with the palm of the hand upwards"- "failing to act as a result of moral weakness or indolence"- n. Latin verbal noun "used only in the accusative and ablative case, especially to denote purpose."

[84] The context in which Navsa ADP (as he then was) used the word might give relevance to the usage of words "supine attitude." During May 2012, DA's attorneys having received certain documents which did not include transcripts of tape recordings which were used as the basis of the withdrawal of the charges against Mr Zuma. At the end of June 2012 DA having not been satisfied with the documents provided and the response to the outstanding information from Jiba, wrote to the State Attorney and recorded:

"5. A copy of the transcript of the recordings ('the transcript') has not been furnished. The transcript itself and any consequent memorandum or report prepared in response thereto, are not covered by the limitation to the production of the record as per the order of the SCA for the following reasons:

5.1 Firstly, the recordings and/or the transcript could not possibly have been given in confidence to the first respondent because he quoted extensively

GSM

from these recordings when announcing his decision to discontinue the prosecution of the Third Respondent on 6 April 2009.

5.2 Secondly, the limitation in the SCA order only relates to 'the written representations made on behalf of the Third Respondent and any consequent memorandum or report prepared in response thereto or oral representations if the production thereof would breach any confidentiality attaching to the representations (the reduced record). The recordings and/or the transcript are neither written, nor oral representation nor memorandum or report prepared in response thereto.

5.3 Thirdly, the limitation in the SCA order does not cover memoranda or reports prepared in response to oral representations but merely in response to the written representations.

5.4 Fourthly, to the extent that internal NPA memoranda, report or minutes of meetings deal with the contents of the recordings and/or the transcript itself, as opposed to Third respondent's written or oral representations in respect thereof, they are not covered by the limitation in the SCA's order and should be produced. In other words in the internal debate regarding the effect of what is revealed in the recordings on the decision on whether or not to discontinue the prosecution, is not covered by the limitation to the extent that such debate does not refer to the representations themselves.

6. It is inconceivable there are no internal NPA memoranda reports or minutes of meeting dealing with the contents of the recordings and/or the transcript itself. We accordingly call on you to produce these documents, as well as the recordings and the transcripts themselves forthwith, failing which our client will take all the necessary steps to compel compliance with the order of the SCA. Naturally, costs will be sought against your client as well."

[85] Then in its judgment handed down on 20 August 2014, the SCA stated:

"[15] The exhortation in the last paragraph of the letter, set out at the end of the preceding paragraph yielded no results. It is common cause that during telephone discussions in July 2012 between specific State Attorney and DA's legal representative, the former had indicated that the blame for the delay was attributable to Mr Zuma's attorneys. <u>The NDPP itself adopted a supine attitude</u>."

[86] Jiba in dealing with this criticism has now in these proceedings responded as follows:

G Sm

"242. As the applicant points out, the Democratic Alliance matter arose from a decision of the then national Director of Public Prosecutions, Mr Mokotedi Mpshe ("Mr Mpshe"), to discontinue the criminal prosecution of President Zuma. The applicant's complaint goes to my response to the directive of the SCA of 20 March 2012. More particularly the applicant's complaint goes to my interpretation of the SCA's directive. I point out that at all times during the Democratic Alliance matter I was again represented by a team of experienced counsel, namely advocates P Kennedy SC and NH Maenetje (whom I am advised has subsequently taken silk) ("the Kennedy team").

243. The SCA directive is set out in paragraph 16.2 of the founding affidavit. As appears from the directive the record of decision (of the former National Director of Public Prosecutions) which I was required to produce, was to "exclude the written representations made on behalf of Mr Zuma and any consequent memorandum or report prepared in response thereto, or oral representations, if the production thereof would breach any confidentiality attaching to the representations".

244. As a result of the tape recordings which were in the process of being transcribed, the directive was not complied with within the stipulated 14 days. As the bulk of the representations, which were to be excluded from the reduced record, concerned the tape recordings, I was concerned that the content of these could potentially breach confidentiality relating to the representations. For that reason, and in order not to fall foul of the SCA directive, the decision was taken, on the advice of senior counsel representing me, to obtain the input of Mr Zuma's legal representatives as to whether there was any objection to the disclosure of the transcript of the tape recordings.

245. The applicant in the Democratic Alliance matter, the Democratic Alliance ("the DA") then brought an application to compel me to produce the record and for an order that I be held in contempt of court, as appears from the decision of Mathopo J, before whom the application was argued, a copy of which is attached hereto, marked "NJ21", the Democratic Alliance matter concerns the interpretation of the SCA's directive.

246. As appears further from paragraph 13 of the decision of Mathopo J, I abided the decision of the Court as regards the production of the transcripts. Although the Judge held that the proper construction of the SCA order confidentiality did not extend to the transcript (at paragraph 27), the court agreed that affording Mr Zuma an opportunity to raise his concerns was in line with the SCA order, and I was therefore not found to be in contempt of court (at paragraph 50).

G SM

247. I draw to this Honourable Court's attention that at paragraph 32 of decision of Mathopo J, the learned Judge criticised me for adopting a neutral position with regard to the transcripts.

248. On appeal, (at the instance of Mr Zuma) the SCA similarly criticised me for adopting what is referred to as 'a supine attitude" to its directive. Indeed this is the basis of the applicant's complaint against me in this application. ...

249. I accept that the SCA has criticised me for not taking an "independent view" about confidentiality. I respectfully submit that this was a result of adopting a cautious approach, in order to ensure that I did not unwittingly infringe on the rights of either of the parties in the Democratic Alliance matter. I respectfully submit that this does not amount to conduct that this is less than objective, honest and sincere and does not render me not 'fit and proper to practice as an advocate."

[87] Indeed the interpretation of the order of the SCA, the relevant part of which is quoted in paragraph 74 of this judgment, did not appear to have been an easy exercise. Its correct interpretation appears to have prompted the DA to widen and clarify it, so did Mathopo J and the SCA as per Navsa ADP. I say so for the following reasons:

87.1 DA in its application before Mathopo J sought relief in addition, as paraphrased in paragraph 77 supra and by so doing sought to widen and clarify SCA 's directive of 20 March 2012.

87.2 Mathopo J also had to deal with DA's application for contempt of court, and in finding that no case has been made for contempt of court against Jiba, in paragraph 50 of his judgment, stated:

"[50] The submissions advanced on behalf of the first respondent is that the delay if any, was occasioned by the third respondent's legal representative in considering whether to object to the transcript or not. Thus no fault could be attributed to the State attorney or first respondent because in terms of the SCA's order, the first respondent was obliged to afford the third respondent, an opportunity to indicate whether he has any objection or not. I agree with first respondent that affording the third respondent an opportunity to raise his concerns was in line with the SCA's order. This conduct in my view cannot be regarded as deliberate or wilful non-compliance with the order. It follows that the contempt of court application must be dismissed". (My emphasis).

G S M

[88] The finding by Mathopo J as indicated above seems to be in line with what was stated in the Democratic Alliance v The Acting National Director of Public Prosecutions and Others[25] wherein it was said:

> *"[33] There was a debate before us about what the value would be to the reviewing court of a reduced record, namely, a record without Mr Zuma's representations. Concern was also expressed on behalf of Mr Zuma that there might be material in the record of decision which might adversely affect his rights and to which he might rightly object. The concern was met by an undertaking on behalf of the first respondent that, in the event of this court altering the decision of the court below, so as to order the production of the record of the decision sought to be reviewed, the NDPP 's office would inform Mr Zuma of its contents. Questions involving the extent of the record of the decision and its value to the court hearing the review application are speculative and premature. In the event of the order compelling production of record, the office of NDPP will be obliged to make available whatever was before Mr Mpshe when he made the decision to discontinue the prosecution. It will then fall to the reviewing court to assess its value in answering the questions posed in the review application. If the reduced record provides an incomplete picture it might well have the effect of the NDPP being at risk of not being able to justify the decision. This might be result of Mr Zuma's decision not to waive the confidentiality of the representations made by him. On the other hand, a reduced record might redound to the benefit of the NDPP and Mr Zuma".*

[89] That being the understanding of Mathopo J and undertaking given in the SCA as quoted in paragraphs 82.2 and 88 of this judgment respectively, the interpretation of the order of 20 March 2012 by the SCA has context as understood by Jiba and articulated in her answering affidavit quoted in paragraph 86 above.

[90] The additional order of the SCA quoted in paragraph 79 of this judgment, in my view, indicates how difficult it was to implement the order of 20 May 2012 without clarification and additions. Seeing this in context, Mathopo J was perhaps right in his conclusion in paragraph 50 of his judgment which conclusion has not been challenged or questioned.

[91] "Supine attitude" must therefore be seen in the context of the preceding paragraphs. Failure by Jiba not to respond to the articulation in the letter of 6 June 2012 from DA attorneys referred to in paragraph 84 of this judgment seems to have been dictated by two things: First, the delay by Mr Zuma's attorneys, an explanation which

[25] 2012(3) SA 486 (SCA) at para 33

G sm

was accepted by Mathopo J as indicated in paragraph [50] of his judgment. Second, by Jiba's understanding of paragraph 2 of the order of 20 March 2012 which understanding was also shared by Mathopo J. The real question ultimately is whether her conduct was of such a nature that she had ceased to be a fit and proper person to remain on a roll of advocates. In the absence of mala fides and or ulterior motive on her part, I am unable to find against her on the "Supine attitude" complaint. I now turn to deal with other remarks made against her in the Spy tapes case.

Metaphorical shrugging of shoulders

[92] The word "shrugging" is described in the Oxford dictionary as 'raising one's shoulders slightly and momentarily to express doubt, ignorance, or indifference'. The context in which Navsa ADP used the words is important. I can do no better than giving the context by quoting what was said in paragraph 17 of the SCA judgment handed down on 28 August 2014:

"[17] The basis of the application, as foreshadowed in the letter from the DA's attorneys as set out above, was that in terms of the order in the first appeal, a copy of the transcript of the recordings ought to have been furnished and that the recordings could not possibly have been provided to the ANDPP confidentially, as that office quoted publicly and extensively from the recordings when announcing the decision to discontinue the prosecution of Mr Zuma. Furthermore, it was contended that the SCA order envisaged an embargo only on written representations made on behalf of Mr Zuma and any subsequent memorandum or report in relation thereto, if the production thereof would breach any confidentiality attaching to the representations. The recordings and/or transcripts, it was submitted, were neither written nor oral representations nor a memorandum or report related to the representations. In addition, it was asserted that memoranda or reports relating to internal debate within the office of the NDPP concerning the recordings were not covered by any limitation envisaged in the order in the first appeal. The DA was adamant that internal memoranda, reports or minutes of meetings addressing the transcripts must exist and are susceptible to disclosure. In the founding affidavit on behalf of the DA the following appears:

> *'The notion of an accused making representations to the First Respondent "in confidence", which representations then lead to the discontinuation of a prosecution, is already absurd. For the time being, the Applicant has elected to live with that absurdity. But the Applicant cannot accept and will not allow the NDPP to conceal the foundation of the decision, i.e. the recordings and the internal debate regarding them."*

GSM

[93] Then in paragraph 18, Navsa ADP mentioned the 'metaphorical shrugging of shoulders" as follows:

"It is important to note that the ANDPP's answering affidavit does not adopt a position in relation to the confidentiality of the tapes or transcripts. it resorts to a metaphorical shrugging of the shoulders, and places the reason for its non-compliance with the order of this court in the first appeal at the door of Mr Zuma's legal representatives, submitting that the present dispute was due to them not being timeously forthcoming with a final position on the disclosure of the tapes or the transcripts. The NDPP's office assumes the position that the lack of consent to the release of the tapes or transcripts was sufficient to forestall compliance with the order in the first appeal."

[94] What is quoted in paragraph 86 as a response to the criticism levelled against Jiba, in my view, serves also as a response to the "metaphorical shrugging of shoulders." The delay or forestalling of compliance with the SCA order of the 20 March 2012 should similarly be seen in the context of what I said with regards to the "supine attitude", particularly now seen in the light of Jiba's responses as quoted in paragraph 86 above. What Mathopo J said in paragraph 50 of his judgment is equally important. The explanation for the delay was accepted, but even most importantly, it was also the understanding of Mathopo J that in terms of the SCA order of 20 March 2012, Mr Zuma or his attorneys were to be contacted before making the tapes and the transcript available to DA. The submission made on behalf of Mr Zuma as articulated in the SCA judgment of 28 August 2014 in my view, is also relevant to Jiba's reason for taking the position as she did. Navsa ADP referred to the submission in his judgment as follows:

"In the high court, even though Mr Zuma had not filed an answering affidavit, counsel on his behalf submited that confidentiality, as envisaged in this court's order in the first appeal, extended to everything comprising representations made on Mr Zuma's behalf. It was contended that since the office of the NDPP did not itself take steps to obtain the recordings, but accessed them through the efforts of Mr Zuma, separating them from the representation would be illogical and irrational"[27].

94.1 It could not have been easy for Jiba to deal with the issue of confidentiality seen in the light of stance articulated by Mr Zuma's attorneys. Considering Jiba's responses in these proceedings to the adverse remarks made against her, I am unable to find that her stance to abide by the decision of the court in the proceedings before Mathopo J was "metaphorical shrugging of shoulders" and neither can I find mala fides on her part or

[27] 2014(4) ALL SA 35 SCA at para 22

GSM

that she was motivated by ulterior motive. I now turn to deal with the other complaints levelled against Jiba.

'Disingenuous, not worthy of office of NDPP, less objective and loath to take independent view'

[95] The words are randomly taken from the judgment of the SCA wherein Navsa ADP inter alia, stated:

> *"[41] One remaining aspect requires to be addressed, albeit briefly. As recently as April this year, this court in the National Director of Public Prosecutions v Freedom Under Law 2014 (4) SA 298 (SCA) criticised the office of the NDPP for being less than candid and forthcoming. In the present case, the then NDPP, Ms Jiba, provided an opposing affidavit in tenderised hearsay and almost meaningless terms. Affidavits from people who had first-hand knowledge of the relevant facts were conspicuously absent. Furthermore, it is to be decried that an important institution such as office of the NDPP is loath to take an independent view, about confidentiality, or otherwise, of documents and other materials within its possession, particularly in the face of an order of this court. Its lack of interest in being assistance to either the high court or this court is baffling. It is equally lamentable that the office of the NDPP took no steps before the commencement of litigation in the present case to place the legal representatives of Zuma on terms in a manner that would have ensured either a definitive response by the latter or a decision by the NPA on the release of the documents and material sought by the DA. This conduct is not worthy of the office of the NDPP, such conduct undermines the esteem in which the office of the NDPP ought to be held by citizenry of this country".*

[96] Whilst these remarks were made in passing, but considered together with what was stated in paragraph 93 above, they serve as an indictment on Jiba. However, the criticism must be seen in the context of what has already been said in the preceding paragraphs. Again, the responses to the criticisms require this court to reconsider the remarks and in particular whether Jiba has ceased to be a fit and proper person to remain on a roll of advocates. 'Freedom Under Law' referred to in the quotation above in reference to Mdluli case and I deal later hereunder with the conduct of Jiba, Mrwebi and Mzinyathi in that case.

GSM

[97] As regards the hearsay information and failure to file confirmatory affidavit, Jiba of relevance, explains in paragraph 248 of her answering affidavit to the present proceedings as follows:

> *"...Navsa JA also criticised me, at paragraph 26 of his judgment, for referring to what I had been told by her Mpshe and not filing a confirmatory affidavit by him. With respect, a confirmatory affidavit was indeed filed by Mr Mpshe, and I attach a copy of it hereto marked "NJZ2". Although I cannot find a copy with a date stamp, it will be observed that this affidavit was signed by Mpshe and commissioned by Warrant officer Seleka in Sinoville Police Station on 3 April 2013, which was three months before the hearing of the matter before Mathopo J on 24 July 2013. It seems that this must have erroneously been omitted from the record of appeal to the SCA. I have no explanation for why this was the case as I took no part in the appeal nor was I responsible for the filing of the documents."*

[98] I have already dealt with failure to take an independent view on confidentiality in the face of the order of the SCA. Jiba, DA and Mathopo J in my view, sought to interpret the order of 20 March 2012. I am unable to find that Jiba's failure to take an independent view with the benefit of her responses in these proceedings can be seen as unworthy conduct to justify removal from the roll of advocates or suspension therefrom.

[99] By the time the matter was heard before Mathopo J, Mr Zuma's attorneys had already indicated what Mr Zuma's stance was, which is more accurately stated by Navsa ADP in paragraph 22 of his judgment quoted in paragraph 94 above. His failure to put Mr Zuma's attorneys on terms should also be seen in context, more so Jiba's replies to the complaint levelled against her in this regard. As she says, she did not want to 'fall foul of the SCA directive' and 'the decision was taken on the advice of a senior counsel' representing her, 'to obtain the input of Mr Zuma's legal representatives as to whether there was any objection to the disclosure of the transcript of the tapes recordings'.[28] I therefore find that no case has been established with regard to the Spy tapes matter. But that cannot be said with regard to Mdluli case (Freedom Under Law case) to which I now turn to consider.

MDLULI CASE (FUL)

[28] See the quotation in paragraph 85above (in particular 244 of answering affidavit).

G sm

[100] Freedom Under Law (FUL) instituted review proceedings against the National Director of Public Prosecutions and others in terms of which FUL wanted the court (as per Murphy J) to review and set aside, inter alia, a decision of Mrwebi to discontinue the prosecution of Lt General Richard Mdluli (Mdluli) on corruption and fraud charges.

[101] Who is Mr Richard Mdluli? He was adequately profiled by Brand JA in his judgment handed down on 17 April 2014[29]. I can do no better than to paraphrase what was articulated by Brand JA: From about 1996 until 1998 one Mr Tefo Ramogibe (the deceased) and Mdluli were both involved in a relationship with Ms Tshidi Buthelezi (Buthelezi). The deceased and Buthelezi were secretly married during 1998. Mdluli was upset about this and addressed the issue on numerous occasions with Buthelezi, the deceased and members of their respective families. At that time Mdluli held the rank of senior superintendent and the position of the detective branch commander at the Vosloorus police station. Since 1 July 2009 Mdluli held the position of National Divisional Commissioner in the Police Services (SAPS), a position also described as head of Crime Intelligence Unit and at that time he assumed the rank of Lieutenant General.

[102] On 31 March 2011 Mdluli was arrested and charged with 18 criminal charges including the murder of the deceased. Many of these charges rested on allegations by relatives and friends of the deceased, Buthelezi and other persons associated with Mdluli including policemen under his command. The further allegations were that Mdluli brought pressure to bear upon these people through violence, assaults, threats and kidnapping and in one instance rape, with the view to compelling their co-operation in securing the termination of the relationship between the deceased and Buthelezi. On one occasion, Mdluli had allegedly taken the mother of the deceased to the Voosiorus police station where she found the deceased injured and bleeding. In the presence of the deceased's mother, Mdluli warned the deceased to stay away from Buthelezi. The deceased was killed few days thereafter: It is important to mention that the murder and other charges never proceeded to trial. Much of the original docket and certain exhibits were lost or disappeared. Information about discontinued investigation resurfaced after Mdluli was appointed the head of Crime Intelligence in 2009.

[29] National Director of Public prosecutions and other V freedom Under Law 2014 (4) SA 298 SCA

G S.M

[103] On 8 May 2011 Mdluli was suspended from office and disciplinary proceedings were instituted against him. After Mdluli's arrest and his suspension from office some members of crime Intelligence Unit came forward with information concerning alleged crimes committed by some of its members, including Mdluli. As a result of further information, instruction was given to investigate those allegations. Upon investigations, warrant for Mdluli's arrest on charges of fraud and corruption was authorised and executed on 20 September 2011.

[104] Fraud and corruption charges emanated from the alleged unlawful utilisation of funds held in the Secret Services account created in terms of the Secret Services Act no. 56 of 1978 for the private benefit of Mdluli and his wife. It was alleged that one of Mdluli's subordinates purchased two motor vehicles ostensibly for use by the Secret Services but structured the transactions in such a manner that a discount of R90 000.00 that should have been credited to the Secret Services account was utilised for Mdluli's benefit. Further allegations were that the two motor vehicles were registered in the name of Mdluli's wife and appropriated and used by the two of them exclusively.

[105] On 3 November 2011 Mdluli wrote a letter to the President of the Republic of South Africa, Honourable Mr Jacob Zuma, the Minister of Safety and Security and to the Commissioner of Police stating that the charges against him were the result of conspiracy among senior officers including the then Commissioner of Police, General Bheki Cele who suspended Mdluli and head of the Hawks, General Anwar Dramat. In the letter it was further stated by Mdluli:

> *"...In the event that I come back to work, I will assist the President to succeed next year."*

[106] "Next year", was reference to African National Congress (ANC) elective conference in Mangaung which was to take place towards the end of 2012. The allegations of conspiracy led to the appointment by the Minister of Safety and Security of a task team which later reported that there was no evidence of a conspiracy and that the police officers who had accused Mdluli of criminal conduct had not acted in bad faith. On 17 November 2011 Mdluli's legal representatives made representations to Mrwebi in his capacity as Special Director of Public Prosecutions and Head of Investigating Directorate, seeking the withdrawal of the fraud and corruption charges. The representations repeated what was said to President Zuma and others regarding conspiracy theory. The representations were also made with reference to the murder

GSM

and other related charges to Advocate KMA Chauke (Chauke), the DPP South Gauteng for the withdrawal of those charges. The fraud and corruption charges were withdrawn in a letter dated 4 December 2011, although it was contended by Mrwebi that the decision was actually taken on 5 December 2011. On 1 February 2012 Chauke decided to withdraw the murder and related charges. These decisions formed the subject of a dispute before Murphy J in the North Gauteng High Court in review proceedings brought by FUL.

[107] I found it necessary to give this lengthy back-ground about Mdluli in order to show the kind of personality, Jiba and Mrewbi in particular, had to deal with. Jiba, Mrewbi and Mzinyathi are respondents in the present proceedings all of them implicated in Mdluli case, complaints of which serve as the basis for GCB's application to remove them from a roll of advocates, the contention being that they have ceased to be fit and proper persons. I deal with the complaints against each one of them hereunder and in some respects those against Jiba overlapping with some of the complaints levelled against Mrwebi.

<u>Complaints against Jiba in Mdluli case</u>

[108] Allegations against Jiba in Mdluli case are in my view, correctly categorised in her answering affidavit to the present proceedings as follows:

108.1 That she did not file a full and complete rule 53 record notwithstanding an order compelling her to do so.

108.2 That she did not file an answering affidavit by the due date and had to be directed to do so by the Deputy Judge President and in addition that she did not file written heads of argument timeously;

108.3 That her reasons for the various delays were sparse and unconvincing;

108.4 That her conduct in particular is unbecoming a person of such high rank in the public service.

GSM

108.5 That she did not disclose to the court that on 13 April 2012, she had received a 24 page memoranda from Adv. Breytenbach and that she deliberately attempted to mislead the court.

108.6 That she did not make a full and frank disclosure in order to refute, explain or ameliorate serious allegations made against her.

108.7 That the SCA had also criticised her conduct.

[109] In dealing with the case against Jiba, I will pick up on each complaint made against her insofar as is material, her responses thereto and evaluation of the evidence on each of the complaints so considered material. I will do so without necessarily following the sequence of the complaints identified in paragraphs 108.1 to 108.7 above.

Failure to file record of decision timeously

[110] In paragraph [73] of this judgment I referred to the provisions of sub-rule (1) of Rule 53. Because of the importance of the provisions of Rule 53 to the topic under discussion, I find it necessary to repeat the rest of the provisions in their entirety:

> *"(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.*
>
> *(3) The registrar shall make available to the applicant the record despatched to him as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.*
>
> *(4) The applicant may within ten days after the registrar has made the record available to him, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit.*
>
> *(5) Should the presiding officer, chairman or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he*

G SM

shall- (a) within fifteen days after receipt by him of the notice of motion or any amendment thereof deliver notice to the applicant that he intends so to oppose and shall in such notice appoint an address within eight kilometres of the office of the registrar at which he will accept notice and service of all process in such proceedings; and (b) within thirty days after the expiry of the time referred to in sub-rule (4) hereof, deliver any affidavits he may desire in answer to the allegations made by the applicant.

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall mutatis mutandis apply to the set down of review proceedings."

[111] "The record despatched to him" in sub-rule (3) above is reference to the record contemplated in sub-rule (1) (b) quoted in paragraph [73] of this judgment. The objective of rule 53 is obvious. The time frames are to ensure that review proceedings are not unnecessarily delayed. Secondly, despatching to the Registrar the record of the proceedings sought to be corrected or set aside, together with such reasons as the decision maker is by law required to give, and notifying the applicant that this has been done and making such record available to the applicant, is to ensure that a party aggrieved by the decision is properly informed as to the route to follow. The rule serves as a tool to ensure that any challenge to the proceedings sought to be reviewed is well considered and properly pleaded. For this purpose, the applicant or aggrieved party is under Sub-rule (4) given an opportunity by delivery of a notice and accompanying affidavit, to amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit if need be. Similarly, the decision maker is in terms of Sub rule (5) (b) given the opportunity to deliver any affidavit he or she may desire in an answer to allegations made therein and any further reasons as contemplated in sub-rule (1) (b).

[112] Therefore compliance with Rule 53 regarding time frames and providing complete record, is not just a procedural process, but is substantive requirement which serves to ensure that the substance of the decision is properly put to the fore at an early stage. Any attempt to frustrate this, should be met with displeasure by our courts.

[113] On 15 May 2012 Jiba was served with court papers in the application brought by FUL and 6 June 2012 was the date on which Jiba and Mrwebi were to despatch to the registrar the record of the decision and to advise FUL that they have done so. Instead,

G SM

and without complying with the time frames, they briefed and consulted with Motimele SC and his team for the first time on 11 June 2012.

[114] Reasons for the delay is sought to be explained in paragraph 86 to 90 of Jiba's answering affidavit in these proceedings and are paraphrased as follows:

114.1 Motimele SC was briefed, inter alia, to advise on the interpretation of Rule 53 and the record of the decision as contemplated in Rule 53. The record of the decision was then allegedly prepared on the advice of Motimele SC. In paragraph 86 of the answering affidavit to these proceedings, Jiba inter alia, states:

"...It is important to note that no decision by me personally in my official capacity as an Acting NDPP was to be reviewed. My citation insofar as these decisions are concerned is, in my view, in official capacity as acting head of the NPA and not because I had made any decision."

114.1.1 I find the statement a bit startling, especially taking into account who is Jiba: She was appointed as Acting National Director of Public Prosecutions on 28 December 2011. Before that, she had gone through the ranks in the legal fraternity and within the prosecuting authority. In addition, she has a good academic record. In 1987 she completed Bluris degree, followed by LLB in 1989 obtained at Walter Sizulu University (then known as University of Transkei). In 1994 she obtained an industrial diploma from Damelin College. In 1996 she graduated with an LLM degree in commercial law. Her work professional career started in1988 in Peddie in the Eastern Cape where she was employed and worked as a prosecutor in a magistrate's court. In 1997 she resigned from the public service and commenced articles of clerkship with attorneys Qunta Ntsebeza in Cape Town. In 1998 she qualified as an attorney. In 1999 she moved to Pretoria to work at an accounting firm, Deloitte and Touche as a senior forensic consultant. Later that year, she joined the Investigating Directorate for Serious Economic Offences (IDSEO) in Pretoria as a senior state advocate. In 2001 the IDSEO was disbanded and the

GSM

Directorate for Directorate of Special Operations ("DSO") within the NPA was established. Later in 2001 she was appointed as a Deputy Director of Public Prosecutions. In 2006 she was appointed senior Deputy Director of Public Persecutions. She was then relocated to the specialised commercial crimes court in Pretoria in 2009. On 22 December 2010 she was then appointed to the position of a Deputy National Director of Public Prosecutions and then followed by her acting stint as a National Director of Public Prosecutions from December 2011.

114.1.2 So, she is clearly an astute lawyer who must know that as an Acting National Director of Public Prosecutions at all material times thereto, the buck had to stop with her and it was in that capacity that FUL cited and served her with the review proceedings. The Act is very clear:

'Subject to the provisions of the Constitution and NPA Act, any director shall subject to the control and the directions of the National Director, exercise the powers referred to in subsection s(1) in respect of-

(a) the area of jurisdiction for which he or she has been appointed; and

(b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director[30].

114.1.3 Powers referred to in subsection (1) are powers as contemplated in section 179 (2) of the Constitution and all other relevant sections of the Constitution to inter alia, discontinue criminal proceedings. Therefore, the statement: *"... no decision by me personally in my official capacity as an acting ANPP was to be reviewed'*, insomuch as it was intended to serve as an execuse for not providing the record of decision in accordance with the time periods set out in

[30] Section 21(3) of the Act

GSM

rule 53, is clearly not good enough and Jiba knew or ought to have known about this. Her failure to ensure that there was compliance was therefore not only unwarranted, but was, in my view, also deliberate and or reckless. She has a vast experience to know where her responsibility in the shoes of National Director of Public Prosecutions lies, otherwise she would not have been appointed to act in that position.

114.2 In paragraph 87 of her answering affidavit to these proceedings, she inter alia, states:

> *"It is also important to point out that the advice on what should be contained in the record was given and accepted at a time when the reviewability of prosecutorial decisions to prosecute or not to prosecute was still largely uncertain and had not been pronounced upon definitively by the court..."*

114.2.1 Just starting with the latter statement regarding *'uncertain and had not been pronounced upon definitively by the court...'* regarding the reviewability of prosecutorial decisions, one is forced to refer to what was articulated in our case law before the challenged decisions of Mrwebi and Chauke to drop charges against Mdluli were taken. On 20 March 2012 in the case of Democratic Alliance v The Acting National Director of Public Prosecutions[31], of relevance, it was held:

> *"[27] Whilst there appears to be justification for the contention that the decision to discontinue a prosecution is of the same genus as a decision to institute or continue a prosecution, which is excluded from the definition of administrative action in terms of Section 1 of (ff) of PAJA, it is not necessary to finally decide that question. Before us it was conceded on behalf of the first and third respondents that the decision to discontinue a prosecution was subject to rule of law. That concession in my view was rightly made. As recently as 1 December 2011, in Democratic Alliance v President of the Republic of South*

[31] Democratic Alliance v The Acting National Director of Public Prosecutions (288/11) [2012] ZASCA (20 March 2012); 2012 (3) SA 486 SCA.

GSM

Africa and Others 2012(1) SA 417 (SCA) this court noticed that the office of the NDPP was integral to the rule of law and to our success as democracy. In that case, this court stated emphatically that the exercise of public power, even if it does not constitute administrative action, must comply with the constitution. The Constitutional Court has respectively emphasised this point."

114.2.2 Now, in Mdluli case, FUL pleaded its cause of action on the basis that the withdrawal of the charges against or discontinuance of the prosecution of Mdluli was an exercise of public power to be performed in accordance with the rule of law and the supreme law of the land (the Constitution). The challenge by FUL was that the withdrawal of the fraud and corruption charges against Mdluli in the face of prima facie case was in conflict with the rule of law and the Constitution based on the facts briefly stated in paragraph 104 of this judgment.

114.2.3 Jiba was the Acting Director of Public Prosecutions when the judgment quoted in part in paragraph 114.2.1 above was handed down on 20 March 2012. She was therefore fully aware of what was stated therein or ought to have known, in particular the concession that whatever the prosecution authority does, must comply with the rule of law and the Constitution. So, for her to allege that when she deposed to her answering affidavit in Mdluli case on 2 July 2013, she moved from the premise that the decisions of Mrwebi and Chauke were not reviewable, could not have been made in good faith seen in the context of the concession made as repeated in the quotation referred to in paragraph 114.2.1 above and the pleaded cause of the review of the decision of Mrwebi. Therefore the delay and reasons for not providing the record of the decision was completely unjustified and deliberate.

GSM

114.2.4. I can do no better than repeating, at the risk of prolonging this judgment, what Navsa JA said in his judgment handed down on 20 March 2012:

> *"[32] The office of the NDPP exercises public power and is subject to the constraints set out in the authorities referred to above. Having made the concession that the decision to discontinue the prosecution was subject to a rule of law review, it was nevertheless submitted on behalf of the first and third respondent that such a review would be a narrow one, on limited grounds. In light of primary concession made on behalf of the respondents, it is for present purposes not necessary to debate the extent to which a decision to discontinue a prosecution is reviewable…" (My emphasis).*

114.2.5 "*On limited grounds*", should for the present purposes be seen in the context of the pleaded failure to comply with the rule of law and the Constitution by withdrawing corruption and fraud the charges against Mdluli in the face of prima facie evidence.

114.2.6 Now coming back to the other part of the quotation in paragraph 114.2 above, Jiba did not need an '*advice on what should be contained in the record.*' She knew or ought to have known and briefed fully on why Mrwebi took the decision to discontinue the fraud and corruption charges against Mdluli. She knew or ought to have known what evidence and documentation Mrwebi relied upon for the decision, for example, what was contained in the docket. So, it was incumbent on Jiba and Mwerbi to advise whoever they had briefed on the matter of the reasons for the decision to discontinue fraud and corruption charges against Mdluli and if they had done so, they would not have speculated or be uncertain about which documents and or information was necessary to form part of the record. In any event, Rule 53 is very clear. The decision maker is required to provide the aggrieved party via the Registrar the record of decision or proceedings sought to be corrected or set aside together with such reasons as he or she is by law required or desire to give or make as contemplated in sub-rule (1) (b). If Jiba was worried about confidentiality, for example, representations by

GSM

Mdluli, she could have resorted to and dealt with the matter by way of an undertaking postulated in the matter of Democratic Alliance v Zuma and Others, the relevant portion of which the SCA in dealing with the topic: "*Production of Record*" stated as quoted in paragraph [88] of this judgment.

114.2.6 It cannot be difficult for any decision maker to know the reasons, information and or documentation relied upon for any challenged decision under rule 53. For this, Jiba and or Mwerbi's suggestion that the advice given to them about the record of the decision was the reason for the delay in complying with the provisions of Rule 53, has no legal basis. The delay was their own making and was completely unreasonable, unwarranted and viewed in context, signified bad faith on the part of Jiba and Mrwebi, bearing in mind that court papers in Mdluli case were served on them on 15 May 2012, that is, two months after the SCA handed down its judgment on 20 March 20012 in DA case against Mr Zuma.

Failure to provide complete record

[115] The complaint is raised in GCB founding affidavit as follows:

> *"8.13 Rule 53 was not complied with. The "record" filed in the murder and related charges case comprised a copy of the charge sheet and three letters complied with a two page document entitled "Reasons for decision". The "record" filed in the case of theft and corruption charges comprised a copy of the charge sheet, three internal memoranda, a fax and two letters together with a document entitled "brief reasons for the withdrawal of charges preferred against LTG Mdluli and another dated 5 July 2012, comprising13 pages.*
>
> *8.14 As a result of the respondent's failure to file a proper record, FUL brought an application in terms of Rule 30 A in order to compel them to do so. Such an order was granted by Prinsloo J on 3 August 2012... The order was not complied with."*

GSM

[116] Jiba in paragraph 87 of her answering affidavit in these proceedings seems to attribute the incomplete record on account of protection of *'the identity of informers and other privileged information, which an accused person is ordinarily not entitled to have sight of in criminal proceedings and that such documents fell outside of "PART A" of the docket that an accused person is entitled to have access to. In addition, there was uncertainty as to whether in the situation of a decision to withdraw charges, representations made by the accused (as had been received from Mdluli) should form part of a rule 53 record."*

[117] I should be worried about Jiba's generalisation instead of being specific and helpful. Starting with Mdluli representations, Jiba is not saying Mdluli claimed confidentiality in his representations for the withdrawal of the charges against him. If Jiba was unclear about Mdluli's stance on his representations, the least she could have done was to establish from Mdluli if his representations could be provided as part of the record of the decision in terms of rule 53. Complete record of the decision and subsequent reasons for the decision if any, may discourage the aggrieved party to pursue a challenge to any decision taken by a public body.

[118] What is referred to as Part A of the docket, would ordinarily be instructions by the prosecuting team and memoranda if any in the investigation process. That may not necessarily constitute evidence admissible in a court of law and may not form the basis to determine the presence or absence of prima facie evidence. Jiba because of her generalisation and avoidance is unhelpful in this regard. For example, which "privileged information" is he talking about? It is not consistent with an officer of the court whose main concern should be to assist the court in arriving at a just decision. The identity of the informers, and other privileged information as alleged in paragraph 87 of Jiba's answering affidavit, should in any event be seen in context. The information that led to the corruption and the fraud charges been preferred against Mdluli did not come from the informers, but rather from fellow colleagues of Mdluli. That being so; and taking into account the general nature of Jiba's attempt to deal with the complaint against her, something which is not different from what she said previously, caused adverse remarks to be made. Murphy J referred to it as "sparse", but despite these remarks, Jiba did not find it necessary to take the court into her confidence and deal with the allegations in some more details given the opportunity to do so in the present proceedings. Clearly the points taken by Jiba in this regard had no merit from the start. For this, she must be found to have acted contrary to the oath she took when she was admitted as an

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advocate and in a way flouted the rules of game of the high position she holds and or held in the prosecuting authority at all material times hereto.

Failure to comply with the directive by Deputy Judge President

[119] On 8 October 2012 FUL delivered supplementary affidavit in terms of rule 53 (4) and on 14 March 2013 it filed a further supplementary affidavit. By that time, no single answering affidavit was delivered. As a result, on 3 June 2013 FUL's attorneys wrote to the Deputy Judge President Ledwaba to arrange a date for the hearing of the application. On 5 June 2013 a directive was issued directing Jiba and Mrewbi to file answering affidavit by not later than 24 June 2013. On 7June 2013 the state attorney Mr JE Ngoetjana who was handling FUL case on behalf of Jiba and Mrwebi was removed from the case and Mothimele SC, Notshe SC and Adv S Phaswane who had been on brief all along were then withdrawn from the case. This was after Ledwaba DJP had given directive on 5 June 2013 to file answering affidavit by Monday 24 June 2013.

[120] According to Jiba, on 18 June 2013, that is, eleven days after the mandate of Motimele SC was terminated and 15 days after DJP Ledwaba had given directive to file answering affidavits by the 24 June 2013, Motau SC team was briefed to replace Motimele team. He was instructed to draft answering affidavit, an application for condonation, consult with Jiba and her team, to prepare heads of argument and argue the matter. On Friday 21 June 2013 Motau SC team sent a draft answering affidavit to be considered and deposed to by Jiba after consultation. Jiba and Mrwebi were also requested to return the draft affidavit and comments if any by mid-morning on Sunday 23 June 2013. The request and the deadline set by the Deputy Judge President were not adhered to, neither was the request by Motau SC team. Instead, on 25 June 2013, a day after the expiry of the deadline set by the Deputy Judge President for the filing of the answering affidavit and two days after Motau SC's request was not met, Motau SC received an email to which two draft affidavits by Jiba and Mrwebi were attached. This was contrary to the one answering affidavit which was proposed by Motau SC to be deposed to by Jiba as the head of the prosecuting authority at the time and presumably with confirmatory affidavit/s to be made by Mrwebi and those who might have been referred to in the answering affidavit.

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[121] Jiba in paragraph 79.2 of her answering affidavit in these proceedings correctly set out one of the complaints levelled against her by GCB as follows:

> "79.2 *That I did not file answering affidavit by the deadline directed by the Deputy Judge President"*

[122] One would have expected that she will offer an explanation. However, that was not to be. The complaint is sufficiently set out in paragraph 8.19 of the founding affidavit in these proceedings to which the answer is offered by Jiba as follows:

> *"AD paragraph 8.19*
>
> *155. Save to deny that the draft answering affidavit prepared by Motau SC team was sent to me on 21 June 2013, and that the email of the 25 June 2013 (annexure "GCBB") came from my office I admit the remainder of the content of this paragraph. The reasons why two separate affidavits were prepared and why the LAD did not agree with the approach of the Motau SC team that I should be the main deponent to the answering affidavit, is dealt with above."*

[123] The quotation above was preceded by the following statement in paragraph 101 of Jiba's answering affidavit in the present proceedings:

> *"...Indeed as stated by the applicant in paragraph 8.19, the Motau SC team prepared a draft answering affidavit prior to any consultation with representatives from NPA. I deny however that this draft was sent to me personally. As appears from annexure "GCB12" this email was not sent to me. I further deny that the email dated 25 June 2013 (i.e annexure "GCB13") was sent from my office. It was in fact <u>sent on my behalf</u> by Adv Chita from the LAD."*

[124] Jiba cannot escape the criticism by seeking to attribute the blame to LAD and the emails not having been sent to her personally. The context is this:

124.1 The directive which was given on the 5 June 2013 to file answering affidavit by 24 June 2013 was followed by a meeting on 7 June 2013 between Jiba, her team and acting deputy state attorney Mr Chouw and Mr Tshivase. Then in paragraph 97 of the answering affidavit in the present proceedings, Jiba states:

> *"After discussion we agreed that since the legal team for the NPA had failed to file the answering affidavit within time periods required by the rules, their mandate should be terminated and they should be replaced".*

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124.1.1 'The legal team for the NPA,' she is referring to Motimele team. So, Jiba knew at least by 7 June 2012 about the directive given by the Deputy Judge President. From that date onwards, she had a flickering red light pointing towards the deadline of the 24 June 2013 set by the Deputy Judge President. But, she did nothing until on18 June 2013 when Motau SC was briefed. In the present proceedings she does not explain what has happened between 5 and 18 June 2013.

124.1.2 Insofar as she might have wanted to blame LAD, she was mistaken, because the final responsibility rested on her, and she had a duty to ensure that the flickering of red light did not to go beyond 24 June 2013. That however, did not worry Jiba as it would appear later hereunder. As explained by Jiba, the Legal Affairs Division ('LAD') is a division within the NPA tasked with handling of all matters pertaining to the civil litigation involving the NPA. It is headed by a Deputy National Director of Public Prosecutions who at all relevant times hereto was Adv. Nomvula Mokhatla and was assisted *inter alia, by* Deputy Directors, Senior State Advocates and Senior Prosecutors. When court papers against the NPA are received, they are referred to LAD and the Deputy National Director heading LAD. Thereafter, they are referred to a member of their team who would then prepare a memorandum on steps to be taken and that would then be discussed with the Deputy National Director. A consultation will then be arranged to brief and advise the National Director and for the present proceedings (Jiba) who was the Acting National Director at the time. It will then be decided how LAD intends to handle the matter and thereafter the state attorney will be briefed. (My emphasis).

124.2 Jiba did not seem to be worried by the flickering of the red light. Despite the request to return the draft answering affidavit by Sunday morning of 23

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June 2013, with such comments as Jiba and Mr Mrwebi might wish to make, the request was not heeded to. The fact that an email of 21 June 2013 to which the draft affidavit was attached, was not sent to Jiba personally, is not an excuse. It should be concluded from the email of the 26 June 2013 sent by Motau SC to the State Attorney that Jiba knew or ought to have known of the contents of the email of 21 June 2013 before 24 June 2013:

124.2.1 The following is recorded by Motau SC in the email of 26 June 2013:

> *"A draft was produced and circulated on Friday with a request that comments, if any, be sent to us by mid-morning of Sunday, 23rd of June 2013. The requested comments were not received as stipulated. <u>We received an email to the effect that an affidavit be prepared in the name of Adv. Mrwebi, which we advised has been incorrect</u>. This despite, we note that the same outcome is sought to be achieved by dividing the affidavits as proposed".*

124.2.2 The latter statement quoted above was prompted by an email of 25 June 2013 to Motau SC from the state attorney in which it was recorded: *"Please find the draft amended affidavit for your attention. We have separated the affidavit of Jiba from that of Adv. Mrwebi".*

124.2.3 Clearly, the statement, *"we have received an email to the effect that an affidavit be prepared in the name of Adv Mrwebi, which we have advised has been incorrect"*; is reference to a stand-alone email before the email of 25 June 2013 to which 'separated affidavits of Adv. Jiba from that of Adv. Mrwebi' were attached. Jiba must have indicated before 25 June 2013 or per the email of 25 June 2013 that she did not want to depose to any affidavit. Most importantly, she must have known of the request by Motau SC to comment on the draft answering affidavit and to have it returned by not later than Sunday 23 June 2013.

G S M

124.2.4 It is actually worrying that an officer of the court, who occupied and continues to occupy a very important high profile public office within the prosecuting authority by virtue of being an admitted advocate, would adopt that kind of an attitude. Wishing to wash her hands at every given opportunity prevailing has a bearing on her fitness to remain on a roll of advocates. What is even more worrying is Jiba's failure to deal with the statement by Motau SC as quoted in paragraph 124.2.1 above. Reference to the email of 26 June 2013 addressed to the State Attorney by Motau SC and the quotation in paragraph 124.2.1 is dealt by Jiba as follows:

"AD PARAGRAPH 8.20

156. I deny that the email dated 26 June 2013 was addressed to myself or the second respondent. It was sent to Adv. Chita and Adv. Mokhatla of the LAD".

124.2.4 As to whom the email was sent, is really not the issue. The issue is how Jiba dealt with the directive by the Deputy Judge President. I return later to the other issues recorded in the email of 26 June 2013 sent to the State Attorney by Motau SC. Jiba did not seem to be concerned with the snail pace at which the matter was being dealt with. This constituted a wanting conduct on her part which cumulatively considered with other complaints relating to her handling of Mdluli case, should justify a removal from a roll of advocates

<u>Failure to heed to Motau's advice</u>

[125] It is advisable for any person who is a party to any legal proceedings to get someone who would be impartial, objective and independent to handle a particular litigation, if that affects you personally. Lawyers do not normally defend themselves in

legal proceedings. They get another lawyer to advise and defend them and understandably, so. Seeking to defend yourself can cloud and blur issues as your own interest is at stake. It is for this reason that I want to believe that Jiba and her team on 18 June 2013 briefed Motau SC. It does not happen often that a client will easily litigate contrary to the advice given by counsel or attorney on brief. Any such conduct contrary to the advice would be unprecedented to constitute a reason for a legal representative on brief to withdraw.

[126] Jiba correctly paraphrased the complaint relevant to the topic under discussion as follows:

> *"79.3 That I persisted, despite the advice of Adv. Motau SC and his team to the contrary, with filing a substantive confirmatory affidavit which was alleged untenable given the evidence that had been given under -oath by the second and third respondents at the Breytenbach disciplinary inquiry".*

[127] The original draft answering affidavit was provided to Jiba and her team on 21 June 2013, although Jiba seeks to deny that it ever came to her attention until 26 July 2013. It was to be considered and commented upon. Jiba and her team suggested that Mrwebi be the one to depose to the answering affidavit. Motau SC advised against this. Despite the advice, on 25 June 2013 separated affidavits were brought to the attention of Motau SC. On 26 June 2013 Motau SC after having met with Jiba at an unscheduled meeting on that day, responded to the proposed separated affidavits and similarly advised against the move and suggested that the issue be discussed during consultation which was still to be arranged. Instead of consultation, Jiba and her team decided to instruct the state attorney to deliver the separated affidavits, which were served and filed with the Registrar on 4 July 2013 as per instruction of the prosecuting authority headed by Jiba at the time.

[128] To give a proper perspective to the complaint, I can do no better than to quote the relevant averments in the founding affidavit and the answer thereto by Jiba. In the founding affidavit GCB states:

"8.24. It appears that the State Attorney who was handling the matter at the time, Mr Sebelematsa, was not present at the unscheduled consultation of 26 June 2013. In an email dated 3 September 2013, he set out his chronology of what had transpired. I attached hereto as annexure "GCB15" a copy of that email. In the email he states that as a result of

the fact that by Monday, 24 June 2013, no comments had been received from Jiba and Mrwebi on the contents of the draft answering affidavit which Motau SC and his team had drafted, he (Mr Sebelemetsa) received numerous calls from counsel as to what they should do since the affidavit had to be filed by 24 June 2013. Mr Sebelemetsa thereupon enquired from "the client" and was told that there were many averments (like the disclosure of internal memos) in the draft prepared by Motau SC and his team with which they did not agree. I infer that "the client" is a reference to Jiba and Mrwebi. Without further input from the State Attorney or counsel, Mr Sebelemetsa on 2 or 3 July 2013 received a "signed copy" of an answering affidavit by Mrwebi , a supporting affidavit by Jiba and a confirmatory affidavit by the South Gauteng Director of Public Prosecutions, Adv Chauke. Mr Sebelemetsa states in his email that ".. the mandate from client was that I must proceed to serve and file the said affidavit". Again, I assume that this is a reference to Jiba and Mrwebi. On the face of it, both affidavits were commissioned on 2 July 2012 (although the date "2 June 2012" was, I assume, incorrectly written in handwriting on the affidavit of Jiba. The date stamp however confirms that it was commissioned on 2 July 2012). Mr Sebelementsa then discussed the matter with Mr Tshivase and was told to file the affidavit since the time was already up for their filing. He was also told to forward copies to counsel. He proceeded to serve and file same on 4 July 2013. (My emphasis).

[129] Jiba in her own wisdom decided to respond as follows:

"AD PARAGRAPH 8.24

160. I admit that Mr Sebelemetsa was not present at the "unscheduled consultation". As I pointed out above, I was at chambers in connection with an unrelated matter and decided on the spur of the moment to stop at Adv Motau SC's chamers to introduce myself.

161. As I have also mentioned above the email by Mr Sebelemetsa dated 3 September 2013 (annexure "GCB15") was addressed to the Hodes SC team in order to assist them in preparing an application for condonation.

162. I deny that the reference to "the client" should be read as a reference to me personally. I never instructed Mr Sebelemetse personally. All instructions received from him would have come from members of the LAD,usually Adv Chita ,or Adv Mokhatla. Adv Muller's assumptions are, with respect, incorrect.

163. I have dealt with the serving and filing of the affidavit deposed to myself and by the second respondent and the reasons therefor, above."

G Sm

[130 Earlier in this judgment I mentioned Jiba's washing of hands in dealing with the complaints against her. The answer quoted above is no different from that attitude. "*All instructions received from him (referring to state attorney) would have come from members of the LAD, usually Adv Chita or Adv Mokhatla*", is intended to suggest that Jiba instructs or instructed no one, but rather that LAD does or did. She is again mistaken and this appears to be once more an attempt to run away from her responsibilities as the head of the prosecuting authority, but even most importantly as an officer of the court.

[131] Jiba in her answering affidavit paraphrased in paragraph 124.1.2 of this judgment, explains how matters against the NPA are brought to the attention of the National Director of Public Prosecutions. For this, it cannot be expected that the instruction to file one affidavit by Mrwebi and later separated affidavits contrary to the advice of Motau SC would have been conveyed to the state attorney by LAD without the knowledge and approval of Jiba. In any event, she should have known on her own initiative taking into account the fact she had a red light flickering towards 24 June 2013 since a directive to this effect was made by the Deputy Judge President on 5 June 2013.

[132] There are actually serious worrying features in Jiba's response as quoted in paragraph 129 above. Clearly, the suggestion is that she had no knowledge of the instruction to file separated affidavits. "*I never instructed Mr Sebelemetsa personally*", should be seen in the context of the events preceding the filing and service of the separated affidavits on 4 July 2013:

132.1 On 24 June 2013, Motau SC out of concern to miss the deadline set by the Deputy Judge President, made several calls to Sebelemetsa (state attorney). Subsequent to this, the state attorney enquired from 'the client' and was told that there were many averments in the draft prepared by Motau SC they did not agree with. Jiba was proposed by Motau SC to be the deponent to the answering affidavit. It is highly unlikely and improbable that LAD, either through Adv Chita and or Adv. D Mokhatla would receive a draft answering affidavit, decide to have it deposed to by Mrwebi against the advice of Motau SC and then instruct the state attorney to file and serve separated affidavits without discussing their strategy with Jiba. Seen in the context of what is stated in paragraph

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124.1.2, the state attorney could not have been instructed by LAD to file separated affidavits without LAD having obtained the go ahead from Jiba. For this reason, her attempt to distance herself from the decision to file separated affidavits is not consistent with the conduct befitting an officer of the court.

132.2 In paragraph 102 of the answering affidavit to these proceedings, Jiba states:

"On 26 June 2013 I happened to be at chambers with Adv Andrew Chauke (Adv Chauke), the Director of Public Prosecutions for south Gauteng (and the person who withdrew the murder charges against Mdluli) for an unrelated matter and decided to stop in to introduce myself to Adv. Motau SC. This was the "unscheduled consultation" referred to in paragraph 8.21 of the founding affidavit. This was however not a full consultation and the merits of the matter was certainly not discussed. Adv Motau SC did mention that draft answering affidavit has been sent and I informed him that I had not received this affidavit. He undertook to send same but I never received it."

133.2.1 With the greatest respect to Jiba, this is a duck and dive tactic. Two things had happened before the so-called "unscheduled consultation" of 26 June 2013: First, on 24 June 2013 Motau SC contacted the state attorney several times to enquire about the draft answering affidavit sent on 21 June 2013. The response by the NPA regarding the enquiry by the state attorney was that "*there were many averments (like the disclosure of internal memos) in the draft prepared by Motau SC and his team with which they did not agree*". The correctness of this statement by the state attorney (Mr Sebelemetsa) as indicated in his email dated 3 September 2013 is not denied or placed in dispute by Jiba. That being so, Jiba knew or must have known before 24 June 2013 about the draft answering affidavit which was supposed to be deposed to by her. Her statement: "I had not received this affidavit", suggesting as on 26 June 2013, cannot be true. As I said, it is highly

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unlikely and improbable that Adv Chita and Adv Mokhatla of LAD would have expressed a view about *"many averments... they did not agree with"* without consultation and approval of Jiba. The suggestion in these proceedings that she did not receive or was not told about the draft answering affidavit by the time she decided to introduce herself to Adv Motau SC on 26 June 2013 and that therefore she did not ignore Motau SC's advice's, cannot be true and is misleading.

134.2.2 Whilst still on the decision to introduce herself to Adv Motau, I find it particularly discontenting that instead of being concerned about whether the deadline set by the Deputy Judge President has been adhered to, she was more interested in introducing herself to Adv Motau SC. That consultation, should never have been "unscheduled consultation"; neither should it have been a brief consultation nor at the spur of the moment consultation. Merits of the matter should have been discussed in detail. Everything to the matter was at stake. There was a deadline of 24 June 2013 already missed to file an answering affidavit which was set by the Deputy Judge President on 5 June 2013. Jiba knew about this because according to her on 7 June 2013 *'due to the alleged concerns and frustrations expressed with regard to the delays in filing answering affidavits, a meeting was held with the state attorney and after the discussion it was agreed that since Motimele SC and his team had failed to file the answering affidavit within the time periods required, their mandate should be terminated and that they should be replaced'*. This was stated in paragraphs 96 to 97 of Jiba's answering affidavit. With this knowledge and not having deposed to any affidavit to meet the deadline set by the Deputy Judge President, it was incumbent on Jiba to be

G Sm

more concerned with the deadline than just introducing herself and then states in these proceedings: "*This was however not a full consultation and the merits of the matter was certainly not discussed*".

134.2.3 The other thing which had happened before 26 June 2013 was conveyed in the email of 25 June 2013 from the state attorney. In the email, *inter alia*, was stated: "*Please find the draft amended affidavit for your attention. We have separated the affidavit of Adv Jiba from that of Adv Mrwebi*".

134.2.4 Therefore the statement: "*I informed him that I had not received it*" in paragraph 102 of her affidavit referring to the meeting of 26 June 2013 with Motau SC, could only have been a lie. How can the state attorney prepare separated affidavits of Jiba and Mrwebi at least on 25 July 2013 without Jiba having been told of the draft affidavit prepared and sent by Motau SC on 21 June 2013? The story is far-fetched and improbable. In other words, Motau SC was misled too. This conduct is so serious that Jiba cannot remain on a roll of advocates. This brings me to the other discontenting issue.

134.2.5 The statement: "*he undertook to send same, but I did not receive it*", referring to Motau SC and the draft answering affidavit, does not make Jiba's case any better. In fact it makes it worse. If she did not receive it, what did she do? She had then introduced herself to Motau SC. She therefore had the opportunity to enquire from Motau SC about the answering affidavit when she did not allegedly receive it. On the same date, that is, 26 June 2013, Motau SC in response to the proposed separated

GSM

SEQ 29/2021-864

affidavits as per the email of 25 June 2013 recorded: and I do this at the risk of repetition and prolonging this judgment:

"... This despite we note that the same outcome is sought to be achieved by dividing the affidavits as proposed. I do not want us to waste time in dealing with this aspect it shall be one of the agenda items to be discussed at the consultation which is still to be confirmed. In the meantime, may we request that comments and outstanding information be furnished using our original affidavit. We also request that a condonation affidavit be furnished to explain the failure to comply with the filing period as set out in the directives issued by the DJP.

Upon receipt of your comments and the outstanding information using our original draft affidavit as a working document, we shall set a date and time for a consultation to deal with issues in the following sequence:

1. *Comments to our original answering affidavit and our reaction thereto,*
2. *The permissibility or otherwise of the proposed splitting of affidavits,*
3. *Our comments on the condonation affidavit to be prepared by the NPA accounting for each day that passes without having filed the answering affidavit in terms of the directive,*
4. *We propose that a period of five hours be set aside for such a consultation".*

134.2.6 In dealing with what is stated above which is quoted in paragraph 8.21 of GCB's founding affidavit, Jibs in one paragraph stated:

"AD PARAGRAPH 8.21

157. I have dealt with the unscheduled consultation above. I reiterate that the merits of the application were not discussed in any detail with the Adv. Motau

G SM

SC. It is indeed correct that I advised Adv Motau SC that I had not seen his draft answering affidavit. As mentioned above, he undertook to forward it to me, however I never received it".

134.2.7 It was not about the brief consultation of 26 June 2013, neither is it about whether merits of the application were discussed in any detail. The issue was rather how she dealt with the information in the email of 25 June 2013 from Motau SC quoted in part in paragraph 134.2.5 above. In addition, how she dealt with the draft answering affidavit after her consultation with Motau SC on 26 June 2013.

134.3 After consultation with Jiba on 26 June 2013, Motau SC again forwarded to Jiba and Mrwebi the original draft affidavit and again advised that the way forward would be a per the steps outlined in paragraphs 1 to 4 of Adv. Motau SC's email of 26 June 2013 quoted in paragraph 134.2.5 above. These averments are contained in paragraph 8.2.2 of the founding affidavit to which Jiba in these proceedings responds as follows:

"168. I deny each and every allegation contained in this paragraph as if specifically traversed. No such affidavit was ever sent to me or if it was sent, I never received it. I wish to state that none of the emails referred to in the deponent's founding affidavit were ever sent to my email address of that of my PA. All were sent to the LAD staff in particular Adv Chita and Adv Mokhatla and my PA, Khanya Lamola".

134.3.1 One is by now accustomed to this kind of responses by Jiba in these proceedings. But again, she misses the point and displays conduct which is not only unbefitting of an officer of the court, but also not befitting the conduct of a person holding such high public position in the prosecuting authority.

134.4 On her own version, on 26 June 2016 without discussing merits of the application in Mdluli case, she was told of the draft answering affidavit which was sent on 21 June 2013. It was an officer of the court talking to another officer of the court, the other one having been briefed to deal with

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the opposition to an application against the prosecuting authority which was at the time headed by Jiba. Without reverting to Adv Motau SC subsequent to the meeting of 26 June 2013 and without terminating Motau SC's mandate, on 2 July 2013 the state attorney received a signed copy of the answering affidavit by Mrwebi, a signed supporting affidavit by Jiba and a confirmatory affidavit by Chauke, (the South Gauteng Director of Public Prosecutions) with the instruction to proceed to serve and file the said affidavits and was also told to forward copies to Motau SC. The state attorney then proceeded to serve and file on 4 July 2013. As accustomed to, the response by Jiba to this is: *"I never instructed Mr Sebelemetsa personally"*.

134.5 It is clear that right at the outset, Jiba and her team did not like the advice given to them by Motau SC. Otherwise the separated affidavits would never have been signed, filed and served. Jiba knew or must have known that by so doing, she will be pushing Motau SC and his team out of the brief. Deposing to the separated affidavits, filing and serving them contrary to the advice of counsel on brief, was in my view, very serious and unprecedented. If she wanted to rely on people internally, that is, Adv. Chita and or Adv. Mokhatla, she should first have withdrawn their instruction to the state attorney and Motau SC as Jiba and her team decided to handle the matter on their own. But instead, she deposed to a separated affidavit and then caused the instruction to be given to the state attorney to serve and file the affidavits without reverting to Motau SC. This was deliberate and displayed an un-repented conduct then and now. She was steadfast to defy logic and advice for as long as her wishes were not accommodated. That is the kind of conduct making Jiba to cease to be a fit and proper person and to remain on a roll of advocates. The conduct is even more glaringly displayed when dealing with the next topic.

<u>Jiba's failure to heed to the advice of advocate Halgryn SC</u>

[135] Later in this judgment I will deal with Mrwebi's failure to heed to advocate Halgryn SC's advice from paragraphs 153 to 153.3.1. The application in FUL (Mdlulí) case before

G S M

Murphy J was set down for hearing on 11 and 12 September 2013. On 5 July 2013 Motau SC and his team, as one would expect, withdrew as counsel for Jiba and Mrwebi. On 2 August 2013 a new legal team was briefed namely, Adv. Leon Halgryn SC and Adv. Johan Uys (Halgryn SC team). On 6 August 2012 Advocate Eulande Mahlangu was added to Halgryn SC team. A series of consultations were held on 5, 6, 7 and 8 August 2013 between the State Attorney, Jiba and her team. Halgryn SC team also studied the case dockets in both the murder and corruption charges. On Friday 10 August 2013, a further consultation took place between counsel and Jiba. Following the latter consultation, Halgryn SC team also withdrew from the brief. This was unprecedented happening indeed:

135.1 Three teams of counsel on brief in one matter, all withdrawing within a short space of time one after the other, was, in my view, a sign of unwillingness on the part of Jiba not to let go the decision to withdraw the charges against Mdluli. Halgryn SC provided Jiba with a document titled "*Confidential and privileged memorandum and opinion dated 12 August 2013*". This memorandum was provided to GCB by the Prosecuting Authority. It must therefore be accepted that confidentially and privilege with regard to the document has been waived.

135.2 In the memorandum, Halgryn SC expressed scathing criticism of the manner in which the proceedings were conducted to that date and stressed the fact that the record filed by Jiba and Mrwebi did not constitute the record of the proceedings as required in terms of Rule 53.

135.3 In a topic headed "*Fundamental flaws in the prosecution of the matter thus far*", Halgryn SC referred to the opposition of the application brought by FUL for the review and setting aside of Mrwebi's decision to withdraw the charges against Mdluli as a "*sinking ship*" and then in paragraphs 9 and 10 of his memo advised:

> "9. *These flaws in the prosecution of the matter thus far, (which we had very little difficulty in uncovering), on behalf of our clients are fundamental- so much so- that we are under no doubt that as matters now currently stand our clients are headed towards a certain judgment against them, with every potential of*

G Sm

irreparable harm to the credibility and reputation of the National Prosecution Authority.

10. As the papers correctly stand there is simply no defence".

135.4 Then in paragraph 51 of the memorandum, Halgryn SC stated:

"If there is a decision to continue with the opposition of this matter, on the basis of attempting to justify the decisions to discontinue the prosecutions, with reference to the records/dockets, our client will regrettably have to find yet, another team of counsel to do so. We are unable to do so. None of the reasons advanced thus far makes any rational sense, let alone establish a defence".

135.5 I do not intend to traverse the content of a 21 page memorandum of Halgryn SC. It suffices to mention that anyone who might have thought that Jiba will be deterred in her tracks, one would have been mistaken. Secondly, it suffices to mention that Halgryn SC's prediction of the possible scathing criticism by the court was spot on. For example, Murphy J in his judgment *inter alia*, stated:

"[24] The reasons for the various delays, and late filing, are sparse and most unconvincing. However, in the interests of justice I was persuaded that the matter should proceed without further delay and condoned the non-compliance with the rules and directives of the DJP. Suffice to say that the conduct of the respondents is unbecoming of persons of such high rank in the public service and is especially worrying in the case of the NDPP, a senior officer of this court with weighty responsibilities in the proper administration of justice. The attitude of the respondents signals a troubling lack of appreciation of the Constitution ethos and principles underpinning the office they hold". (The emphasis is mine as was also that of GCB in their founding affidavit).

135.6 I cannot agree more with the sentiments expressed by Murphy J both with regards to the delay, incomplete record and holding steadfast on the decision to discontinue the prosecution against Mdluli despite clear *'sinking ship'* and prima facie case in particular regarding the corruption and fraud charges against Mr Mdluli as indicated briefly in paragraph 104 of this judgment.

G SM

135.7 Jiba was not deterred in her tracks by the criticism made by her counsel, Adv. Halgryn SC. Instead, Jiba and Mrwebi insisted in defending the 'sinking ship' which ultimately caused Halgryn SC team to withdraw on 12 August 2013. Thereafter yet another set of counsel Hodes SC's team was briefed and a belated attempt was made to file supplementary affidavit. The application was heard on 11 September 2013 and judgment was handed down on 23 September 2013. The application by FUL was granted by Murphy J making a number of adverse remarks against Jiba including the one quoted in paragraph 135.5 above.

135.8 Attempts to justify her decision not to heed to the advice of Halgryn SC, in my view, just makes her situation worse. In her answering affidavit to the present proceedings, she seems to suggest that the assumption by Halgryn SC team that there was a prima facie case against Mr Mdluli of fraud and corruption charges was wrong. In paragraph 112 of her answering affidavit to these proceedings she states:

"... After I learnt that the charges were withdrawn, I called for a briefing from both the second respondent and Adv Chauke. I was satisfied with the reasons that were advanced for the withdrawal of the charges. With regard to the fraud and corruption charges, it was my understanding that the case was withdrawn to enable the police to finalise the investigations as at that time there was no evidence that linked Mdluli to the offences to which he was charged. To me there was nothing untoward about this".

135.9 For the following reasons such understanding could never have been honestly and truly made:

135.9.1 There was everything untoward about the decision to withdraw the charges. There was a clear prima facie case against Mdluli in the corruption and fraud charges.

135.9.2 Having been briefed by Mrwebi on her request about the merits or demerits of the decision to withdraw the charges, she would have known that Mrwebi, as a special director, was obliged to take the decision to withdraw the corruption and fraud charges in consultation with Mzinyathi as

G Sm

contemplated in the Act. I deal with the relevant provisions in some more detail when I deal with the complaints against Mrwebi. It suffices for now to mention that it is striking that Jiba decided to be briefed by Mrwebi on the corruption and fraud charges to the exclusion of Mzinyathi.

135.9.3 Jiba having called for a meeting with Mrwebi to be briefed on the withdrawal of the fraud and corruption charges, she would have been told that on 8 December 2011 Mzinyathi sent an email to Mrwebi in which he recorded inter alia:

> *"Essentially the aspect I want to discuss is that I do not agree with your understanding (as expressed in your memorandum, that you can instruct prosecutors in the North Gauteng Division in respect of which I am appointed as the Director of Public Prosecutions irrespective of my views on the matter. As explained above in summarising our meeting of 5 December 2011, we did not discuss that you have prepared memorandums (already singed on 4 December 2011) in which you are giving the said instructions. Had you mentioned this aspect, I would have made my objections to your approach during our meeting. I am also concerned that you indicated in your memorandum to me that you will advise the attorneys of Mr Mdluli of your instructions that charges will be withdrawn. I hold the view that such advice to the attorneys would be premature as I do not share your views/nor do I support your instructions that the murder charge be withdrawn". (My emphasis)*

135.9.4 Jiba having consulted and briefed by Mrwebi on the withdrawal of the charges against Mdluli, would have been told that the provisional withdrawal of the fraud and corruption charges after the meeting of 9 December 2013 between Mrwebi, Mzinyathi and Breytenmbach was a damage control compromise as he (Mrwebi), had already notified Mdluli's lawyers about his decision to discontinue

GSM

the prosecution. I deal with this in some more detail when I deal with the complaints against Mrwebi.

135.9.5 In my view, Jiba was steadfast to do everything in her power to ensure that the charges against Mdluli were permanently withdrawn. This was despite the prima facie evidence against Mdluli and failure to withdraw the fraud and corruption charges in consultation with Mzinyathi. By so doing, was mala fide and displayed ulterior motive and thus offended against the rule of law and the Constitution. She must be found to be no longer fit and proper person to remain on a roll of advocates. This then brings me to another complaint against Jiba.

Jiba's failure to disclose to the court Breytenbach's memo and representations for the internal review of Mrwebi's decision.

[136] On 12 April 2012 Breytenbach sent a memorandum to Jiba in terms of which she requested Jiba to review the decision of Mrwebi to discontinue the prosecution of Mdluli on the fraud and corruption charges. The memo was received by Jiba on 13 April 2012. On 2 July 2013 Jiba deposed to an affidavit opposing the application by FUL in terms of which the decision by Mrwebi was sought to be reviewed. In paragraphs 21 to 25 of her answering affidavit in FUL application she stated:

"21. *The decisions of the third respondent (Mrwebi) and Adv Chauke (the South Gauteng DPP) on this matter have not been brought to my office for consideration in terms of regulatory framework.*

22. *In the light of the above I did not take any decision referred to in the applicant's founding affidavit. In terms of s 22(2)(b) of the NPA Act, I may intervene in any prosecution process when policy directives are not complied with. I may also in terms of section 22 (c) of the NPA Act review a decision to prosecute or not to prosecute after consulting the relevant director and after taking representations of the accused person within the time period specified by me, the complainant or any other party whom I consider to be relevant.*

G Sm

23. *At this state there was no policy contravention and/or representations received by me to warrant my intervention.*

24. ...

25. *To descend to the arena without any representations being made to my office would prejudice the fifth respondent or any other interested party in this matter".*

136.1 GCB in paragraph 9.19 of its founding affidavit in these proceedings, inter alia, states: *"It is difficult to avoid the conclusion that her affidavit was an attempt by Jiba to deliberately to mislead the court".* I tend to agree. Jiba probably when she deposed to her affidavit on 2 July 2013 and stated what is quoted in paragraph 136 above, particularly paragraphs 21, 22 and 25 never thought that one day the memorandum of Breytenbach will surface in court proceedings. It is not her version that she forgot about it when she deposed to her affidavit on 2 July 2013. Instead, she brings in a very startling defence, which in my view, only serves as a trap to herself and displays her again as an un-repented and dishonest person.

136.2 Her explanation in these proceedings is as follows:

> *"135. I deny that the memorandum received from Adv Breytenbach was from a person or party that I considered relevant or was obliged to consider relevant. It therefore did not constitute representations from a person contemplated by the provisions of section 22(2)(c) of the NPA Act, or at all. It was a document from a prosecutor who failed to execute tasks assigned to her by her superior. Pursuant to the suspension of Adv. Breytenbach another team of prosecutors was appointed to take the case forward, namely Adv. Becker and Adv Viljoen. There were mamoranda submitted by these prosecutors in terms of which the opposite view was expressed. There was similarly no mention made of this in my affidavit. I deny that I was under any obligation to place the content of internal memoranda received from colleagues before court.* (My emphasis).

136.2.1 Jiba is again mistaken. In my view, she was driven by the desire to bury the charges against Mduli once and for all. The provisions of section 22(2)(c) is clear and simple. Jiba being such an astute lawyer as profiled in paragraph 114.1.1 of this judgment, could never have made such a

GSM

mistake about the interpretation and application of the provisions of section 22(2)(c) of the NPA Act. At the risk of repeating myself, the section reads as follows:

"22. *Powers, duties and functions of National Director*

1. ...
2. *In accordance with section 179 of the Constitution, the National Director-*

(a)...

(b)...

(c) may review a decision to prosecute or not to prosecute, after consulting the relevant Director and after taking presentations within the period specified by the National Director, of that accused person, the complainant and any other person whom the National Director considers to be relevant".

136.2.2 Breytenbach was not only such person who Jiba should have considered relevant, but was also the person best placed to provide Jiba with the relevant information regarding the prima facie evidence against Mdluli. For example, she was involved in the prosecution of Mdluli. On 9 December 2011 she was together with Mzinyathi when they confronted Mrwebi for having withdrawn the charges against Mdluli. On 13 April 2012 by virtue of her having had access to the contents of the docket, provided Jiba with a detailed 24 page memorandum setting out her view why Mrwebi's decision ought to be reviewed in terms of section 22(2)(c) of the Act. Jiba was therefore obliged to disclose the memorandum to the court and to consider the merits of the internal review provided for in section 22 (2) (c) quoted above. She however, chose to ignore Breytenbach and her detailed memorandum. I cannot believe that it was because she felt that Breytenbach was not '*any other person*' she was obliged to listen to and consider her memorandum. As I said, her motivation in adopting the attitude as she did

GSM

must be found in her willingness to protect Mdluli by all means. In so doing she offended against section 179 of the Constitution and the rule of law, something which has a direct relevance to the question whether she should remain on a roll of advocates. She was occupying the highest position in the prosecuting authority by virtue of the fact that she is an admitted advocate on a roll of advocates. Her conduct in bringing the image of the prosecuting authority into disrepute also questions her suitability to remain on a roll of advocates.

136.3 Failure by Jiba not to disclose Breytenbach's memo in the proceedings before Murphy J and failure to consider the request by Breytenbach for internal review of Mrwebi's decision was, in my view, deliberate and was intended to mislead Murphy J.

Jiba's failure to consider the contradictions in the evidence of Mrwebi

[137] During April 2012 Breytenbach was charged with misconduct and suspended by Jiba from work pending finalisation of her disciplinary enquiry. On 15 May 2012 FUL served on the prosecuting authority an application to set aside the decisions to withdraw charges against Mdluli. On 22 and 23 January 2013 Mrwebi and Mzinyathi respectively testified in the disciplinary enquiry of Bretenbach. On or about 26 June 2013 Motau SC and his team whilst waiting for the comments of Jiba and Mrwebi on the draft answering affidavit, received from NPA or State Attorney, certain further documentation from the NPA and or State Attorney including the transcript of Bretenbach's disciplinary hearing were received. Upon consideration of such documentation and the transcript, they noticed a series of contradictions between the evidence which had been given on behalf of Jiba in her capacity as Acting National Director of Public Prosecutions during Bretenbach's hearing and the contents of the two draft affidavits prepared by Jiba and Mrwebi. This information as distilled from paragraph 8.23 of the founding affidavit, is dealt with by Jiba in one sentence as follows: *"I have no direct knowledge of the contents of this paragraph"*:

GSM

137.1 Jiba cannot claim not to have known of the contradictions of the evidence adduced during the disciplinary enquiry and the relevance thereof to FUL's application and in particular the validity of the decision to withdraw the fraud and corruption charges against Mdluli. She cannot suspend Breytenbach for misconduct and thereafter pretend like she had nothing to do with Breytenbach disciplinary enquiry. Mrwebi in dealing with section 24 (3) of the Act made a concession during cross-examination in the disciplinary proceedings of Breytenbach, which unfolded as follows:

"Adv Trengrove:	*No, you must understand that consult means little bit more than telling the guy what your views are. Correct?*
Adv Mrwebi:	*Yes you are right, because I consulted with him, the point is that I consulted with him.*
Adv Trengrove:	*By telling him what your views were.?*
Adv Mrwebi:	*We did not strictly speaking at first, at first agree, that's the point.*
Adv Trengrove:	*By the time you took this decision ...?*
Adv Mrwebi:	*We were not the same mind."*

137.2 I revert later to the evidence of Mrwebi when I deal with the complaints against him. I have referred to this evidence just to show that when Jiba deposed to her affidavit opposing the setting aside of the decision of Mrwebi, knew or ought to have known as put by Halgryn SC that they were chasing a 'sinking ship'. The application was clearly unassailable for the following reason: A Special Director (Mrwebi) shall exercise the powers, carry out duties and perform the functions conferred or imposed on or assigned to him or her by the President, subject to the directives of the National Director: Provided that if such powers, duties and functions include any of the powers, duties and functions referred in section 20 (1), they shall be exercised, carried out and performed in consultation with the Director of the area of jurisdiction concerned as contemplated in suction 24(3) of the Act.

G Sm

[138] It is common cause that Mrwebi could only have discontinued the prosecution of Mdluli on the corruption and fraud charges in consultation with Mzinyathi. I dealt earlier in paragraph 135.9.3 above how Mzinyathi reacted angrily to the conduct of Mrwebi. The real point for the topic under discussion is that: Jiba on 2 July 2013 when she deposed to her answering affidavit, which affidavit she deposed contrary to the advice of her counsel (Motau SC), was aware that there was no defence to hold on the decision of Mrwebi regarding the discontinuance of the prosecution against Mdluli on the fraud and corruption charges. In this regard her conduct was wanting and inconsistent with the conduct of a lawyer who should remain on a roll of advocates. But Jiba was relentless in fighting the case brought by FUL and directly or indirectly dismissed team of advocates one after the other because she did not agree with their advices. That was done irrespective of the merits of the advices. By so doing, she ceased to be a fit and proper person to remain on a roll of advocates. I make the order accordingly later in this judgment.

COMPLAINTS AGAINST MRWEBI IN MDLULI (FUL)

[139] Mrwebi in his answering affidavit to the present proceedings categorises complaints levelled against him as follows:

139.1 That he sought to mislead the court by not placing before it a proper record of all the documents and facts relevant for the court to arrive at a proper decision;

139.2 That he persisted with the aforesaid conduct even after he had received the memoranda of Motau SC and Halgryn SC;

139.3 That he sought to mislead the court as to the fact or extent of consultation that allegedly took place between him and Mzinyathi;

139.4 That he made the decision to withdraw the charges before he had consulted with Mzinyathi;

139.5 That he persisted with his conduct even after it had been pointed out to him by both Motau SC and Halgryn SC that his version was demonstratively false.

[140] For the purposes of this judgment, I will not necessarily follow Mrwebi's categorisation of the complaints aforesaid. I will however deal with what I consider to be the essence of GCB's complaints against Mrwebi. In some instances, extensive quotations of his evidence in these proceedings, in FUL and disciplinary proceedings of Breytenbach might be necessary. Some of the complaints against Mrwebi have already been dealt with insofar as they overlap with those against Jiba.

Alleged mistake on the date Mrwebi took the decision to withdraw the charges

[141] Just to recap, Mrwebi was a special director appointed in terms of section 13(1)(c) of the Act, which provides that the President, after consultation with the Minister and the National Director – may appoint one or more Directors of Public Prosecutions, (hereinafter referred to as Special Directors) to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the President by proclamation in the Gazette. On the other hand, the President shall as contemplated in section 13(1)(b) in respect of any Investigating Directorate established in terms of section 7(IA), appoint a Director of Public Prosecutions as head of such an Investigating Directorate established by the President in the office of the National Director contemplated in section 7 to deal with offences or criminal offences or unlawful activities as set out in the proclamation issued in the Gazette for establishment of such Investigating Directorate . Mrwebi at all material hereto was the head of the Investigating Directorate and corruption and fraud charges are offences set out in the proclamation by the President as envisaged in section 7(1) of the Act.

141.1 In paragraphs 100 to 107 of this judgment I referred to the events which preceded the taking of the decision to discontinue fraud and corruption charges against Mdluli. On 4 December 2011 not less than two documents were issued under the signature of Mrwebi. Firstly, it was a letter addressed to the Mdluli's lawyers advising them of the withdrawal of the charges. Secondly, it was a document titled: "CONSULTATIVE NOTE IN TERMS OF SECTION 24(3) OF THE NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998 (NPA) ON REPRESENTATIONS OF LT. GENERAL MDLULI".

G Sm

141.2 Mrwebi suggested during the disciplinary proceedings of Breytenbach, proceedings before Murphy J and in the present proceedings that his decision to withdraw the charges was not taken on 4 December 2011, but rather on 5 December 2011. I have very serious problems with this. For the following reasons the decision must have been taken on 4 December 2011 before Mrwebi met and allegedly consulted with Mzinyathi:

141.2.1 It was common cause that on the morning of 5 December 2011 Mrwebi visited the office of Mzinyathi regarding representations by Mdlulí for the withdrawal of the charges against him. Mrwebi in his answering affidavit of 2 July 2013 dealing with the opposition to FUL application, and in seeking to explain himself, stated:

> *"25. Later the same day on 5 December 2011 I drafted and directed a memorandum to Adv Mzinyathi in which I recorded some of my views on the matter as well as the fact that I consulted him as required by section 24(3) of the NPA Act. The Regional Head of SCCU, Adv Breytenbach was copied merely for her information. I also directed correspondences <u>incorrectly dated 4 December 2011</u> to Adv Breytenbach in which I advised of my decision that the matter must be withdrawn. A further correspondence was directed to the legal representative of Fifth Respondent also advising of my decision. <u>The date appearing on these documents should be 5 December 2011 not 4 December 2011. This was clearly a mistake on my part.</u>"*

141.3 For the following reasons I do not think it was a mistake:

141.3.1 Firstly, the alleged mistake is not explained. There were at least three documents on which the date of 4 December 2011 was indicated. On each of these documents the date of 4 December 2011 is reflected twice, that is, on the first and last page. The third document which I have not mentioned yet, was a covering letter to the "consultative note". Repetition of the date about six times, without more, could not have been a mistake.

141.3.2 The consultative note and the covering letter to it, were both addressed to Breytenbach, Mzinyathi being the person copied. It is

G Sm

not explained why the two documents dated 4 December 2011 were incorrectly directed to Adv. Breytenbach and incorrectly copied to Mzinyathi, particularly that Breytenbach was not part of consultation between Mrwebi and Mzinyathi on 5 December 2013.

141.3.3 On the morning of 5 December 2011 Mrwebi went to Mzinyathi's office to discuss Mdluli matter. Then in his 'consultative note' he concluded by seeking to explain what had happened during the discussion as follows:

"Because I believed that the IG's assistance would serve to address any short comings\defects about the evidence, I did not during the discussion with the DPP deem it necessary to go into much detail about the merits of the matter although there was brief reference to the merits during the discussions"

141.3.4 "IG" is reference to "Inspector General" in terms of Intelligence Services Oversight Act. Accepting that this is what had happened, there was no need to take a decision to withdraw the charges immediately after having deemed it *not 'necessary to go into much detail about the merits of the matter'* as that would not have constituted 'in consultation' with Mzinyathi.

141.3.5 According Mzinyathi, it was Mwrebi who approached him in his office. He informed him that he (Mrwebi) was dealing with the representations in connection with the matter of Mdluli. Mzinyathi then in paragraph 7 of his confirmatory affidavit dated 10 September 2013 in FUL case stated:

"...He further informed me that he was going to conduct some research on the Intelligence Serving Oversight. Act, No 40 of 1994. Thereafter he left my office."

141.3.6 So, because there was no basis to take the decision, no such decision could have been taken on 5 December 2011. It appears from the quotation above that when Mrwebi approached Mzinyanthi, he knew that he was going to raise the provisions of the Intelligence Services Oversight Act, whilst on the other hand he had already taken a

G Sm

decision to withdraw the charges against Mdluli. The contents of "consultation note" dealing with what Mwerbi referred to in paragraph 24 of his opposing affidavit in FUL matter, as *'the views that IG can help in the matter as he/she has unlimited access to documents and information in possession of crime intelligence'*, in my view, was a well-planned mission calculated to give Mzinyathi the impression that a decision to withdraw the corruption and fraud charges against Mdluli was not taken when in actual fact that was fait accompli. I am satisfied that Mwerbi took the decision before he met with Mzinyathi on 5 December 2011.

141.3.7 This is also the understanding of Mzinyathi, which is articulated as follows in his affidavit to the present proceedings:

> *"71. I need to emphasise that on 5 December 2011, we did not discuss the fact that he had prepared memoranda, nor did he say he had prepared any, nor did he bring any along. I had no idea that as of the following day, I would suddenly get two memoranda of the nature that I have indicated herein above. I wish to make in unequivocally clear that if we had had such a discussion on the 5 December 2011, I would have raised my objections to his approach during that very meeting."*(My emphasis);

141.3.8 Just to conclude on the topic, what is recorded in the 'consultative note'; in my view, serves to support the conclusion I have reached. In paragraph 2 of the 'consultative note' Mrwebi refers to the representations received from Mdluli and then ends the paragraph in the last four lines by stating as follows:

> *"The purpose of this document is therefore to deal with and record a decision on the matter. It is the further aim that the document shall serve as a consultative document with the Director of Public Prosecutions North Gauteng as required by Section 24(3) of the NPA Act."* (My emphasis)

141.3.9 The two underlined sentences cannot go together. The latter sentence gives the impression that the Mzinyathi (the Director of Public

GSM

Prosecutions North Gauteng) was still to be consulted on the document, whilst the former announces a decision already taken by announcing that the "document is...to deal with and record a decision on the matter". In my view, it is very clear from the quotation above that the document in question could only have been written before the meeting of the 5 December 2011. The way it is coached, speaks to that conclusion. If the document was not there before he met with Mzinyathi, how 'a consultative document' which was not in existence could have been used as a 'further aim that the document shall serve as a consultative document', with Mzinyathi on 5 December 2011? In cross-examination during Breytenbach disciplinary proceedings, Mrwebi blamed the construction as quoted in paragraph 141.3.8 above on being an African. The answer to this effect was preceded by cross-examination of Mrwebi which unfolded as follows:

> *"ADV TRENGROVE: Can I take you through sentences one by one. You say the purpose of this document is to deal with and record a decision on the matter, Correct?*
>
> *ADV MWERBI: Yes.*
>
> *ADV TRENGROVE: So you had taken your decision by the time you issued this document.*
>
> *ADV MRWEBI: The decision, I had taken a decision, I had issued, I have taken a decision by the time I wrote this document.*
>
> *ADV THENGROVE: But then you say that the aim of this document is to serve as a consultative document with Advocate Mzinyathi.*
>
> *ADV MWERBI: Yes, that is correct Sir because I did not record, we had a verbal meeting with Advocate Mzinyathi, I was trying to capture the things that we discussed there with Mzinyathi, that was the idea of..., that's what I'm...*

GSM

ADV THENGROVE: I see, so this is not, not then to serve, because you say, it doesn't say: "I record, this is to record the meeting we've already had", this says: "This shall serve as a consultative document."

ADV MWERBI: As a record may be because the point is my intention Sir, you know you will excuse me, maybe my language is not very well. I'm an African Sir, my language is not very good maybe, my English language is not…

ADV TRENGROVE: Sorry?

ADV MRWEBI: My English language may not be very good…

ADV TRENGROVE: Yes neither is mine.

ADV MWERBI: Yes, but the point is, is the intention was to record the consultative discussions that I had with Mzinyathi on the matter".

141.4 With the quotation above, I am even more convinced that the document was prepared before the meeting of 5 December 2011. How can Mrwebi use the document as a "consultative document" with Mzinyathi when he allegedly produced it after he had consultation with Mzinyathi. This should find to have constituted a lie on the part of Mwerbi.

<u>Mrwebi's failure to disclose 'consultative note' and to despatch a complete record</u>

[142] Murphy J in paragraph 41 of his judgment said this concerning Mrwebi:

"Mrwebi determined to withdraw the fraud and corruption charges against Mdluli and prepared a memorandum and a consultative note setting out his reasons dated 4 December 2011. Mrwebi did not disclose these obvious relevant documents as part of his record of decision belatedly filed in terms of Rule 53.They came to light however as annexures to Breytenbach's founding affidavit in her application to the Labour Court".

142.1 The quotation above is referred to in paragraph 9.9 of the GCB's founding affidavit in these proceedings. It is one of the complaints for the case against

G Sm

Mrwebi. In an answer specifically to paragraph 9.9 of GCB's founding affidavit, Mrwebi states:

"116. I have already dealt with the disclosure of the record in proceedings involving NPA and reiterate what I have already stated".

142.2 This statement was preceded by what Mrwebi stated in the present proceedings as follows:

"15... I must emphasise that this document was purely an internal memorandum meant for the attention of the NDP North Gauteng only and was in no way meant to be a complete recording of the reasons for the decision in the matter".

142.2.1 Mrwebi could never have come to the conclusion that a document which contains his reasons for the decision would remain to be *'purely an internal memorandum meant for the attention of the DPP North Gauteng only'*. Rule 53 (1) (b) is very clear. It required Mrwebi to despatch within 15 days upon receipt of notice of motion to the registrar the record of such proceedings sought to be corrected or set aside together with such reasons as he is by law required to give. So, in addition to the record of the proceedings, his consultative note which contained his reasons should have been filed. The consultative note did not have to be a complete record of the reasons for the decision in the matter before he was obliged to disclose or despatch it to the registrar as required by the Rules.

142.2.2 On 12 August 2013 Halgryn SC provided NDPP with his memorandum in which inter alia, he recorded:

> *"21. We have had regard to 'records' which were indeed filed (which comprise of a scant odd 67 pages) and if we compare it to the actual dockets (each of which comprise of 3 lever arch files there seems to be no logic behind the filing of the skimpy document*
>
> *22. It is palpably not the entire records and our clients are not only going to lose this case for reasons alone, but in the process will undoubtedly be the subject of scathing attacks in open court for failing to provide the full*

GSM

records/dockets, let alone be the subject of a highly critical judgment in which this aspect will receive much attention".

142.2.3 With the critical advice and possible scathing attacks on the skimpy compliance with the provisions of Rule 53, Mrwebi cannot hide, like Jiba attempted to do, behind the fact that LAD was doing everything and that he was just a by-standing person having nothing to do with the case. It was his decision which was challenged. He is a lawyer, an advocate admitted in 1988. During June/July 2012 he was informed of the challenges by FUL. He subsequently consulted with Motimele SC. Then in paragraph 24 of these proceedings, he states:

> *"After the aforesaid consultation, I was never contected by any official in regard to the application of FUL until a year later, during July/August 2013 when I was again requested by the Legal Affairs Division to attend another consultation with counsel in Sandton. I duly attended the aforesaid consultation with Halgryn SC, Johan Uys and Eulande Mahlangu". (my emhasis*

142.3 Mrwebi has shot himself in the foot for this statement. The statement is for the following reasons false:

142.3.1 On 2 July 2013 Mrwebi deposed to an answering affidavit in FUL matter. At that time, Motau SC was still on brief and Halgryn SC with whom he consulted in August 2013 was not in the picture yet. The answering affidavit was according to his counsel finalised and deposed to on the advice of LAD. If that is so, his statement, "*After the aforesaid consultation, I was never contacted by any official in regard to the application of FUL until a year later, (during July/August 2013 ...)*, referring to consultation with Motimele SC on 11 June 2012, cannot be correct.

142.3.2 Between 21 and 25 June 2013 Motau SC by email was told that only Mrwebi should be deposing to an affidavit as the decision maker. When Motau SC did not accede to this, on 25 June 2013 state attorney and Motau SC were provided with separated affidavits of Mrwebi and Jiba. On 26 June 2013 Motau SC sent an email to the State Attorney objecting to the separated affidavits. Subsequent

GSM

thereto separated affidavits were commissioned on 2 July 2013 and filed on 4 July 2013. Now, Mrwebi wants this court to believe that all of this about him, had happened without his knowledge and approval until he was contacted during 'July/ August 2013' to consult with Halgryn SC who was briefed on 2 August 2013 and first consultation with him having taken place only on 5 August 2013. His version cannot be true.

142.3.3 Another worrying factor was Mrwebi's suggestion stated in his affidavit of 2 July 2013 as follows:

> *"3 Where I make submissions of a legal nature I do so on the advice of the NPA's legal representative".*

142.3.4 The first question about the statement is which NPA's legal representative was he referring to? It could not have been Motau SC team because his advice was ignored by the NPA and then Mrwebi and Jiba on their own settled separated affidavits on or before 25 June 2013 and the instruction to serve and file same must have been given before the end of June 2013. So, if Mrwebi intended to suggest that he relied on the advice of NPA's legal representative referring to Motau SC team he would have been untruthful. If he sought to rely on LAD for such an advice, his suggestion that the last time he had anything to do with FUL application was 2012 and that he was then contacted to consult with Halgryn SC in July/ August 2013 similarly cannot be correct for the reason already mentioned above.

142.3.5 As I said, Halgryn SC team was briefed on 2 August 2013 and first consultation with him took place on 4 August 2013. So, by the time Mrwebi deposed to his answering affidavit on 2 July 2013, he had nothing to do with Halgryn SC team, but one thing for sure he knew of the draft answering affidavit. First, he proposed one affidavit by him and later separated affidavits.

142.4 In terms of the statement quoted in paragraph 143.2.3 above, Mrwebi is effectively seeking to suggest that he had nothing to do with the defiance

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of Motau SC's advice. The tactic adopted by Mrwebi in these proceedings as was the tactic in FULmatter before Murphy J, is the same as the adopted by Jiba, i.e. 'the application was never served on me personally' and as stated in paragraph 32 of his affidavit in the present proceedings, "did not know or become aware that the complete record for purposes of review had not been disclosed".

143.4.1 If his statement is true that he never became aware that the complete record for the purposed of review had not been discovered what did he then do after he had become aware of the critical memorandum of Halgran SC in August 2013? The case was proceeded with and finalised before Murphy J. Seeing that it was his decision which was under attack, he was not expected to play a passive role. It was his duty to ensure that there was compliance with the Rules of court and advice by Halgryn SC. His attempt to blame LAD is of no help to his conduct complained of. Failure to disclose the consultative note and to provide complete record should be found to have been deliberate.

Mrwebi's failure to heed to the understanding he had with Mzinyathi

[144] According to Mzinyathi, on 5 December 2011 Mrwebi visited his office. Mrwebi informed him of the representations made by Mdluli and made Mzinyathi to believe that the meeting was a way of fulfilling the requirement for consultation contemplated in the relevant section 24 (3) of the Act which Mrwebi quoted to Mzinyathi. This version was never disputed by Mrwebi and therefore he would have known that Mzinyathi's attitude was that the decision to withdraw the fraud and corruption charges against Mdluli can only be taken if Mzinyathi agreed thereto.

[145] The discussion centred around section 7(7) of the Intelligence Services Oversight Act no. 40 of 1994 as according to Mrwebi, the section was critical in dealing with Mdluli's representations. They then parted on the understanding that Mrwebi was going to conduct some research on the regulations applicable to the intelligence environment

GSM

in which Mdluli worked. Section 7(7) has nothing to do with the prima facie case which was established as contained in the docket placed before Mrwebi.

[146] In paragraph 135.9.3 of this judgment I referred to what Mzinyathi 's reaction was to the decision taken by Mrwebi after the meeting of 5 December 2011, a version which is not placed in dispute by Mrwebi. To discuss with a colleague whom you are obliged in terms of the legislative framework to consult and agree with; and parted on the understanding that a decision will not be taken before a research is conducted, but, then thereafter took a decision contrary to the understanding, in my view, can only be ascribed to as a betrayal and consultation in bad faith by an officer of the court. This in my view is so serious that it should justify a removal from the roll of advocates.

Mrwebi's failure to take advice offered by Mzinyathi

[147] Mzinyathi knew on 6 December 2011 when he received two memorandums from Mrwebi that the latter has taken a decision to withdraw the charges against Mdluli on the corruption and fraud charges. The one memo was addressed to Mzinyathi and another one to Adv. Glynis Breytenbach. The one addressed to Mzinyathi was entitled "consultative note" in terms of section 24(3) of the National Prosecuting Authority Act, referred to earlier in this judgment. The one addressed to Breytenbach was headed "Decision regarding the representations of Lt. General Mdluli". In paragraph 28 of the memorandum addressed to Mzinyathi, Mrwebi stated: *"The prosecutor is accordingly instructed to withdraw the charges against both Lt-General Mdluli and Col. Barnard immediately"*. Furthermore, in paragraph 29 of the memo Mrwebi stated that Lt-General Mdluli's lawyers will be advised accordingly.

[148] In the memorandum to Breytenbach, Mrwebi stated:

> *"I refer to the attached consultative note in terms of section 24(3) of the National Prosecuting Authority Act, 32 of 1998 to the Director of Public Prosecutions, North Gauteng and which was copied to your office. For reasons stated in the said note, the charges against Lt-General Mdluli and Colonel Barnard must be withdrawn immediately".*

[149] That appeared to have infuriated Mzinyathi terribly. On the morning of 7 December 2011, Mzinyathi called Mrwebi and requested to meet with him during the

GSM

cause of that day. This was after Mzinyathi had a meeting with the prosecutors Mr Smith and Breytenbach that morning. Mrwebi was apparently in Bloemfontein and then, they agreed to meet on 9 December 2011.

[150] On 8 December 2011, Mzinyathi apparently out of anxiety sent an email to Mrwebi. The relevant portion of the email is quoted in paragraph 135.9.3 of this judgment. Of importance, it was clearly conveyed to Mrwebi that he (Mrwebi) cannot instruct prosecutors in the North Gauteng Division in respect of which Mzinyathi is appointed as a Director of Public Prosecutions.

[151] In the present proceedings, Mrwebi seeks to find an excuse in the following statement made by him in paragraph 17 of his answering affidavit:

> *"17. Even though the North Gauteng High Court as well as the Supreme Court of Appeal, subsequently ruled that the phrase "in consultation with" as contained in section 24(3) of the National Prosecuting Authority means that there must be concurrence between two functionaries, I was as at 05 December 2011 of the view that my consultation with Adv Mzinyathi, such as it was in full compliance with the provisions of section 24(3) of the National Prosecuting Act".*

[152] For the following reasons Mrwebi should be found not to be honest and candid with this court, as he was also not honest in the proceedings before Murphy J.

152.1 Firstly, he was warned in the email of 8 December 2011 that he cannot legally instruct prosecutors in the North Gauteng Division without Mzinyathi agreeing thereto;

152.2 Secondly, according to Mzinyathi on the 9 December 2011 when they met with Mrwebi, the latter was told that his withdrawal of the charges against Mdluli was contested by both of them, that is, Mzinyathi and Breytenbach. It has always been Mzinyathi's contention that a decision to withdraw the charges could not be taken without his concurrence. This version by Mzinyathi was never questioned by Mrwebi, nor did he at any stage raise it with Mzinyathi that the latter's concurrence was not required in terms of section 24(3) of the Act. Only in these proceedings did Mrwebi plead as quoted in paragraph 151 above.

GSM

152.3 On 22 January 2013 Mrwebi took the witness stand in the disciplinary proceedings of Breytenbach. Interpretation and application of the provisions of section 24(3) featured prominently particularly under cross-examination. For its importance, I find it necessary to quote the relevant portion of Mrwebi's evidence during cross-examination:

"ADV TRENGROVE: *Did he agree to stop the prosecution?*

ADV MRWEBI: *The decision was mine.*

ADV TRENGROVE: *Did he agree to stop the prosecution?*

ADV MRWEBI: *Okay let's say he did not agree to stop the prosecution.*

CHAIRPERSON: *Is that your answer?*

ADV MRWEBI: *That is my final answer.*

ADV TRENGROVE: *Which means that your decision was unlawful, correct?*

ADV MRWEBI: *I did not believe so, no.*

ADV TRENGROVE: *No there is no doubt about this legal rule.*

ADV MOKHARI: *It's a legal argument.*

ADV TRENGROVE: *There is no doubt about this legal argument and I simply say to the witness I agree with you that your view is correct, it accords with these cases, but let me do it on that basis. You understood the law to be, rightly or wrongly, that you required substantial agreement on the exercise of that power correct? We also know that Mr Mzinyathi did not agree with you that the prosecution be stopped, correct?*

ADV MRWEBI: *Mr Mzinyathi did not wholly agree with me in respect of issues that I raise.*

ADV TRENGROVE: *Mr Mzinyathi did not agree with you that the prosecution be stopped, correct?*

GSM

ADV MRWEBI: We left on the understanding that I am going to take a decision. To me that's sufficient agreement. We left on the understanding that I will go and take the decision based on what we have discussed. To me that would have ...

ADV TRENGROVE: Why don't you just answer the question?

ADV MRWEBI: No, no, no, there was no express agreement, expressly, expressly, in express terms

ADV TRENGROVE: The only view he expressed was that the prosecution should go on?

ADV MRWEBI: On the one part.

ADV TRENGROVE: On that issue?

ADV. MRWEBI: Yes.

ADV. TRENGROVE: Yes?

ADV. MRWEBI: Yes.

ADV TRENGROVE: On your understanding of the law thereof your decision was unlawfully taken?

ADV MRWEBI: I do not think it was sir.

ADV TRENGROVE: Because you did not have substantial agreement to stop the prosecution?

ADV MRWEBI: Because sir, I believe I had substantial agreement Sir.

ADV TRENGROVE: You believe you..?

ADV MRWEBI: I believe I had substantial agreement

ADV TRENGROVE: I see, so you believed that Adv Mzinyathi substantially agreed that the prosecution should be stopped?

ADV MRWEBI: Agreed with me, discuss the issue and these are the issues, then he said he will take the decision

GSM

ADV TRENGROVE: *Mr Mrwebi we will submit to the chair that this evidence is patently, dishonestly given. It can't be honest.*

ADV MRWEBI: That's your view Sir. I can't stop you from saying that".

152.3.1 **What is quoted in paragraph 152.3 above was preceded by cross-examination of Mrwebi during the disciplinary hearing of Breytenbach which unfolded as follows:**

"ADV TRENGROVE: Was there anybody else who shared your view? Any lawyer who shared your view?

ADV MRWEBI: I do not know, I do not know because I did not consult with anybody else.

ADV TRENGROVE: You don't know because you didn't consult anybody?

ADV MRWEBI: I don't know.

ADV TRENGROVE: I see. Now by the time you took this decision that the matter be withdraw, as you said, you did not yet know what Advocate Mzinyathi's view was, correct?

ADV MRWEBI: You know, the simple view of Advocate Mzenyathi was known, I would say it was known because I, this is what I picked up later on you know, because he says he believed there is a case, that's his view, that was his view, yet I told him the problems later.

ADV TRENGROVE: So at the time you took this decision to the best of your belief Advocate Mzinyathi was of the view that the prosecution should continue?

ADV. MRWEBI: Not necessarily.

TRENGROVE: Yes, but that's what I understand you to say Mrwebi?

ADV MRWEBI: Yes, you said there was ...Yes.

ADV TRENGROVE: I beg your pardon?

ADV MRWEBI: Well, maybe let's say yes.

ADV MRWEBI: Yes, what?

GSM

ADV MRWEBI: Yes it's what, he wanted the prosecution to continue.

CHAIRPERSON: He had that view?

ADV MRWEBI: Well, he did not say so. He did not say so.

ADV TRENGROVE: But your belief was ...

ADV MRWEBI: His view was that you know, on his... In fact he says he did not get deeper into the matter but on the face of it, looks like you know we can, there is a case, that was his view".

152.3.2 Further in cross-examination, his evidence which preceded also what is quoted in 152.3 above unfolded:

ADV TRENGROVE: Did you and he agree to discontinue the prosecution on that day?

ADV MRWEBI: No, we agree on the problems, we did not agree to discontinue the prosecution on that day.

ADV TRENGROVE: You unilaterally decided to discontinue the prosecution without his agreement, correct?

ADV MRWEBI: I think I did so after I consulted him, as I thought I consulted him I was required.

ADV TRENGROVE: Just answer my question. You unilaterally stopped the prosecution with...

ADV MRWEBI: I did not think it was unilateral Sir.

ADV TRENGROVE: You unilaterally stopped the prosecution without his agreement, correct?

ADV MRWEBI: In certain respects, let's say in certain respects.

ADV TRENGROVE: You unilaterally stopped the prosecution without his agreement to stop the prosecution.

ADV MRWEBI: In certain respects.

ADV TRENGROVE: In ... He did not agree to stop the prosecution at all. Correct?

ADV MRWEBI: No, in respect of certain issues.

GSM

ADV TRENGROVE: He did not agree to stop the prosecution at all.

ADV MRWEBI: In respect of certain issues.

ADV TRENGROVE: What do you mean by that?

ADV MRWEBI: He identified, he agreed with me in terms of the problems that there were that..."

152.3.3 I agree with the conclusion by Mr Trengrove as in the quotation under paragraph 152.3 of this judgment. That is, Mrwebi's evidence was 'patently, dishonestly given". Mr Mrwebi seems to have forgotten about the oath which he took as a witness, but also as an officer of the court when he was admitted as an advocate in 1988. He turned himself into an unreliable and dishonest witness. Unfortunately that finds its way into the present proceedings. His statement in paragraph 17 of his answering affidavit in these proceedings quoted in paragraph 151 above is not only a lie, but is intended to mislead this court. He clearly knew long before he deposed to his answering affidavit in FUL matter on 2 July 2013 that his decision would never have been lawful without the agreement, concurrence or substantial agreement with Mzinyathi. I am not sure if he thought this court will have no regard to his evidence adduced during the disciplinary proceedings of Breytenbach. There cannot be any excuse for his lies. He should be found to have ceased to be a fit and proper person to remain on a roll of advocates. He betrayed his oath of office as an advocate and in doing so, also brought the prosecuting authority into disrepute

Mrwebi's failure to heed to Hagryn SC's advice

[153] In paragraphs 135 to 135.9.5 of this judgment I dealt with Jiba's failure to adhere to Halgryn SC's advice. In some respects what is stated therein finds some relevance to the topic under discussion. On 12 August 2013 Halgryn SC provided his written opinion in which he clearly pointed out that the decision to withdraw the charges against Mdluli

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will not stand in court. Despite the advice, Mrwebi and Jiba persisted in seeking to oppose the application brought by FUL. In paragraph 24 of his answering affidavit in the present proceedings, Mrwebi states that he consulted with Halgryn SC in August 2013. Then in paragraph 25 he concludes by saying: *"After the aforesaid consultation, I never interacted in any manner whatsoever with Halgryn SC or any other external legal practitioner in regard to the FUL matter"*:

153.1 Mrwebi cannot wash his hands. First, he is the person who made the decision which was challenged. Secondly, he knew of the advice by Halgryn SC or ought to have known. " *I never interacted in any manner whatsoever with....or* <u>*any other external legal practitioner*</u>", confirms that after consultation with Halgryn SC, he (Mrwebi) interacted with "internal legal practioner/s" seen in the light of what follows hereunder. Jiba in her answering affidavit to the present proceedings puts it this way:

> *"110. The approach suggested by Halgryn SC team at the consultation held on 8 August 2013 and prior consultations made a number of assumptions:.. His advice was that therefore that I should review the decision of the second respondent and Adv Chauke in terms of section 22(2)(c) of the NPA Act and give FUL an opportunity to amend their grounds for relief if they still disagree".*

153.2 Then in paragraph 111 of her answering affidavit in the present proceedings, Jiba says:

> *"I together with the NPA team could not agree with Halgran SC".*

153.3 Furthermore, in paragraph 137 of Jiba's answering affidavit in these proceedings and after having dealt with a range of oral advices given by Halgran SC during consultation, she concludes by saying:

> *"It was for these reasons that I was uncomfortable with the oral advice furnished to me by the Halgryn SC team.* <u>*Indeed the entire team of representatives from the NPA disagreed with his advice.*</u> *I therefore requested the Halgryn SC team to prepare a written memorandum of advice.* <u>*The representatives of the NPA then also went away and reconstructed the respective dockets".*</u>

GSM

153.3.1 Clearly none of the above would have happened without the decision maker's (Mrwebi's) involvement. The point is, Mrwebi's attempt to distance himself from the decision to defy Halgryn SC's advice, smacks him as untruthful and dishonest person in the handling of Mdluli case up to the present proceedings. He should know as a decision maker and a person against whom serious allegations are made in the present proceedings, that he ought to take this court into his confidence than just stating that he never interacted with Halgryn SC or any other external legal practitioner' after consultation with Halgryn SC. The real issue is what he did with Halgryn SC's advice. He together with Jiba ignored solid and right advice given by Halgryn SC. That does not accord with a fit and proper requirement to remain on a roll of advocates. I now turn to deal with the other issue.

Mrwebi's withdrawal of corruption and fraud charges in the face of prima facie evidence

[154] There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, namely the National Prosecuting Authority Act. The prosecuting authority has the power inter alia, to institute criminal proceedings on behalf of the state and to carry out any necessary functions included to incidental to instituting criminal proceedings (section 179(1) and (2) of the Constitution).

154.1 Anyone within the prosecuting authority, who exercises this power, must do so in accordance with the rule of law and the Constitution. Short of this, would be in conflict with the Constitution and the national legislation. Failure to prosecute any case in the face of a prima facie evidence would offend against the law and the Constitution, being the supreme law of the Republic of South Africa.

154.2 It is not my understanding that Mrwebi suggested that there was no prima facie case on the corruption and fraud charges. In his 'consultative note' he expressed himself on the issue as follows and I do this at the risk of repetition:

GSM

> *"...Essentially my views related to the process that was followed in dealing with the matter particularly in view of the fact that the matter fall squarely within the mandate of the Inspector-General in terms of Intelligence Services Act 40 of 1994. I noted that it is only the Inspector General who by law is authorised to have full access to the Crime Intelligence documents and information and thus who can give a complete view of the matter as the investigative can never be complete without access to such documents and information. In my view, the process followed in this matter is possibly illegal as being in contravention of the said provisions of the Intelligence Services Oversight Act 40 of 1994".*

[156] For the following reasons there was no legal basis to come to the conclusion as quoted above and Mrwebi knew about it:

156.1 If the concern expressed above was genuine, instead of withdrawing the charges, Mrwebi could have allowed the prosecution team and the investigating officer to resort to utilisation of the provisions of section 205 of the Criminal Procedure Act, which allows the Director of Public Prosecutions or a public prosecutor authorised thereto in writing, to request a judge of a High Court, a regional court magistrate or a magistrate subject to the provisions of subsection (4) and section 15 of the Regulation 12 Interception of Communicative and Provisions of Communication – related Information Act 2002, to require the attendance before him or her or any other Judge, regional court magistrate or magistrate for examination by the Director of Public Prosecutions or the public prosecutor authorised thereto in writing, of person who is likely to give material or relevant information as to any alleged offence.

156.1.1 Therefore, Mrwebi could have advised the investigating and prosecution team in the matter to resort to section 205 of Act 51 of 1977 in order *'to have full access to...documents and information'* and to subpoena whoever *'can give a complete view of the matter'* by submitting documents and information during the proceedings in terms of section 205.

156.2 It looks like the raising of the Intelligence Services Oversight Act was just a shield behind the real intention of Mrwebi, the intention being the

G Sm

withdrawal the charges despite prima facie case against Mdluli and with or without the concurrence of Mzinyathi.

156.3 Before Mzinyathi and Breytenbach met with Mrwebi on 9 December 2011, together with a member of the South African Police Services met with Inspector General of Intelligence's legal advisor, Ms Joy Governder who expressed the view that Inspector General of Intelligence (IGI) does not investigate criminal offences as such Investigations are within the domain of the SAPS.

[157] On 19 March 2012 IGI ambassador, Adv FD Radebe prepared a memo which memo was later forwarded by Lt. Gen. Dramat to Jiba and Mrwebi on 23 March 2012. In the memo addressed to Lt. Gen, NS Mkhwanazi, Acting National Commissioner of Police at the time, it was recorded:

"1. We refer to your letter of the 22nd February 2012 wherein you requested an opinion on the reasons advanced by the National Prosecuting Authority for the withdrawal of the criminal charges against General Mdluli.

2, In response to the memorandum of Adv. Mrwebi of the 4 December 2011 we advise as follows:

2.1 The Inspector- General of Intelligence (IGI) derives her mandate from the Constitution of the Republic of South Africa, which provides for the monitoring of the intelligence oversight which much result in a report containing findings and recommendations;

2.2 Any investigation conducted by the Inspector-General is for the purposes of intelligence oversight which must result in a report containing findings and recommendations;

2.3 The mandate of the IGI does not extend to criminal investigations which are court driven and neither can IGI assist the police in conducting criminal investigations. The mandate of criminal investigations rests solely with the police;

As such we are of the opinion the reasons advanced by the NPA in support of the withdrawal of the criminal charges are inaccurate and legally flawed. We therefore recommend that this matter be referred back to the NPA for the institution of the criminal charges".

GSM

[158] How Mrwebi could have missed this simple mandate of IGI is mind boggling. His intention, in my view, was to withdraw the charges against Mdluli and never to reinstate them. The following facts seem to support the conclusion: The memorandum quoted above was brought to the attention of Mrwebi by Breytenbach in the company of Adv Ferreira. Mrwebi in paragraph 21 of his answering affidavit deposed to on 2 July 2013 in the FUL matter, stated:

> *"... The document from the IGI in the last paragraph thereof contained a recommendation that this matter must be referred back to the NPA for the investigation of criminal charges".*

[159] Then in paragraph 32 of the answering affidavit of 2 July 2013, Mrwebi introduced a revealing shift from his initial basic reason for the withdrawal of charges against Mdluli, and by so doing exposed himself in bad light. He stated inter alia:

> *"Later on 30 March 2012 I addressed to General Dramat, advising of the fact that any decision to instruct the withdrawal of the charges still stands and that the matter is closed..." (My emphasis)*

159.1 The statement above is in direct contrast to what Mrwebi said in the preceding paragraph 24 of his affidavit deposed to on 2 July 2013 wherein he stated:

> *"On 5 December 2011 I met Adv Mzinyathi, the DPP of Gauteng North to discuss the Mdluli matter. In the light of the views I held about the matter that the IG would not only help with access to documents and information as well as the fact that she/he would also assist with the issue of privilege my view as conveyed to the DPP related to the process that was followed by the police in dealing with the matter as well as the view that, in the nature of the matter, the IG can help in the matter as she/he has unlimited access to documents and information in possession of crime intelligence. Because I believe that the IG's assistance would serve to address any shortcomings or defects about the evidence... "*

159.1.1 A turn around on the statement quoted above is sought to be explained further in the same paragraph 32 of the answering affidavit of 2 July 2013 as follows:

> *"I want to clarify that I wrote in the fashion I did (referring to 'the withdrawal of the charges still stands and the matter is closed'), I did because since our agreement with the DPP, North Gauteng and Adv. Breytenbach on 9*

G SM

December 2011 nothing, as far as I was aware changed in terms of the status of the investigation in the matter, no new information was presented on which the earlier decision could be reconsidered and accordingly in my view what was the point of keeping the matter open in the books of NPA, hence my statement that 'the matter is closed'. This statement does not however, mean that should new evidence come to light it may be reopened and dealt with according law".

[160] *"I wrote in the fashion I did...", Mrwebi was referring to "the withdrawal of the charges still stands and the matter is closed."* Mrwebi was dishonest and sought to mislead the court in FUL matter. First, the charges were not withdrawn because there was lack of evidence. The brief summary of evidence in paragraph 104 above is quite clear that there was *prima facie evidence upon which* to proceed on the fraud and corruption charges about Mdluli. That was also the views of Mzinyathi to which Mrwebi conceded during the disciplinary hearing of Breytenbach. Secondly, the "consultative note" containing the reasons for the withdrawal of the charges focused on the views of the Inspector General. Lastly, the discussion of 9 December 2011 came after the horse had bolted because Mdluli's lawyers were already informed that the charges against Mdluli would be withdrawn.

160.1 Mzinyathi explained it on 23 January 2013 as follows during his cross-examination in the disciplinary proceedings against Breytenbach:

"ADV TRENGROVE:	*So, by the time he met with you on the 9th December he said he was functus officio, correct?*
ADV MZINYATHI:	Yes
ADV TRENGROVE:	And we all know that *functus officio means that I have taken any decision and I no longer have power to reopen it, correct?*
ADV TRENGROVE:	So that presented you with a fait accompli, the horse bolted, the case will have to be withdrawn;
ADV MZINYATHI:	Indeed.
ADV TRENGROVE:	And it was in the light of that fait accompli that you then had your discussion as to what now, correct?
ADV MZINYATHI:	Yes.

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ADV TRENGROVE: And I understand your evidence that you felt, and I'm told that Advocate Breytenbach agreed with you, whether she said so or not, that you did not want the spectacle of a public clash between various affidavits of the NPA, correct?

ADV MZINYATHI: Yes.

[161] So, the provisional withdrawal as agreed on 9 December 2011 had context and the context was not that there was insufficient evidence to prosecute Mdluli on the fraud and corruption charges. Refusing to reinstate the charges after the Intelligence had cleared the way for Mrwebi, bearing in mind that, that was his initial main concern, in my view, displayed how Mrwebi was determined to flout the rule of law and the Constitution by discontinuing the prosecution against Mdluli in the face prima facie evidence and in contravention of the provisions of section 24 (3) of the Act, that is, without concurring with Mzinyathi.

Insistence on 'in consultation' with Mzinyathi

[162] On 9 September 2013, that is, few days before the hearing of FUL application which was scheduled for 11 September 2013, Mrwebi delivered supplementary answering affidavit in an attempt to respond to FUL replying affidavit in which retired Judge Kriegler stated:

> "83. *The second is that Advocate Mrwebi still seeks to sit on two stools: whereas his cotemporaneous actions and documents clearly point to withdrawal of charges, i.e. an unequivocal withdrawal of proceedings against General Mdluli, he subsequently sought – and still seeks – to suggest a "provisional" withdrawal.*
>
> 84. *The third is that Advocate Mrwebi still persists in generalising when seeking to justify his criticism of the case against the General and his disagreement with the Specialised Commercial Crimes Court prosecutor who had worked up the case with senior investigators and the prosecutor's two experienced supervisors, Advocates Brytenbach and Mzinyathi.*
>
> 85. *Then, when the Inspector General of Intelligence ("the IGI") (the fourth respondent) intimated that Advocate Mrwebi was quite wrong in seeking to involve her office instead of the Police, he doggedly adhered to the manifestly position he had adopted from the outset".*

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[163] I cannot agree more with the criticism. The 'fourth respondent' was with reference to the Inspector General of Intelligence. Mrwebi in seeking to tackle the criticism as he should, in my view, made his position worse by responding as follows:

> *"AD PARAGRAPHS 83 TO 85*
>
> 23. *The allegations herein are denied. The Applicant has not made any basis for its bold allegation that I had made the decision to cease the prosecution of the firth respondent.*
>
> 24. *I took the decision to withdraw the criminal case in consultation with Adv. Breytenbach and Mzinyathi ..."*

[164] There was no 'bold allegation' about it. In the preceding paragraphs, I particularly dealt with the concession and at times serious contradictions made by Mrwebi at every corner regarding the withdrawal of the charges against Mdluli on the corruption and fraud charges. He clearly discontinued the prosecution by all means in the face of a clear prima facie evidence and without concurring with Mzinyathi.

[165] But what has really brought down Mrwebi in the quotation above, is his alleged in consultation with Mzinyathi. For the first time since his decision on 4 December 2011, did he use the words 'in consultation' with Mzinyathi. By 9 September 2013 when he deposed to the supplementary affidavit in Mdluli/FUL case he had already conceded on 22 January 2013 during the disciplinary hearing against Breytenbach that he single-handedly took the decision to withdraw the charges against Mdluli. He later in the disciplinary proceedings moved to 'substantial agreement' with Mzinyathi, something branded by Advocate Trengrove SC as evidence which was 'patently, dishonestly given'.

[166] In paragraph 37 of his supplementary affidavit deposed to on 9 September 2013, he persisted with the evidence 'patently, dishonestly given' as follows:

> *"... The decision to withdraw charges was taken in consultation with Advocate Mzinyathi".*
>
> 166.1 Mrwebi clearly has made himself liable to cease to be a fit and proper person to remain on a roll of advocates.

Concluding words on Mrwebi and Jiba

GSM

[167] I cannot believe that two officers of the court (advocates) who hold such high positions in the prosecuting authority will stoop so low for the protection and defence of one individual who had been implicated in serious offences.

[168] In fact, taking into account the kind of personality (referring to Mdluli), Mrwebi and Jiba had to deal with, they should have stood firm and vigorous on the ground by persisting to prosecute Mdluli on fraud and corruption charges. By their conduct, they did not only bring the prosecuting authority and the legal profession into disrepute, but have also brought the good office of the President of the Republic of South Africa into disrepute by failing to prosecute Mdluli who inappropriately suggested that he was capable of assisting the President of the country to win the party presidential election in Mangaung during 2011 should the charges be dropped against him.

[169] It is this kind of behaviour that diminishes the image of our country and its institutions which are meant to be impartial, independent and transparent in the exercise of their legislative public powers. Retired Judge Johan Kriegler in his replying affidavit in FUL review proceedings had the occasion to put it this way:

> *"128. In serious matter of public interest, an accountable and transparent organ of state has a responsibility to keep the public informed and to make full and frank disclosure in order to refute, explain or ameliorate dangerous allegations..."*

169.1 POCA as a national legislation was introduced in our country and in its preamble, a concern is raised of the ineffectiveness of the ordinary laws of the country to deal with the surge of crimes like corruption and fraud. The Prosecuting Authority Act makes a provision for the establishment of the Investigating Directorate and special Director, (who was Mrwebi at all material times hereto) within the prosecuting authority, to deal with the surge of crimes like corruption and fraud, the mandate being to effectively investigate and prosecute these offences without fear, favour and prejudice.

[170] Mzinyathi, Breytenbach and other prosecuting officials who were involved in the investigation of charges against and prosecution of Mdluli, were like foot soldiers in a war-zoned area crying loud for the freedom and space to declare war and to fight against serious crimes that are crippling our country and threating investment. Jiba on the other hand, was like a commander-in-chief and in charge required to lead by example. But instead, she flouted every rule in the fight against crime. Her failure to intervene when she was required to do so, has failed the citizens of this country and in the process, brought the image of the

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legal profession and prosecuting authority into disrepute. Both Mrwebi and Jiba should be found to have ceased to be fit and proper persons to remain on a roll of advocates.

COMPLAINTS AGAINST MZINYATHI

[171] GCB's complaint against Mzinyathi arose from his confirmatory affidavit deposed to on 10 September 2013. This was a confirmatory affidavit to Mrwebi's supplementary answering affidavit deposed to on 9 September 2013. Murphy J in his judgment in FUL matter handed down on 28 September 2013 inter alia, criticised Mzinyathi as follows:

> "[52] *Mrwebi in his answering affidavit did not deal with Mzinyathi's testimony at the disciplinary enquiry or for that matter with any of the averments in the supplementary affidavit. His account of the events between 5 December 2011 and 9 December 2011 takes the form of a general narrative which does not admit or deny the specific allegations in the supplementary founding affidavit. He nonetheless maintained that he had consulted Mzinyathi. The answering affidavit was not accompanied by a confirmatory affidavit from Mzinyathi who therefore initially did not confirm Mrwebi's general account. In his confirmatory affidavit filed at the 11th hour the day before the hearing without any explanatory whatsoever for it being filed 6 months after the delivery of the supplementary founding affidavit, Mzinyathi differing from his evidence at the hearing, confirmed the allegations in Mrwebi's affidavit as they relate to herein thus saying in effect for the first time that he had indeed concurred in the decision.*
>
> [53] *Mzinyathi elaborated further in regraph 7 to 9 of the affidavit that Mrwebi approached him at his office on 5 December 2011, told him that he was dealing with representations regarding Mdluli and needed to consult him. Mrwebi mentioned to him that he was busy researching the Intelligence Services Oversight Act and then left his office. The impression created as mentioned earlier is that no substantive discussions took place that day and hence clearly there was concurrence before Mrwebi wrote the consultative note and communicated with Mdluli's attorneys. Later Mzinyathi heard from Smith that Mrwebi had instructed the prosecutor to withdraw the charges. He then wrote the e-mail of 8 December 2011 to Mrwebi and met him on 9 December 2011 together with Breytenbach. At the meeting he was persuaded that the matter was not ripe for trial and agreed to the provisional withdrawal of the charges. This differs materially from his original position that he was unable to influence the decision because it has been finally taken, but conceded to the characterization of the withdrawal as provisional as a compromise partially addressing his concerns.*

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> [54] *Taking into account of how it was placed before the court by Mzinyathi after FUL's heads of argument were filed, without explanation for its lateness, and its inconsistency with his testimony at the disciplinary hearing that he was presented with a fait accompli and was unable to influence the decision because Mrwebi claimed to be functus officio, this evidence of the DPP of North Gauteng to the effect that he ultimately concurred, must regrettably be rejected as creditworthy. The affidavit is a belated transparent and unconvincing attempt to rewrite the script to avoid the charges of unlawfulness. The version in the supplementary founding affidavit, originally uncontested by Mzinyathi and corroborated by Mzinyathi's testimony at the disciplinary hearing, must be preferred and accepted as the truth".*

[171] In the present proceedings Mzinyathi deals with these criticisms and explains himself extensively in more than twenty page affidavit made out of several paragraphs. I do not intend to deal with his responses in detail. Mzinyathi in paragraph 13 of his confirmatory affidavit deposed to on 10 September 2013 stated:

"I have read the answering affidavit of Mrwebi and the first respondent and confirm the allegations made therein in so far as they relate to me".

[172] It is this statement that brought Mzinyathi in the firing line with Murphy J. This court now has the benefit of hearing Mzinyathi on the remarks made against him. I must immediately point out that I have not been able to find in Mzinyathi's confirmatory affidavit that at the meeting of 9 December 2011 *'he was persuaded that the matter was not ripe for trial and agree to the provisional withdrawal of the charges'*. What I read in his confirmatory affidavit of 10 September 2013 is that he *'...initially disagreed with Adv Mrwebi's decision that the matter should be withdrawn'*. The *'not ripe for trial'* statement in paragraph 10 of Mzinyathi confirmatory affidavit cannot be attributable to him as his statement, but rather that of Mrwebi and it reads: *"The other issue which he raised was that the investigation were incomplete and the matter was not ripe for trial. After extensive discussions we agreed that the matter should be withdrawn provisionally so that the investigating officers can work with the office of the Inspector General of Intelligence to conduct further investigations. Adv. Mrwebi informed Adv. Breytenbach that once the investigations were completed she could re-enroll the matter for trial"*, something which Mrwebi refused to do after the Inspector General advised that *'the matter be referred to the NPA for the institution of the criminal charges'* afresh against Mdlull as quoted in paragraph 157 of this judgment. What is clear from what was stated in paragraph 10 of Mzinyathi's confirmatory affidavit is that *"not ripe for trial"*, was a statement made by Mrwebi to Mzinyathi and Mzinyathi did not own the

GSM

statement in his confirmatory affidavit. The agreement of 9 December 2013 to provisionally withdraw the fraud and corruption charges against Mdluli has context which is briefly referred to hereunder:

172.1 The statement quoted in paragraph 171 above was preceded in particular by paragraphs 7 to 9 in which Mzinyathi recorded:

"7. On 5 December 2011; Adv, Lawrence Mrwebi approached my office and informed me that he was dealing with representations in connection with the matter of the Fifth Respondent, and that he needed to consult with me in this regard, He further informed me that he was going to conduct some research on the Intelligence Services Oversight Act No 40 1994. Thereafter he left my office.

8. Later I received a copy of a letter from the prosecutor, Adv. Smith in which Adv. Mrwebi instructed the prosecutor to withdraw charges against the Fifth Respondent. In response to the said instruction I wrote an email to Adv. Mrwebi in which I requested a meeting with him to discuss the matter.

9. On 9 December 2011, I and Adv. Breytenbach held a meeting with Adv.Mrwebi in his office, 2nd Floor, VGM Building 123 West Lake Avenue, Weavind Park in Silverton, the NPA Head Office. During our meeting, I initially disagreed with Adv Mrwebi decision that the matter should be withdrawn."

[173] What is quoted above should be seen in the context of the email of 8 December 2011 quoted in part in paragraph 153.9.3 of this judgment, which email Mzinyathi sent to Mrwebi before their meeting of 9 December 2011. This email is also mentioned by Mzinyathi in the present proceedings. Mzinyathi in my view should be commended for standing firm against Mrwebi's withdrawal of the charges against Mdluli. His evidence during Breytenbach's disciplinary proceedings part of which is quoted in paragraph 160 above was consistent with his stand point about what had transpired on 5, 8 and 9 December 2011. That coupled with his detailed answering affidavit in the present proceedings tackling the adverse remarks made against him as quoted in paragraph 169 of this judgment, should bring the complaints against Mzinyathi to rest. Murphy J did not have the benefit of the detailed response which has now been placed before this court by Mzinyathi. The agreement on 9 December 2011 as indicated in paragraph 10 of Mzinyathi's confirmatory affidavit deposed to on 10 September 2013 to have the charges 'withdrawn provisionally' against Mdluli was not inconsistent with what Mzinyathi said during the disciplinary proceedings of Breytenbach as quoted in paragraph 160 of this judgment.

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[174] GBC seems to have been mindful of the insufficient information against Mzinyathi to justify any of the reliefs sought. For example, in paragraph 20 of its founding affidavit, it states:

> *"Jiba and Mrwebi, in particular, appear to be entirely indifferent to the demands of the advocates profession and high standard required of them as officers of the court. They have fallen well short of their high duty to the court, which requires absolute honesty and integrity. The affidavits deposed by Jiba and Mrwebi in the FUL matter evince an attempt to mislead the court, at best and, indeed, appear to have been untruthful in material respects". (my emphasis).*

[175] Mzinyathi in my view, was consistent throughout. His confirmatory statement quoted in paragraph 171 above has to be considered in the light of what is stated in paragraph 173, all of which speak to the contextualisation of the statement in paragraphs 10 and 13 of his confirmatory affidavit. It is for this reason, amongst others, that this court did not deem it necessary for Mzinyathi to address the court in the present proceedings, neither did GCB insist to proceed against Mzinyathi after counsel for GCB was requested to indicate whether GCB still persists with its application against Mzinyathi.

COSTS

[176] Mzinyathi should be found to have substantially succeeded in his opposition for the relief sought by GCB. For this reason he should be entitled to costs up to the stage when counsel for GCB indicated that the latter will not persist with its relief against Mzinyathi. Similarly, GCB should be found to have substantially succeeded arising from my findings with regard to Jiba and Mrwebi conduct in their handling of Mdluli case.

[177] An order is hereby made as follows:

177.1 The case against Mzinyathi (third respondent) is hereby dismissed with costs, such costs to include the costs of two counsel up to the stage when the applicant (GCB) indicated that it will not persist against the third respondent.

177.2 The application against Jiba (first respondent) and Mrwebi (second respondent) with regard to their handling of Mdluli's (FUL) case is hereby granted and an order is hereby made as follows:

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177.2.1 The names of Ms Nomgcobo Jiba (first respondent) and Mr Lawrence Sithembiso Mrwebi (second respondent) are hereby struck from the roll of advocates;

177.2.2 The first and second respondents to pay the costs of the application the one paying the other to be absolved and such costs to include the costs of two counsel.

M F LEGODI

JUDGE OF THE HIGH COURT

I agree

W.HUGHES

JUDGE OF THE HIGH COURT

For the Applicant:	Adv S Burger SC
	Adv N Mayosi
Instructed by:	Bernard Van Der Hoven Attorneys
For the 1st Respondent	Adv N Arendse SC
	Adv S Fergus
Instructed by:	Majavu Incorporated
For the 2nd Respondent	Adv RPA Ramawele
	Adv k Magano

Instructed by Attorneys:	AM Vilakazi Tau Attorneys
For the 3rd Respondent:	Adv DB Ntsebeza SC
	Adv SX Mapoma
Instructed by:	Magaga Incorporated

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case no: 141/17 and 180/17

In the matter between:

NOMGCOBO JIBA	**FIRST APPELLANT**
LAWRENCE SITHEMBISO MRWEBI	**SECOND APPELLANT**

and

THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA	**FIRST RESPONDENT**
SIBONGILE MZINYATHI	**SECOND RESPONDENT**

and in the matter between:

LAWRENCE SITHEMBISO MRWEBI	**APPELLANT**

and

THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA	**RESPONDENT**

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SEQ 29/2021-910

Neutral citation: *Jiba & another v The General Council of the Bar of South Africa and Mrwebi v The General Council of the Bar of South Africa* (141/17 and 180/17) [2018] ZASCA 103 (10 July 2018)

Coram: Shongwe ADP, Leach, Seriti, Van der Merwe and Mocumie JJA

Heard: 22 March 2018

Delivered: 10 July 2018

Summary: Advocate – misconduct – whether fit and proper person to practise as an advocate – appellants not advocates in private practice – employed by the National Prosecuting Authority – alleged to be not fit and proper persons to remain on the roll of advocates while acting as litigants – found not to have benefitted – appeal upheld.

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ORDER

On appeal from: Gauteng Division, Pretoria (Legodi and Hughes JJ sitting as court of first instance):

1 The appeal is upheld with no order as to costs.

2 The counter-appeal is dismissed with costs including the costs of two counsel.

3 Paragraph 177.1 of the order of the court a quo is confirmed.

4 Paragraph 177.2.1 and 177.2.2 are set aside and replaced with the following: 'The application for the striking off the roll of Ms Jiba and Mr Mrwebi is dismissed with no order as to costs, however as regards Mr Mrwebi he is suspended as an advocate for a period of six months from the date of this order (15 September 2016).'

JUDGMENT

Shongwe ADP (Seriti and Mocumie JJA concurring)

Introduction

[1] The General Council of the Bar (GCB), a voluntary association with legal personality in terms of its constitution, brought an application in terms of s 7(1)(*d*) of the Admission of Advocates Act 74 of 1964 (the Act) to strike from the roll of advocates, alternatively to suspend officials of the National Prosecuting Authority (NPA) in April 2015. These officials are Ms Nomgcobo Jiba (Jiba), who held the position of Deputy National Director of Public Prosecutions (DNDPP); Mr Lawrence Sithembiso Mrwebi (Mrwebi), who held the position of Special Director of Public Prosecutions and head of the Specialised Commercial Crime Unit (SCCU) and Sibongile Mzinyathi (Mzinyathi) who held the position of Director of Public Prosecutions in North

G S M

Gauteng. (For ease of reference and without disrespecting them, I shall refer to all parties by their surnames.)

[2] This appeal is against the order of the Gauteng Division, Pretoria (Legodi and Hughes JJ), striking from the roll of advocates, the names of Jiba and Mrwebi with costs including the costs of two counsel, the one paying the other to be absolved. The application against Mzinyathi was dismissed with costs to include the costs of two counsel. Against the order of costs, the GCB filed a counter-appeal. The appeals are with the leave of the court a quo. The three applications were dealt with in one hearing and were therefore heard together in this court as the factual and legal background was similar.

[3] The appointment of members of the NPA is in terms of s 179 of the Constitution read with s 11 of the National Prosecuting Authority Act 32 of 1998 (the NPA Act). The NPA Act provides for the members of the NPA to be appropriately qualified and to possess legal qualifications that would entitle him or her to practise in all courts in the Republic (s 9(1) of the NPA Act). The GCB has the authority to apply to court for suspension of its members as advocates from practice and the removal of their names from the roll of advocates in terms of s 7(1)(*d*) of the Act.

[4] Only a court has the authority to strike a name from the roll of advocates or attorneys. In this case the GCB amassed information from various sources and public records, for instance from judgments handed down from various courts such as *Freedom Under Law v National Director of Public Prosecutions & others* 2014 (1) SA 254 (GNP); *National Director of Public Prosecutions &*

GSM

SEQ 29/2021-913

others v Freedom Under Law 2014 (4) SA 298 (SCA); [2014] ZASCA 58; and *Zuma v Democratic Alliance & others* [2014] ZASCA 101; [2014] 4 All SA 35 (SCA). And also sourced information contained in the affidavits in the various cases and from the office of the NPA. The gist of the information gathered sought to prove that the appellants (Jiba and Mrwebi) were not fit and proper persons to remain admitted as advocates.

Legal Framework

[5] I now turn to deal with the relevant legal principles to be considered before an advocate can be struck from the roll. The application is brought in terms of s 7(1) of the Act – and it reads as follows:

'Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates–

(*d*) if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate . . . .'

[6] This court in *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) ([2000] 2 All SA 310 (A) placed the following guidelines which were followed with approval in *Malan & another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) para 4:

'First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry.

Second, it must consider whether the person concerned "in the discretion of the Court" is not a fit and proper person to continue to practise. This involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment.

GSM

And third, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.'

The principles that apply in striking off an attorney from the roll also apply where an advocate is concerned. It is common cause that these proceedings are not ordinary civil litigation proceedings but are said to be *sui generis* in nature. The GCB as *custos morum* of the profession acts in the interest of the profession, the court and the general public. The GCB's role is to present evidence of the alleged misconduct to court, and for the court to exercise its disciplinary powers. On the other hand the practitioner is expected to proffer an acceptable explanation to gainsay the allegations. The nature of the proceedings is not subject to the strict rules that govern ordinary civil proceedings. (See *General Council of the Bar of South Africa v Matthys* 2002 (5) SA 1 (E) para 4 and *Society of Advocates of South Africa (Witswatersrand Division) v Edeling* 1998 (2) SA 852 (W) at 859I et seq.)

Facts

[7] The genesis and the long history of this appeal arose after a certain Lieutenant-General Richard Mdluli (Mdluli), the head of Crime Intelligence within the South African Police Service (SAPS) had been charged with fraud, corruption and related charges and also with murder and attempted murder. The fraud and corruption charges were subsequently withdrawn by Mrwebi and later Advocate Chauke, the Director of Public Prosecutions (DPP) South Gauteng, also withdrew the murder and related charges against Mdluli. Unhappy about the withdrawal of these charges, Freedom Under Law (FUL), a non-profit organisation recognised to be acting in the public interest in terms of s 38 of the Constitution, launched review proceedings to have the withdrawals set aside. It is significant to mention that Jiba was appointed DNDPP with effect from 22 December 2010 when the GCB launched the application for her to be struck

GSM

from the roll of advocates. She had been acting as the NDPP after the position became vacant when Advocate Simelane was removed as NDPP. The context of her involvement in this office vis-à-vis the grounds on which she is accused of not being a fit and proper person is important in the proper consideration of the adjudication of this matter.

[8] Several complaints were raised by FUL against Jiba, Mrwebi and Mzinyathi during the hearing of the review proceedings. For example that, through their conduct, they delayed and frustrated the prosecution of the review proceedings by failing to file a record of decision in terms of rule 53 of the Uniform Rules of Court. (I shall revert to this complaint later in the judgment.) For now, it suffices to say that it is one of the reasons put forward by the GCB to show that the appellants were not fit and proper persons. The other complaint by FUL was that the delay to file a record of decision prolonged the review proceedings which resulted in the late filing of the appellants' answering affidavits in the review proceedings. The Deputy Judge President of the Gauteng Division, Pretoria (DJP) had to intervene, by directing the appellants to file their answering affidavit by 24 June 2013, which was eventually filed nine days later. This delay resulted in Murphy J, who presided in the review proceedings, to remark that the reasons advanced for the various delays, and late filing were sparse and mostly unconvincing. This was also raised by the GCB as an indicator of them being unfit persons to remain on the roll of advocates. However Murphy J condoned the non-compliance with the rules and directives of the DJP. I now turn to deal with the complaints against Jiba and Mrwebi which according to the GCB justify declaring them to be not fit and proper persons to remain on the roll of advocates.

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Complaints against Jiba

[9] Initially Jiba raised certain points in limine, that she had not been afforded a proper hearing and the issue of separation of powers. She argued that the GCB should have held an enquiry before approaching a court of law, as is usually done where a practising advocate is charged with misconduct. These points were not pursued on appeal, therefore there is no need to decide them. I now turn to deal with the specific complaints levelled against Jiba.

[10] The first complaint dealt with by the court a quo was in connection with *Booysen's* case. In that case Jiba, in her capacity as acting NDPP issued two authorisation letters charging Major General Johan Wessel Booysen with the contravention of s 2(1)(*e*) and (*f*) of the Prevention of Organised Crime Act 121 of 1998 (POCA). In a nutshell Booysen alleged that Jiba was 'mendacious' when she asserted that she considered statements together with other information in the docket before she took the decision to charge him. This allegation was further exacerbated by the negative remarks of Gorven J who presided in the *Booysen* matter when he drew an inference that none of the information upon which Jiba relied linked Booysen to the offence in question. The court a quo found that '[i]t suffices for now to conclude on [the] *Booysen* matter by stating that no case has been made for removal or suspension from the roll of advocates'. I do not find it necessary to deal with the detail of the complaint in view of the finding of the court a quo. I share the sentiment expressed. Before us counsel for the GCB dealt with some of the complaints but, in my considered view did not take the matter any further. The court a quo could not find 'any mala fides and or ulterior motive in the authorisation by Jiba as contemplated in POCA'.

GSM

[11] The next complaint against Jiba was in connection with a challenge on review by the Democratic Alliance (DA), a political party, against the decision of the NPA in which the then acting NDPP, Advocate Mokotedi Mpshe, withdrew corruption charges against the former President Jacob Zuma. The withdrawal came after Adv Mpshe had listened to a recorded conversation on tape between the former NDPP (Mr Bulelani Ngcuka) and the then DPP for Durban (Mr McCarthy). The complaint was in connection with Jiba's handling of this matter in her capacity as acting NDPP. This case popularly became known as the 'spy tapes case'. The specific complaint was that Jiba failed to comply with the requirements of rule 53 of the Uniform Rules which require the disclosure of the record of proceedings under review. As a result the DA approached the high court, Pretoria seeking an order to compel the NPA to comply with the rule. The application was dismissed, subsequently the DA appealed to this court. The appeal was upheld and certain orders were made which the NPA failed to comply with. As a result certain negative remarks were made by this court. Such remarks and failure to comply with the court order were advanced as reasons why Jiba was not fit and proper to remain on the roll of advocates. Because of the findings of the court a quo, which I agree with, it will not be necessary to deal with specifics, save to add that the court a quo concluded that the GCB failed to show any *mala fides* on Jiba's part or that she was motivated by an ulterior motive. (See the judgment of the court a quo reported as *General Council of the Bar of South Africa v Jiba* 2017 (2) SA 122 (GP).)

[12] The main reason, in the court a quo's view, why Jiba and Mrwebi were found to be not fit and proper persons to remain on the roll of advocates was their handling of the so called Mdluli case. It is significant to note that the court a quo started by describing who Mdluli was and detailed his personality,

GSM

characterised him in an egregious manner as if he was already convicted of the allegations against him. This characterisation, in my view, negatively influenced the court a quo's evaluation of the manner in which Jiba and Mrwebi handled the Mdluli case. The relevance of which is not clearly explained. The court a quo, in its judgment, referred to a letter by Mdluli to former President Zuma, the Minister of Safety and Security and the Commissioner of Police, which stated that the charges brought against him were a conspiracy. I was unable to glean the relevance of quoting from the said letter. In my view the content of the letter was far-fetched and did not establish whether Jiba was a fit and proper person to practise as an advocate.

[13] The specific complaints were: (a) that she failed to file a full complete rule 53 record even after a court order to that effect; (b) that she failed to file an answering affidavit after the DJP had directed her to do so and that she did not file her heads of argument timeously; (c) that her reason for the delays were sparse and unconvincing; (d) that her conduct as a person of high rank in the public service was unbecoming; (e) that she failed to disclose that she had received a 24 page memorandum from Advocate Breytenbach and that she deliberately attempted to mislead the court with reference to the memorandum; (f) that this court had criticised her conduct in the handling of the Mdluli matter; and (g) that she failed to make a full and frank disclosure to refute, explain or ameliorate the serious allegations against her.

[14] It is significant to consider these complaints together with Jiba's answers and explanation in the context of her position as acting NDPP and the fact that she is cited herein as a litigant. Jiba was not acting as counsel representing a client. She acted as head of the NPA, therefore the State Attorney and counsel

GSM

had to be appointed to represent her. In her answering affidavit she explained the policy applicable where an official had been cited in his or her representative capacity. She further explained that the Legal Affairs Division (LAD) tasked with the handling of all matters pertaining to civil litigation dealt with this matter. The LAD was headed by Advocate Nomvula Mokhatla the Deputy National Director of Public Prosecutions. In her team, were deputy directors, senior State advocates and senior State prosecutors. This team would prepare a memorandum on steps to be taken, arrange consultations with her and advise on how the LAD would handle the matter further. Counsel would be briefed by the State Attorney. She further explained that the LAD is similar to 'an in-house legal department . . . '.

[15] Jiba's explanation to counter the complaint that she failed to file a full and complete rule 53 record was that Advocate Motimele SC and Advocate Notshe SC had been briefed to advise on the preparation of the rule 53 record. It was prepared by Advocate Chita on behalf of the NPA on the advice of the Motimele SC team. This was done after Advocate Chita had consulted with Mrwebi and Advocate Chauke whose impugned decisions were to be reviewed. Her conduct must be viewed and equated to an attorney and client relationship to her advisors. She is a trained lawyer, however her opinion would be secondary to that of counsel and the LAD. She cannot, in my considered view be said to be not a fit and proper person simply because she was advised otherwise. It must be considered that she did not benefit in any manner whatsoever from providing an incomplete rule 53 record, nor did she act dishonestly. In para 24 of Murphy J's judgment he condoned the non-compliance with the rules and directives of the DJP. To me this is an indication that no prejudice was caused to any party. We preside in matters daily where attorneys and counsel take incorrect decisions or instructions, and also file court

G S M

processes out of time, however, they apply for condonation; and in most cases such would be granted if no prejudice would result. The legal practitioners in these instances are not necessarily unfit persons to practise as advocates or attorneys in so doing.

[16] The complaint that she failed to disclose the memorandum from Advocate Breytenbach and thereby deliberately attempted to mislead the court, was explained as follows. It must be clear from the onset that this was a confidential internal memorandum prepared by Advocate Breytenbach to Jiba expressing a different view to the impugned decision by Mrwebi. The court a quo concluded in para 136.3 that '[f]ailure by Jiba not to disclose Breytenbach's memo in the proceedings before Murphy J and failure to consider the request by Breytenbach for internal review of Mrwebi's decision was, in my view, deliberate and was intended to mislead Murphy J'. It was not Murphy J who said that Jiba attempted to mislead the court. It was the court a quo's conclusion on the reasons set out above. The truth of the matter is that when Murphy J heard the review proceedings, the Breytenbach memo had already been in the public domain at the labour court when Breytenbach was fighting against her suspension. It cannot, therefore be fair, to accuse Jiba of failing to disclose the Breytenbach memo before Murphy J. Jiba cannot, fairly be accused or alleged not to be a fit and proper person for failing to consider the request by Breytenbach for the internal review of Mrwebi's decision. Surely Jiba should be entitled to her own opinion based on facts at her disposal. She should not be punished for differing with Breytenbach. Murphy J went further to say that 'The NDPP in her answering affidavit, though not dealing directly with the [Breytenbach] memo, maintained that the decision to withdraw charges had not come to her office for consideration "in terms of the regulatory framework"'.

GSM

[17] The next complaint arose from a meeting between Jiba and Advocate Motau SC, who had been briefed after Motimele SC's team withdrew on 26 July 2013, in an unscheduled consultation. She is reported to have said that she had not received the answering affidavit settled by Advocate Motau SC. Whereas Advocate Sebelemetsa of the State Attorney's office had written to Advocate Motau SC's team advising them that the draft answering affidavit had been amended by separating Jiba's from that of Mrwebi. Advocate Sebelemetsa also wrote a memo on 3 September 2013 advising that they 'never had any consultation with the team [i e Advocate Motau SC] in preparation of the said affidavit'. The court a quo concluded that Jiba 'was steadfast to defy logic and advice [from Advocate Motau SC] for as long as her wishes were not accommodated. That is the kind of conduct making Jiba to cease to be a fit and proper person and to remain on the roll of advocates'. Therefore the court a quo was of the view that Jiba lied when she told Advocate Motau SC that she had not received the affidavit. In my view it is not the only reasonable inference to be drawn. As explained above, the State Attorney would liaise with the LAD and deal with issues and correspondence without necessarily informing Jiba. All that needed to happen was to have Mrwebi sign the affidavit and that Jiba sign a supporting affidavit. The explanation could be that Jiba's team was of the view that the impugned decision in the Mdluli matter was that of Mrwebi. The signed affidavit was received by Advocate Motau SC. The difference of opinion between Advocate Sebelemetsa on the second and third of July 2013 long after the unscheduled consultation with Motau SC and Jiba's team and the inference drawn by the court a quo, in my considered view, would not justify labelling Jiba a dishonest person and consequently not fit and proper to remain on the roll of advocates. As a result of this misunderstanding Advocate Motau SC and his team withdrew from the matter.

GSM

[18] Advocate Halgryn SC was briefed after the withdrawal of Advocate Motau SC. After several consultations Advocate Halgryn was in disagreement with the manner in which the case had been conducted. He was of the view that from the papers there was no defence. Jiba responded to Halgryn SC's team by saying that 'it assumed that there was a *prima facie* case against Mdluli of fraud and corruption which had to be enrolled and prosecuted . . . it assumed that the decision of Adv Chauke not to proceed with the other charges while he had referred the matter to a formal inquest was incorrect . . . it assumed that I [Jiba] had stood back and did nothing since the withdrawal of the charges'. She further explained that the fraud and corruption charges against Mdluli were withdrawn for purposes of further investigation and that the intention was to reinstate these charges if further incriminating evidence came to hand. The difference of opinion should not and cannot fairly be considered sufficient to conclude that Jiba is not a fit and proper person to remain on the roll of advocates. Perhaps one may infer some form of incompetence with regard to her duties, which may be a ground to remove her from being the DNDPP but not sufficient enough to be removed from the roll of advocates. Jiba also referred, in her answering affidavit, to the view of two senior State prosecutors who also handled this matter, namely Advocate Andre Becker and Advocate Rita Viljoen who expressed the view that there was insufficient evidence to prosecute Mdluli on the fraud and corruption charges. It follows therefore that the GCB failed to establish any misconduct against Jiba. Therefore the first jurisdictional requirement was lacking. In the circumstances of this case there is no need to deal with a value judgment to determine whether Jiba is a fit and proper person to remain on the roll of advocates. Therefore even the sanction imposed of striking her name from the roll does not arise. The court a quo materially

GSM

misdirected itself when it came to the conclusion that the decision is one no reasonable court could make.

Complaint against Mrwebi

[19] The main complaint against Mrwebi was that he sought to mislead the court on the extent of the consultation or 'in consultation' between himself and Mzinyathi. Put differently that he took a decision to withdraw the fraud and corruption charges against Mdluli before he consulted with Mzinyathi in terms of s 24(3) of the NPA Act. It is alleged further that Mrwebi persisted with this conduct even after having been advised by Motau SC and Halgryn SC that he was wrong. The other complaints were that he sought to mislead the court by not providing a proper record of all the documents and facts relevant for the proper determination of the FUL review proceedings. Some of the answers and explanations given by Jiba relating to the rule 53 record are relevant and applicable to the case of Mrwebi and may be properly considered herein.

[20] What weighs heavily against Mrwebi are the answers and explanations proffered by him against these allegations. Mrwebi received representations from Mdluli regarding the fraud and corruption charges. He apparently decided to withdraw and discontinue the prosecution of Mdluli before discussing with Mzinyathi or 'in consultation' with Mzinyathi as required by s 24(3) of the NPA Act. It is apparent that Mrwebi furnished contradictory explanations of when and why he decided to withdraw the charges against Mdluli. It is clear from Mzinyathi's confirmatory affidavit that he contradicted Mrwebi's assertions that there was any form of consultation on 5 December 2011 when the two met and discussed the Mdluli matter. At some point while discussing this matter Mrwebi created the impression that the decision to discontinue the prosecution fell

GSM

SEQ 29/2021-924

squarely within the mandate of the Inspector General of Intelligence (IGI) in terms of the Intelligence Services Oversight Act 40 of 1994. Murphy J found that '[i]t is common cause that Mrwebi did not consult the SAPS or the IGI prior to withdrawing the charges, and that Mzinyathi and Breytenbach informed Mrwebi at the meeting with him on 9 December 2011 that the IGI was not authorised to conduct criminal investigations'. The IGI, indeed, confirmed that '[t]he mandate of the IGI does not extend to criminal investigations which are court driven and neither can the IGI assist the Police in conducting criminal investigations'.

[21] It is highly possible that Mrwebi, genuinely, did not comprehend what the concept 'in consultation' meant, however the concessions he made under cross examination by counsel for the GCB, indicated that he was at most confused. I would not classify his explanations as dishonest. However I am prepared to find that the GCB succeeded in establishing the alleged offending conduct on a preponderance of probabilities. Because there was no personal gain from Mrwebi's conduct, I do not think that the sanction handed down is justified. The purpose of these proceedings is to uphold the rules regulating the profession and not to punish the wrongdoer. (See *Society of Advocates of South Africa (Witwatersrand Division) v Cigler* 1976 (4) SA 350 (T) at 357 G-H.)

Complaints against Mzinyathi

[22] Murphy J made some negative remarks against Mzinyathi suggesting that the confirmatory affidavit of Mzinyathi differed from his evidence tendered at the disciplinary hearing of Breytenbach. The GCB interpreted this supposed contradiction as misconduct, hence it was of the view that Mzinyathi was not a fit and proper person. The court a quo placed the misunderstanding by Murphy J

G-S M

into perspective and contextualised it. It came to the conclusion that Mzinyathi, should be commended for standing firm against Mrwebi's withdrawal of the charges against Mdluli. His evidence during Breytenbach's disciplinary proceedings was consistent with his stand point surrounding what transpired on the fifth, eighth and ninth of December 2011. The court a quo, correctly so in my view, dismissed the complaint against Mzinyathi with costs, up to the stage when the GCB indicated that it will not persist against Mzinyathi.

[23] The GCB was granted leave to appeal the costs order against it in favour of Mzinyathi. The GCB contended that it acted reasonably and in the interest of its members and the public at large when it brought the application against Mzinyathi. It further contended that Mzinyathi together with Jiba and Mrwebi had been criticised by not only the high court (Murphy J) but also by this court. Finally it averred that the normal rules of costs in adversarial proceedings should find no application.

[24] On the other hand, counsel for Mzinyathi contended that the general principle with regard to costs is that the court exercises its discretion and that the successful party should, as a general rule, have his or her costs. (See *Ferreira v Levin NO & others; Vryenhoek & others v Powell NO & others* 1996 (2) SA 621 (CC) para 3.) He argued that the fact that the GCB was the *custos morum* should not insulate it from paying costs and that no special treatment should be given to the GCB.

[25] I am unable to find any reason that demonstrates that the court a quo did not exercise its discretion honestly and judiciously. Therefore this court is not empowered to interfere with the findings of the court a quo. The only recognisable basis is possibly that the GCB acted as a *custos morum*. However, s 9(1) of the Constitution provides that everyone is equal before the law and has

GSM

SEQ 29/2021-926

the right to equal protection and benefit of the law. (See *Biowatch Trust v Registrar Genetic Resources & others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).) I am unable to provide a cogent reason as to why Mzinyathi should be out of pocket when the GCB dragged him to court without sound and reasonable grounds for doing so. The GCB should at least, have withdrawn the application to strike Mzinyathi's name from the roll of advocates, immediately after the filing of his answering affidavit in this matter. The court a quo was able to identify the misunderstanding Murphy J was labouring under and the explanation given by Mzinyathi. The GCB recklessly, if not irresponsibly, continued to implicate Mzinyathi in a matter where he had no involvement without verifying the allegations. The only matter wherein Mzinyathi filed a confirmatory affidavit was the FUL matter; he was not involved in the so-called 'spy tapes' investigation and the *Booysen* case. The GCB did not even explain its insistence in its replying affidavit. Counsel for Mzinyathi elaborated at length on the various instances where the GCB unreasonably continued to implicate Mzinyathi in its heads of argument. Due to the view I take on the issue of costs, it is not necessary to exhaust the list. The counter-appeal stands to be dismissed with costs.

Appropriate sanction

[26] A court of appeal is entitled to interfere with the exercise by the court a quo of its discretion if it is satisfied that it did not bring an unbiased judgment to bear on the issues before it, or exercised its discretion upon a wrong principle and or as a result of a material misdirection. (See *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 654E-H and 655G and *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 537; also reported at [1998] 3 All SA 358 (A).) Stated differently, but to the same effect, in *Fine v Society of Advocates of South Africa (Witwatersrand Division)* 1983 (4) SA 488 (A) at 494H – 495A, the court remarked that:

G SM

'[T]he Appeal Court will only interfere with the exercise of this discretion on the grounds of material misdirection or irregularity, or because the decision is one no reasonable Court could make.'

[27] As regards Mrwebi, I am of the considered view that the court a quo treated him harshly. Mrwebi, notwithstanding his misconduct, did not personally gain anything from his actions. His failure to comprehend the concept of 'in consultation', in my view should perhaps be attributed to his incompetence or naivety rather than his honesty and lack thereof. I recognise the principle that the main consideration is the protection of the public and not to punish. In my view the court a quo over-emphasised the nature and personality of Mdluli, his past misdemeanours or alleged criminal activities and found it abhorrent that Mrwebi had withdrawn the fraud and corruption charges against him. Although it later transpired that the charges were not finally withdrawn, it was a provisional withdrawal. The approach of the court a quo did not only close its reasoning but ultimately led it to commit material misdirections by finding that Mrwebi had committed misconduct arising from allegations irrelevant to his case. The withdrawal of charges against Mdluli became the centrepiece of the inquiry, whereas the handling and conduct of the administrative procedures and negative remarks by the judges a quo were indeed the cause for the complaint. The court a quo, in my view, did not bring its unbiased judgment to bear.

[28] The GCB alleged that Mrwebi sought to mislead the court by not placing before it a proper record of all the documents. That Mrwebi sought to mislead the court as to the date of the consultation with Mzinyathi, whether it was the fourth or fifth of December 2011. All these complaints collectively or

GSM

SEQ 29/2021-928

individually cannot justify the striking off the roll of advocates. These are common mistakes which counsel make in their daily work and are mostly excusable. Moreover Mrwebi was not acting for a client but was a litigant advised by the LAD and counsel. Nowhere in the judgment of the court a quo was it shown that the court considered a suspension instead of the ultimate penalty of striking an advocate off the roll and reasons why a suspension was not an appropriate sanction. I am of the view that considering all the facts and circumstances of this case a suspension of Mrwebi as an advocate would be the appropriate sanction. I am alive to the fact that a court of appeal's interference with the trial court's discretion is permissible on restricted grounds. The basis of my interference is grounded on my findings that the court a quo did not bring its unbiased judgment to bear on the question before it, and materially misdirected itself. (See *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A) at 781I-782A.)

[29] In conclusion, as regards Jiba, the evidence presented by the GCB juxtaposed with the explanation proffered by her failed to establish the alleged offending conduct on a preponderance of probabilities. On that ground the appeal must succeed. It becomes unnecessary to consider the discretion of the court on the question whether or not she is a fit and proper person to remain on the roll of advocates. As regard Mrwebi, I am satisfied that the alleged offending misconduct has been established and also concur that the court a quo exercised its discretion judicially when it concluded that he is not a fit and proper person to practise as an advocate, however, misdirected itself regarding the appropriate sanction to be imposed. Based on the reason given above, this is a case where the court a quo should have suspended Mrwebi, more especially, that he did not personally benefit from his misconduct nor did he prejudice any client. All that the court a quo was dissatisfied with was that '[b]y their conduct,

G sm

they did not only bring the prosecuting authority and the legal profession into disrepute, but have also brought the good office of the President of the Republic of South Africa into disrepute by failing to prosecute Mdluli who inappropriately suggested that he was capable of assisting the President of the country to win the party presidential election in Mangaung during 2011 should the charges be dropped against him'. Surely this is irrelevant and cannot be a good reason singularly or cumulatively to remove an advocate from the roll.

[30] We have had cases in this court against advocates who had admitted to unlawfully enriching themselves of millions of rands, who in the result have been either suspended or ordered to repay the spoils (see *General Council of the Bar of South Africa v Geach & others; Pillay & others v Pretoria Society of Advocates & another; Bezuidenhout v Pretoria Society of Advocates* [2012] ZASCA 175; 2013 (2) SA 52 (SCA)). In the case of Mzinyathi on costs, no cogent and justifiable grounds have been placed before this court to interfere with the discretion of the court a quo, save to underscore the tradition of the GCB being insulated against a costs order regardless. The appeal in this regard must also fail.

[31] In the result I make the following order:

1 The appeal is upheld with no order as to costs.

2 The counter-appeal is dismissed with costs including the costs of two counsel.

3 Paragraph 177.1 of the order of the court a quo is confirmed.

4 Paragraph 177.2.1 and 177.2.2 are set aside and replaced with the following:

'The application for the striking off the roll of Ms Jiba and Mr Mrwebi is dismissed with no order as to costs; however as regards Mr Mrwebi he is

GSM

SEQ 29/2021-930

suspended as an advocate for a period of six months from the date of this order (15 September 2016).'

J B Z Shongwe
Acting Deputy President
Supreme Court of Appeal

Van der Merwe JA (Leach JA concurring)

[32] I have had the benefit of reading the judgment of Shongwe ADP, and find myself respectfully unable to agree with his conclusions in respect of the appeal and cross appeal. In my judgment the appeals of Ms Nomgcobo Jiba (Ms Jiba) and Mr Lawrence Sithembiso Mrwebi (Mr Mrwebi) should fail and the cross appeal of the General Council of the Bar (the GCB) should succeed.

[33] An advocate is required to be of 'complete honesty, reliability and integrity'. See *General Council of the Bar of South Africa v Geach and others* [2012] ZASCA 175; 2013 (2) SA 52 (SCA) paras 126-127. It goes without saying that these qualities are particularly required of an advocate who holds high public office in the administration of justice.

[34] Whether a person should be struck from the roll of advocates for failure to comply with these standards, is determined by a three-stage process. The first entails a factual finding in respect of the alleged offending conduct. If that conduct is established, the second stage comprises a finding as to whether the person is a fit and proper person to continue to practise. If not, the third stage involves the exercise of a discretion in respect of whether a removal from the

G S

SEQ 29/2021-931

roll of advocates or suspension from practise is appropriate. This court, on appeal, has limited grounds to interfere with such discretion. It can only do so if the court a quo acted capriciously, or on a wrong principle, or if it failed to bring an unbiased judgment to bear on the issues or did not have substantial reasons – see *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 654D-G.

[35] In light of these considerations I deal with the appeals of Ms Jiba and Mr Mrwebi in turn.

Ms Jiba

[36] Ms Jiba was a Deputy National Director of Public Prosecutions. During the period from 28 December 2011 to 30 August 2013 she acted as the National Director of Public Prosecutions and thus headed the National Prosecuting Authority (NPA). The contention that Ms Jiba is not a fit and proper person to continue to practise as an advocate was based on her alleged conduct in her capacity as Acting National Director of Public Prosecutions (ANDPP) in relation to three matters.

[37] In the first matter, Freedom Under Law (FUL), a public interest organisation, *inter alia,* sought the review and setting aside of the decision of Mr Mrwebi, who was at the time a Special Director of Public Prosecutions, to withdraw charges of fraud and corruption against Lieutenant-General Richard Mdluli. At the time Mr Mdluli was the head of the Crime Intelligence Unit of the South African Police Service (SAPS). FUL succeeded in the Gauteng Division, Pretoria where Murphy J reviewed and set aside the decision to withdraw these charges against Mr Mdluli. His judgment is reported as *Freedom Under Law v National Director of Public Prosecutions and others* 2014 (1) SA 254 (GNP) (the *FUL* matter). An appeal to this court against that

GSM

part of the order of Murphy J was unsuccessful. In *National Director of Public Prosecutions and others v Freedom Under Law* [2014] ZASCA 58; 2014 (4) SA 298 (SCA) Brand JA, speaking for a unanimous court, held that Mr Mrwebi had failed to comply with the provisions of s 24(3) of the National Prosecuting Authority Act 32 of 1998 (the NPA Act), which required him to take the decision in consultation with, that is with the concurrence of, the Director of Public Prosecutions for the Gauteng Division, Pretoria (Mr Mzinyathi).

[38] In the second matter, Major-General Johan Booysen, in essence, sought the review and setting aside of the decision of Ms Jiba to authorise the institution of a prosecution against him. The matter served before Gorven J in the KwaZulu-Natal Local Division, Durban who granted the relief claimed. Gorven J found that the decision was irrational. His judgment is reported as *Booysen v Acting National Director of Public Prosecutions and others* [2014] 2 All SA 391 (KZD) (the *Booysen* matter).

[39] The relevant aspects of the third matter appear from the judgment of this court in *Zuma v Democratic Alliance and others* [2014] ZASCA 101; [2014] 4 All SA 35 (SCA) (the *Zuma matter)*. This judgment formed part of protracted litigation between Mr Zuma and the Democratic Alliance and dealt with the precise ambit of a previous order that the ANDPP produce and lodge the record relating to the decision to discontinue the prosecution of Mr Zuma.

[40] The court a quo based its finding that Ms Jiba was not a fit and proper person to practise as an advocate, only on her conduct in the *FUL* matter. In the process it rejected the contentions of the GCB that the conduct of Ms Jiba in the *Booysen* and *Zuma* matters also justified her being struck from the roll of advocates. In this court, counsel for Ms Jiba argued that in the absence of a

cross appeal it was not open to the GCB, on appeal, to rely on the conduct of Ms Jiba in the *Booysen* and *Zuma* matters.

[41] This argument is without merit. It is trite that on appeal a respondent may seek to justify the order appealed against on any ground that the record of appeal allows. A cross appeal is only required when a respondent seeks a variation of the order of the court a quo, as is the case here in respect of the costs order against the GCB. The reason for this is that an appeal lies only against an order, not the reasons for the order. It matters not that the reasons for the order may to some extent have been incorporated in the order itself. The court a quo made the order in respect of Ms Jiba that the GCB had proposed. A cross appeal in respect thereof would be nonsensical. Thus, the GCB was entitled to seek to justify this order with reference to the *Booysen* and *Zuma* matters.

[42] The essential issue in the *Zuma* matter was whether the record of decision that had been submitted by Ms Jiba should have included certain tapes or transcripts, alleged by Mr Zuma to be confidential, and internal memoranda of the office of the NDPP relating to the tapes and transcripts. Navsa ADP said that in her answering affidavit Ms Jiba failed to adopt a position in respect of the former and resorted to 'a metaphorical shrugging of the shoulders'. He said that this displayed a baffling lack of interest in being of assistance to the court. In respect of the internal memoranda, Navsa ADP stated that 'Ms Jiba provided an "opposing" affidavit in generalised, hearsay and almost meaningless terms'. Navsa ADP added that the generalisation resorted to by Ms Jiba was, 'to say the least, disingenuous'. Thus, this court held in the *Zuma* matter that Ms Jiba had acted in a singularly unhelpful manner and had been less than truthful.

T S M

[43] In her answering affidavit in the *Booysen* matter, Ms Jiba stated that she had based the decision to authorise the prosecution of Mr Booysen on, *inter alia,* four documents that were annexed to her answering affidavit, as annexures NJ2, NJ3, NJ4 and NJ5. She said that Mr Booysen 'is directly implicated under oath in the statements placed before me in Annexures "NJ2" to "NJ5"'.

[44] In this regard Gorven J held as follows:

'[31] The submissions of Mr Booysen in his replying affidavit can be summarised as follows. Two of the annexures are sworn statements made under the name of Colonel Aiyer. These are annexures NJ2 and NJ4 respectively. Mr Booysen describes these as statements which concern "office politics" and submits that they in no way implicate him in any of the offences with which he has been charged. The second of these, in addition to not implicating him in any of the offences in question, was deposed to on 31 August 2012, some two weeks after the first impugned decision was taken. The document referred to as a statement by Mr Danikas, annexure NJ3, is not a sworn statement. It is not even signed by anyone. It is not dated. Even if it can be attributed to the named person and even if it was a sworn statement as claimed by the NDPP, the contents do not cover the period dealt with in the indictment except for one event which does not relate to Mr Booysen. As regards annexure NJ5, this does not implicate Mr Booysen in any of the offences in question.

[32] In argument, the respondents did not in any way challenge the above factual submissions concerning the nature and content of the annexures in question. The factual submissions appear to me to be accurate.'

[45] Counsel for Ms Jiba pointed out that annexure NJ3 was patently not an affidavit, it had not even been signed, and argued that it is improbable that Ms Jiba intended to express a deliberate falsehood or attempted to mislead the court in respect of this annexure. That may be so, but the force of the argument is reduced by the fact that Ms Jiba did not explain in her answering affidavit, in the present matter, that she had mistakenly described annexure NJ3 as a

GSM

statement under oath. In any event, this could not explain the objectively false statements by Ms Jiba under oath that she had regard to all these annexures when she made the decision to authorise the prosecution of Mr Booysen and that Mr Booysen had been directly implicated in the alleged crimes in all of these statements. The court a quo should, in my view, have taken cognisance thereof that unexplained false statements were made by an advocate acting as the NDPP in respect of the essence of the *Booysen* matter, namely the reasons for the decision to authorise the prosecution.

[46] In the *FUL* matter a dismally incomplete record of the decision had been filed out of time. I am in agreement with counsel for Ms Jiba that in terms of rule 53(1) the primary obligation to submit the record of decision rested on Mr Mrwebi. He had taken the decision to withdraw the fraud and corruption charges against Mr Mdluli. But that did not absolve Ms Jiba from all responsibility. Indeed, in her answering affidavit in the present application she did not rely on the absence of an obligation on her to ensure the filing of a proper record of the decision. Instead, she attempted unconvincingly to justify the filing of an incomplete record on the basis of uncertainty at the time as to what should be included in such a record of decision. As the head of the NPA, who had been cited in that capacity as a party in the *FUL* matter, Ms Jiba bore the overall responsibility for the submission of a proper record of the decision. It suffices to say that this conduct displayed at least a lack of appreciation of the duty of an advocate to assist the court to come to a speedy and just conclusion.

[47] This is also illustrated by the following. On 8 October 2012, FUL delivered a supplementary founding affidavit in terms of rule 53(4). On 14 March 2013 it filed a further supplementary affidavit. This was necessitated by the paucity of the records filed and by further documents that had become publicly available. The respondents in the *FUL* matter, including Ms Jiba and

GSM

Mr Mrwebi, had to file answering affidavits by no later than 2 May 2013. They did not do so. On 5 June 2013, Ledwaba DJP issued a directive obliging the respondents to deliver answering affidavits by no later than 24 June 2013. One would have thought that the timeous filing of the answering affidavits of Ms Jiba and Mr Mrwebi would in the circumstances have become a matter of critical concern to them. On her own evidence, however, Ms Jiba made no attempt to ensure compliance with the directive. New counsel was briefed to draft the answering affidavits of Ms Jiba and Mr Mrwebi only on 18 June 2013. Nevertheless, by 21 June 2013 counsel had managed to prepare draft answering affidavits and made them available for perusal and comments to be given by midmorning on Sunday, 23 June 2013. Ms Jiba said that she was unaware hereof. On 26 June 2013, two days after the deadline for the filing of the answering affidavits, Ms Jiba had an unscheduled meeting with counsel in chambers. Counsel personally informed her that the draft answering affidavits had been made available. This notwithstanding, the answering affidavits were only filed on 4 July 2013.

[48] Mr Mrwebi took the decision to withdraw the fraud and corruption charges against Mr Mdluli on 4 or 5 December 2011. These charges related only to certain motor vehicle transactions. During April 2012, two members of the NPA, advocates G Breytenbach and J M Ferreira, submitted a memorandum to Ms Jiba. This memorandum was referred to by the parties as the Breytenbach memorandum and for convenience I continue to do so. The Breytenbach memorandum implored Ms Jiba to review the decision of Mr Mrwebi to withdraw the fraud and corruption charges in respect of the motor vehicle transactions. It also mentioned that new evidence of possible further similar offences by Mr Mdluli had since become available.

[49] Ms Jiba did not mention the Breytenbach memorandum in her answering affidavit in the *FUL* matter. In the founding affidavit in the present matter, the GCB suggested that this failure to disclose the Breytenbach memorandum constituted an attempt to mislead the court and that suggestion found favour with the court a quo. However, FUL had obtained the Breytenbach memorandum and it formed part of its papers in the *FUL* matter. This is not clear form the record, but I accept that it was probably submitted with one of FUL's supplementary founding affidavits. Although Ms Jiba did not appear to be aware that the Breytenbach memorandum formed part of the papers, I accept that it is improbable that she intended to conceal the Breytenbach memorandum.

[50] However, this is not the end of the enquiry for present purposes. Ms Jiba stated in her answering affidavit, in the *FUL* matter, that the decision of Mr Mrwebi 'had not been brought to my office for consideration in terms of the regulatory framework' and that she had not received a request to review the decision by a person whom she considered to be relevant. She went so far as to say that to 'descend into the arena without any representations being made to my office' would prejudice Mr Mdluli or any other interested party.

[51] A different picture emerged from Ms Jiba's answering affidavit in the present matter. First, she said that immediately after she learnt that the charges against Mr Mdluli had been withdrawn, she called for a briefing by Mr Mrwebi and Mr Chauke (who had withdrawn murder charges against Mr Mdluli) and was satisfied with the reasons that were advanced for the withdrawal of the charges. Thus, Ms Jiba in fact did review or reconsider the withdrawal of the charges.

[52] Second, Ms Jiba elaborated as follows in respect of the Breytenbach memorandum:

G.S.M

'135. I deny that the memorandum received from Adv Breytenbach, was from a person or party that I considered relevant or was obliged to consider relevant. It therefore did not constitute representations from a person contemplated by the provisions of section 22(2)*(c)* of the NPA Act, or at all. It was a document from a prosecutor who failed to execute tasks assigned to her by her superior. Pursuant to the suspension of Adv Breytenbach another team of prosecutors was appointed to take the case forward, namely Adv Becker and Adv Viljoen. There were memoranda submitted by these prosecutors in terms of which the opposite view was expressed.'

[53] This view about the Breytenbach memorandum could not have been honestly held. Ms Breytenbach was the regional head of the Specialised Commercial Crime Unit in Pretoria. This memorandum was submitted by 'the lead prosecutors in the matter'. In their 24 page memorandum they made a persuasive case that Mr Mdluli should be prosecuted on the fraud and corruption charges relating to the motor vehicle transactions. The Breytenbach memorandum was certainly worthy of consideration. The statement that it emanated from a person that was not and should not have been considered relevant, is simply spurious.

[54] Third, after the answering affidavit of Ms Jiba in the present matter had been filed, the GCB requested copies of the memoranda by advocates Becker and Viljoen, in terms of the provisions of rule 35(12). Only one memorandum, dated 25 June 2013, was produced. It did not at all convey that the prosecution of Mr Mdluli should not proceed. It only conveyed that the investigation of the fraud and corruption charges in respect of the motor vehicle transactions and four other matters of similar nature, had not yet been concluded. Thus Ms Jiba's evidence was untruthful in all three of these respects.

[55] The matters that I have mentioned extend beyond mere incompetence or unsuitability for the position of ANDPP. First, they demonstrate a serious lack

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SEQ 29/2021-939

of appreciation or disregard of the duty of an advocate to be of assistance to the court and to uphold the administration of justice. The fact that Ms Jiba was a litigant in official capacity in these matters is no excuse. That was all the more reason for her to conduct the litigation with the utmost trustworthiness and integrity. Second, in all three matters Ms Jiba gave untruthful evidence under oath and thus displayed dishonesty and a lack of integrity.

[56] The importance of legal practitioners being scrupulously honest in their dealing with the court has been stressed time and again in this country – see eg *Toto v Special Investigating Unit* 2001 (1) SA 673 (E) at 683A-F and the cases there cited. As the court stressed in *Kekana* at 655G-656B, in our system of justice the courts should be able to rely absolutely on the word of practitioners, and for that reason there is a serious objection to allowing a practitioner who is untruthful, and deceives or attempts to deceive a court, to continue in practice. What is also relevant, but was not taken into account by the court a quo, is that Ms Jiba has persisted throughout these proceedings with a denial under oath of misconduct on her part. This shows a lack of insight into what she did wrong. In itself it is an important factor which refers adversely on her character, and is a weighty consideration in militating against any lesser stricture than her removal from the roll – see *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 539B-C.

[57] As is mentioned in more detail below, the GCB is the watchdog of the profession. As such, it bears an onerous duty owed to the public at large to ensure that practitioners meet the high standards of integrity expected of them. Instead of recognising the importance of the functions the GCB carries out as *custos morum* of the profession, she berated it. She alleged, inter alia, that the GCB had displayed 'double standards', that the founding affidavit of the GCB 'seeks deliberately to mislead the court and indeed the public' and that the application 'is therefore misconceived, mischievous and is designed to

GSM

embarrass me.' All these allegations are unsubstantiated. None of this is consistent with the high standards of integrity expected from a practicing advocate.

[58] For the aforementioned reasons I am not persuaded that the court a quo erred in finding that Ms Jiba was not a fit and proper person to practice as an advocate. In fact the reasons to do so are more extensive than those relied on by the court a quo. There is therefore not only no reason to interfere with the exercise of the discretion of the court a quo in respect of the appropriate sanction, but in my view it was correct in ordering Ms Jiba's name to be removed from the roll.

Mr Mrwebi

[59] Mr Mrwebi was a Special Director of Public Prosecutions and headed the Specialised Commercial Crime Unit of the NPA. As I have said, he was directly responsible for submitting the record of his decision in the *FUL* matter. He failed to file a proper record and did not deliver his answering affidavit in time. He gave no acceptable explanation for these failures. On his own evidence he took no interest in these aspects.

[60] These instances of unreliability must be also viewed in the light of what follows. Mr Mrwebi said that he took the decision to withdraw the fraud and corruption charges against Mr Mdluli on 5 December 2011, after he had spoken to Mr Mzinyathi earlier that day. He recorded the reasons for his decision in a memorandum which he said was incorrectly dated 4 December 2011. In the memorandum he expressed scepticism in respect of the merits of the charges, but said that this was unimportant in view of his conclusion. His conclusion was that 'the offences for which Mdluli was charged fall squarely within the mandate' of the Inspector-General of Intelligence (IGI) in terms of the

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Intelligence Services Oversight Act 40 of 1994. He concluded that the prosecution of Mr Mdluli could therefore not continue and that the investigator should advise the complainants to refer the complaint to the IGI.

[61] On 22 January 2013 Mr Mrwebi testified in disciplinary proceedings instituted against Ms Breytenbach, after her suspension from office during April 2012. His evidence under cross examination in respect of his engagement with Mr Mzinyathi presented a sorry picture. He acknowledged that s 24(3) of the NPA Act required the agreement of Mr Mzinyathi in order for the charges to be withdrawn. He then attempted to say that he did reach such agreement with Mr Mzinyathi on 5 December 2011. Then he referred to this as a '50/50 agreement'. Thereafter he referred to it as 'substantial' agreement. However, earlier in his evidence he said that at their meeting, on 5 December 2011, Mr Mzinyathi had expressed the view that there was a *prima facie* case against Mr Mdluli. Mr Mrwebi eventually conceded that Mr Mzinyathi did not agree to stop the prosecution at all.

[62] This part of the evidence reads as follows:

'ADV TRENGOVE: He did not agree to stop the prosecution at all. Correct?

ADV MRWEBI: No, in respect of certain issues.

ADV TRENGOVE: He did not agree to stop the prosecution at all.

ADV MRWEBI: In respect of certain issues.

ADV TRENGOVE: What do you mean by that?

ADV MRWEBI: He identified, he agreed with me in terms of the problems that there were that . . .

ADV TRENGOVE: Did he agree to stop the prosecution?

ADV MRWEBI: The decision was mine.

ADV TRENGOVE: Did he agree to stop the prosecution?

ADV MRWEBI: Okay let's say he did not agree to stop the prosecution.

CHAIRPERSON: Is that your answer?

ADV MRWEBI: That's my final answer.'

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Notwithstanding this, Mr Mrwebi thereafter recanted by saying that he believed that he had reached substantial agreement with Mr Mzinyathi on 5 December 2011. This prompted counsel to say that he would submit to the chairperson of the enquiry that this evidence was patently dishonest. That would indeed be a proper description of his evidence.

[63] By then Mr Mrwebi must have realised that his decision would not withstand scrutiny. As an officer of court he should have conceded this. But Mr Mrwebi persisted in opposing the relief claimed in respect of his decision in the *FUL* matter. In his answering affidavit in that matter he glossed over his conversation with Mr Mzinyathi on 5 December 2011. He then said that at his subsequent meeting with Mr Mzinyathi and Ms Breytenbach, on 9 December 2011, they both agreed with him that there was a serious defect in the case against Mr Mdluli on the merits. This was not only irrelevant, as the decision to withdraw the charges had been taken on 5 December 2011, but was emphatically shown to be untrue by the evidence of Mr Mzinyathi and the conduct of Ms Breytenbach.

[64] In his answering affidavit in the present application, Mr Mrwebi repeatedly said that on 5 December 2011 he had been under the impression that he was only required to speak to Mr Mzinyathi in order to comply with s 24(3) of the NPA Act, and that it had not been necessary to obtain his approval. This directly contradicted his evidence at the disciplinary hearing.

[65] It is quite astonishing that a Special Director of Public Prosecutions could have held the view that the investigation of fraud and corruption charges relating to motor vehicle transactions fell within the functions of the IGI. When Mr Mzinyathi and Ms Breytenbach questioned this during their meeting with Mr Mrwebi on 9 December 2011 (they had spoken to the legal advisor of the

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IGI on the previous day), Mr Mrwebi intimated that his withdrawal of the charges on 5 December 2011 should be regarded as provisional, pending further investigation.

[66] On 26 March 2012 a letter from the office of the IGI to the Acting National Commissioner of the SAPS, dated 19 March 2012, was handed to Mr Mrwebi. This letter conveyed the following clear position:

'1. We refer to your letter of the 22 February 2012 wherein you requested an opinion on the reasons advanced by the National Prosecuting Authority for the withdrawal of the criminal charges against Lt General Mdluli.

2. In response to the Memorandum of Adv Mrwebi of the 4 December 2011 we advise as follows:

2.1 The Inspector- General of Intelligence (IGI) derives her mandate from the Constitution of the Republic of South Africa, 1996 and the Intelligence Services Oversight Act, 1994 (Act 40 of 1994) which provides for the monitoring of the intelligence and counter- intelligence activities of the Intelligence Services,

2.2 Any investigation conducted by the Inspector-General is for the purposes of intelligence oversight which must result in a report containing findings and recommendations;

2.3 The mandate of the IGI does not extend to criminal investigations which are court driven and neither can IGI assist the police in conducting criminal investigations. The mandate of criminal investigations rests solely with the Police;

As such we are of the opinion the reasons advanced by the NPA in support of the withdrawal of the criminal charges are inaccurate and legally flawed. We therefore recommend that this matter be referred back to the NPA for the institution of the criminal charges.'

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[67] Without any further investigation or engagement, Mr Mrwebi responded in writing to General Dramat of the SAPS on 30 March 2012 'that my decision to instruct the withdrawal of the charges still stands and that the matter is closed'. His subsequent explanation of this conduct, namely that it had been agreed on 9 December 2011 that there was a serious defect in the case and that nothing changed thereafter, has been shown to be false. The inference is irresistible that Mr Mrwebi had throughout used his senior position in the prosecutorial service to advantage Mr Mdluli and to ensure that he not be prosecuted.

[68] As already set out, Mr Mrwebi lied about the events of both 5 and 9 December 2011 and abused his position. Not only has Mr Mrwebi shown himself to be seriously lacking in integrity, but has failed in these proceedings to have taken the court into his confidence and fully explained his actions. All of this hallmarks him as a person unfit to practice as an advocate, particularly in the light of the authorities already referred to when dealing with Mr Jiba. I have no hesitation in endorsing the order of the court a quo that Mr Mrwebi should be struck from the roll of advocates.

Cross appeal

[69] The GCB cross appeals against the following order of the court a quo:

'The case against Mzinyathi (third respondent) is hereby dismissed with costs, such costs to include the costs of two counsel up to the stage when the applicant (GCB) indicated that it will not persist against the third respondent.'

The GCB submits that no order should have been made in respect of the costs of Mr Mzinyathi.

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[70] In the *FUL* matter, Murphy J made findings in respect of the credibility of Mr Mzinyathi that required serious consideration of whether he was a fit and proper person to continue to practice as an advocate. Murphy J *inter alia* said:

'Taking account of how it was placed before the court by Mzinyathi, after FUL's heads of argument were filed, without explanation for its lateness, and its inconsistency with his testimony at the disciplinary hearing, that he was presented with a *fait accompli* and was unable to influence the decision because Mrwebi claimed to be *functus officio*, this evidence of the DPP of North Gauteng, to the effect that he ultimately concurred, must regrettably be rejected as un-creditworthy. The affidavit is a belated, transparent and unconvincing attempt to re-write the script to avoid the charge of unlawfulness.'

These findings formed the heart of the complaint against Mr Mzinyathi in the present application.

[71] In his answering affidavit in the present application, Mr Mzinyathi explained the circumstances of his involvement and the context of his affidavit in the *FUL* matter. In the result, the GCB did not engage with the answering affidavit in its replying affidavit and at the hearing in the court a quo declared that it left the matter of Mr Mzinyathi in the hands of the court.

[72] The GCB is the *custos morum* of the profession of advocates, in the public interest, in much the same manner that the Law Societies act as the guardians of the attorneys' profession. As such it brings matters of alleged misconduct of advocates to the attention of the court. The nature of an application by the GCB to strike an advocate from the roll of advocates is a disciplinary enquiry conducted by the court. In these *sui generis* proceedings the GCB is therefore not in the position of an ordinary litigant. See *Society of Advocates of South Africa (Wits Division) v Edeling* 1998 (2) SA 852 (W) at 859G-I. For these reasons our courts have over many decades recognised the principle that unless the GCB had acted irresponsibly in bringing a disciplinary matter to the attention of the court, the GCB should not be mulcted in costs,

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SEQ 29/2021-946

even if the court decides that the practitioner should not be struck from the roll or suspended. See the remarks of Tindall J in *Incorporated Law Society v Taute* 1931 TPD 12 at 17, approved by this court in *Botha v Law Society, Northern Provinces* [2008] ZASCA 106; 2009 (1) SA 227 (SCA) para 22.

[73] It was with explicit recognition of this principle that counsel for Ms Jiba submitted that no order as to costs should be made in the event of her appeal being successful. The court a quo was not alive to this principle and therefore misdirected itself. The GCB cannot be faulted for bringing the findings of Murphy J to the attention of the court. It was its duty to do so. Even though the answering affidavit of Mr Mzinyathi in the present application appeared to contain an acceptable explanation of the criticisms of Murphy J, it was not for the GCB to assume the function of the court and determine that the proceedings in respect of Mr Mzinyathi should terminate. Its decision to leave the matter in the hands of the court, was principled and responsible. In my judgment the GCB should therefore not have been ordered to pay Mr Mzinyathi's costs.

[74] I would therefore make the following order:

1 The appeal of the first appellant (Ms Jiba) and the second appellant (Mr Mrwebi) are dismissed, and they are in each instance to pay the costs of the respective appeal, such costs to include the costs of two counsel.

2 The cross appeal of the GCB in the case of the third respondent a quo, Mr Mzinyathi, is upheld with costs of two counsel, and para 1 of the order of the court a quo is altered to read as follows:

'The case against Mzinyathi (third respondent) is dismissed with no order as to costs.'

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C H G Van der Merwe

Judge of Appeal

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Appearances

For the First Appellant:	N Arendse SC (with him T Masuku and S Fergus) Instructed by: Majavu Inc. Attorneys, Johannesburg; Rampai Attorneys, Bloemfontein.
For the Second Appellant:	M Rip SC (with him R Ramawele SC) Instructed by: A M Vilakazi Tau Attorneys, Pretoria; Lovius-Block, Bloemfontein
For the Appellant and Respondent in Cross-Appeal:	S Burger SC (with him N T Mayosi) Instructed by: Magaga Inc. Attorneys, Pretoria; Honey attorneys, Bloemfontein.
For the Respondent in Cross-Appeal:	D B Ntsebeza SC (with him S X Mapoma) Instructed by: Bernhard van der Hoven Attorneys, Pretoria; Rosendorff Reitz Barry, Bloemfontein.

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OFFICIAL TRANSLATION

Certified true translation / copy
Johannesburg, the ..... day of 12 OCT 2018
MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Case No: 2008/8872

HELLENIC (GREEK) REPUBLIC
ATHENS COURT OF FIRST INSTANCE
SPECIAL INVESTIGATIVE DEPARTMENT
OF INTERNATIONAL JUDICIAL ASSISTANCE

Address: Former Military Academy
Building no 9, Office no 127, street code 113-62
Telephone & Fax No: 210-8840621

WITNESS SWORN TESTIMONY REPORT

In Athens today, **Monday, October 24, 2016**, at 15:14 appeared before the Special Investigator of the International Judicial Assistance, Panayiotis Karakonstantis, President of the Court of First Instance, and the Secretary Adamantia Mitronika, a witness who replied that he was called ***Aristides (also known as ARISTIOLIS – also known as Aris) DANIKAS son of Vasilios (Basil),*** born in Amaliada on 25-03-1971, an entrepreneur, holder of no. 457793122 Passport issued by the South African Authorities, a Greek and Christian Orthodox. He was informed that he was considered as a witness in the framework of the International Judicial Assistance to the South African Authorities, which was forwarded to us under the Government Gazette No. 18199 File of International Judicial Assistance 5493/16 of the Athens Court of Appeal in accordance with the provisions of articles 457, 458§1, 2 and in accordance with the provisions of the Hague Convention on Mutual Assistance in Criminal Matters (1961) and the Additional Protocol thereto. He was sworn in by a political oath, in accordance with Article 218 (4) and 219 of the Code of Criminal Procedure, and stated the following:

I am appearing today before you, as I have been informed that the authorities of South Africa, of the country I have been living for 20 years, have sent a request for legal assistance on a criminal case of extreme importance.

I, the undersigned Marilena E.M. Piperides, sworn translator of the Supreme Court of South Africa, hereby certify that the above translation of the attached document, a Sworn Examination Report of a Witness, is true and correct. Reg. No: 2008/8872. In Johannesburg, the 12th of October 2018.

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OFFICIAL TRANSLATION

I hereby certify that the above statement was received by me and that the witness read and understood the content of the affidavit. The witness signed this affidavit in my presence in Athens on the 24th of October 2016.

DATE: 24 October 2016

TIME: 14:30

PLACE: The Office of the Special Investigator of International Judicial Assistance, Building 9, office 127, Court of First Instance in Athens, street code 113 62.

THE INVESTIGATOR

Αθήνα, ΤΚ 113 62

..... Ο ΑΝΑΚΡΙΤΗΣ

ΠΛΗΡΕΣ ΟΝΟΜΑ: Παναγιώτης Νικολάου Καρακωνσταντής.

ΕΠΑΓΓΕΛΜΑΤΙΚΗ ΔΙΕΥΘΥΝΣΗ: Πρωτοδικείο Αθηνών, ΤΚ 113 62.

ΒΑΘΜΟΣ: Πρόεδρος Πρωτοδικών

NAME & SURNAME: Panayiotis son of Nikolaos Karakonstantis

BUSINEES ADDRESS: Court of First Instance in Athens, code 113 62

TITLE: President of the First Instance Court

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OFFICIAL TRANSLATION

I would like to say that I have already met with South African officials at the Embassy in Athens and have explained to them in detail what exactly has happened in South Africa. I repeat that I am requesting to be included in the witness protection programme and I am also requesting assistance regarding my own safety and my family's security. I have even sent the South African Authorities a special request to do so. As I am afraid of my life, as an address, I declare the address of my lawyer named Spyridon Spyropoulos, with bar registration number 2461. His address is, Athens Academy of Law, 60 Academias street, Athens, street code 10679, tel. 210 3398102. The email of my lawyer is saspyropoulos@gmail.com and his personal phone number is +30 6977 943 138.

I wish all correspondence addressed to me and calls to me to be sent to the above address for the attention of my lawyer.

Furthermore, regarding the case I am stating the following:

Official Stamp of the Hellenic Republic, Athens Court of First Instance, and signatures follow.

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OFFICIAL TRANSLATION

1.

I, Aris Danicas, 45 years of age, a former member of Technotronic Electronics in South Africa, would like to make the following statement regarding the criminal offense of members of the Cato Manor Organized Crime Unit, which I witnessed as a volunteer policeman in the unit since 1999 up to 2008. I would like to stress my deepest concern that this statement, which describes the criminal acts that I have witnessed, could put my own life and the life of my immediate family, including my wife's relatives in South Africa, in danger and I make this statement on the agreement that the South African authorities will do their part to ensure the safety and security of my immediate family and myself.

Furthermore, I am deeply concerned that the description of these acts will make me a target of false accusations and will involve me in the crimes of the members of the Cato Manor unit, of which I was a witness but not a member of them. It should also be stressed that any misconduct in order to compromise my credibility and the blurring of my character will be compounded by the very people who committed the crimes I have witnessed and who are also officers of the police and who possess the means to counter the evidence against me. Therefore, I make this statement on the agreement that I will be protected legally and be ensured against these attempts to falsely involve me in any crime. I also accept to be examined as a witness, but not in South Africa, only by video communication and only after we have been offered Witness protection.

2.

In the 1990s, I helped the police to arrest a number of shop robbers and I was asked by Major-General Booysen to be a reservist, after a meeting that had followed between us. He then told me that he would take me to his own unit under his protection and that I would never have to wear a uniform or serve in a police station and that he would use me only in his own very and of high standards unit, as I was considered in my community a specialist in electronics due to my work and expertise in the field.

3.

All applications were completed by the unit's secretary. All approvals and certificates of criminal records, as well as my applications, were completed by Major-General Booysen himself.

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OFFICIAL TRANSLATION

4.

Major-General Booysen personally transported me in his car to the various government departments in order to submit the relevant applications. He also had a serious disagreement with the Commander of the Police Department, where I had been booked as a reservist, because from the first day of my registration, Major-General Booysen ordered my transfer to the Cato Manor Unit.

5.

I have submitted all my detailed records of the case files from 2000 to 2008 to an electronic file I handed over to Lieutenant – General Mabula. These are the same records that I filed twice a month at Major-General Booysen's office at the Provincial Headquarters. The same records were also collected personally once a month in person by Police Officer B 'Mitchell, who was working at the central office of the reservists under the command of the Police Chief Officer Kennedy.

6.

I have never been paid for my term of office as a police reservist. In addition, I have been injured on duty many times and received medical care at the expense of the State. As a result, I have permanent injuries to my back, knee and neck.

7.

I have been given police firearms such as a 9-mm Beretta parabellum, which was given to me permanently with a special permission from Booysen's office, and I was also given, a pepper spray, handcuffs, a police siren, a safety vest, a police light for my private car, a police radio transmitter, and a common crime scene investigation kit, like the one that all the members of the unit had in their vehicles. I have in my possession letters signed by Booysen himself, which authorize all the above concessions. When I was called to join operations in my field of expertise, I was also assigned a R5 rifle for the duration of the mission.

8.

I had been trained in firearms handling, Special Units methods and in crime investigation procedures. The members of the Cato Manor Unit usually wore regular clothes.

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OFFICIAL TRANSLATION

9.

At that time, I was a very close friend of the Major-General Booysen's family.

I sold to him electronics from my store at a discounted price, I gave for free electronics from my store to him and his family, and I did a lot of repairs without any charge and spent a significant amount on other gifts and entertainment for him and his family. Major-General Booysen generally had the requirement of me to entertain him and his family at my own expense in return for my protection from criminals, to give him my apartment to use during his private moments with his mistresses. He would call it: "A FAVOR FOR A FAVOR". He had similar agreements with other businessmen I knew. He always demanded some type of favor from these businessmen and, in return, arranged for his team from the Cato Manor unit to protect these businesses and to sort out any problems that the businessmen might had with the law or security. For example, during the most instances that I was traveling to Greece, Booysen posted a Cato Manor police officer to guard the premises of my business for as long as I was away. Some of the police officers who guarded my store were Shane Naidoo and Panday Viresh. When I had to send my wife to the bank with a large sum of cash, Booysen would send armed members of the Cato Manor unit to escort her to the First National Bank at Musgrave. When Interpol and FBI members arrived in Durban, Booysen ordered me to meet them for lunch and dinner at a Greek restaurant and expected me to cover all the costs so that he looked good. When Booysen wanted to buy a Mercedes Benz from a local dealer in Durban, he asked me to call the owner of the company (a wealthy Muslim and a member of the family who owned the NMI dealership) and pass him the message that he wanted to buy a good car at a good price, in exchange for help from the members of the Cato Manor unit in the event of theft or hijacking of the cars of his dealership.

10.

Major-General Booysen was responsible for some of the incidents that occurred at the Cato Manor Organized Crime Unit. He was always called on high profile incidents and any serious shooting incident involving the murder of suspects by his members.

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OFFICIAL TRANSLATION

11.

Other times, he would arrive after a shootout when many suspected criminals were killed. If the shooting episode was near driving by car, he would always drive there and on many occasions he would call me to meet him there as well. He often asked me to make use of my siren in order to get to the crime scene faster. Following orders by Major-General Booysen, in several occasions I also received photographs from the scene of the crime before the arrival of the official photographer of the forensic laboratory. These photos are available for examination.

12.

I was useful to him (Major-General Booysen) since I had shown to the unit that I was observant with details and could use my own latest technology equipment exclusively for the unit in the crime scene.

13.

I sometimes escorted Major-General Booysen just for companionship, sometimes he was too drunk to drive, so I was driving him with the car to a certain crime scene. I have recorded a particular case where Major-General Booysen was in my house when he was called to a triple murder crime scene and followed him, with my own car behind Major-General Booysen' s car, who led to the scene of the crime. At the time, he was drunk and caused an accident going through a red robot in the Musgrave area. From there on, he proceeded to attack the driver of the other vehicle involved in the accident, and I was obliged to physically hold Major-General Booysen from attacking the other man. Then, I drove to the crime scene with him in my car. Previously, he had managed to drive his damaged car back to my house. The photograph of the damaged car parked outside my house is at your disposal. After the incident, an insurance investigator, who was a former police officer called me and questioned me regarding the car accident, but I had already received orders from Major-General Booysen to lie to him and cover up the fact that Major-General Booysen was drunk at the time of the accident.

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OFFICIAL TRANSLATION

14.

Major-General Booysen was very proud and passionate about the work of the Cato Manor Unit and the fact that they were shooting "criminals". His favorite phrase was, "I can make people disappear." By the way, the African suspect who was wanted for his connection to the above triple murder was shot and killed by his members, and the Second Officer Mossie Mostert proudly gave me digital photos while being in my business. These photos are stored on my computer and are at your disposal.

15.

In October 2001, I was having dinner with Major-General Booysen at the News Cafe in Musgrave Shopping Center in Durban. Major-General Booysen showed me a photograph of a suspect who had escaped, who he claimed to have faxed threatening material to senior justice officials who had previously in the past convicted him of various crimes. Major-General Booysen identified the suspect as "Jabulani" and told me that if I saw the man in the photograph, I would have to plant a bullet in his head. I asked him why. He told me that an order had come from very high, from the judiciary circles, that he should not be captured alive, as he would escape from the prison again. He said that the man was a member of a house burglary that he was out of control and raped women during the burglaries. After his arrest and escape, the members of his gang themselves began to turn against him and gave information to the police about his activities and his whereabouts.

16.

On October 18, 2001 at 12:30 pm Major-General Booysen invited me to participate in a mission. This happened either the same afternoon when I and Major-General Booysen were dining at the News Café, or one or two days later. I recall this date in my memory by consulting my records as I will never forget what happened that day, since it was my first field operation where a death had taken place.

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OFFICIAL TRANSLATION

I do not remember if I drove to some collection point with the rest of the police, or if I was picked up from my house. Major-General Booysen invited me to drive with him in his car to a small town. I think it was called Umlazi. We were followed by quite a few members of the Cato Manor unit in discreet vehicles. Major-General Booysen remained in the car and I participated with the other members in conducting raids in homes to search for suspect Jabulani. Major-General Booysen took me there as a member of the unit. That night I was armed with a gun, as well as my own weapon.

17.

More than ten members arrived at the suspect's home. I cannot remember who used what kind of weapon. What I remember is that, Jeremy Martin had an automatic police rifle. I saw Jeremy Martin kicking the door. At that moment I was near the entrance of the house and could see a woman and children lying on a bed. Martin dragged the suspect out of the house in the rain, wearing only a dark underwear, and we stood around him in a circle, while Martin was trying to put on him his handcuffs. I remember that this person was Jabulani. He was lying down on his stomach. Suddenly Martin ordered the suspect to stop moving after he got him handcuffed and moved towards him and grabbed him. The suspect and Jeremy then slipped along a 2-3 meter downhill outside the circle. At that moment, another policeman, I think he was called Eddie van Rensburg, told me in abusive language to "leave from there". Then I heard shots and the suspect was dead. I personally believe that up to the moment of his death, the suspect was not armed. Major-General Booysen was the general commander of the operation. I remember that, after the shots, I phoned Major-General Booysen, who the last time I saw him, was standing at a distance on the hill in his car, next to the rest of the parked cars of our unit. Then, in the morning, he came to the place where we were and congratulated the members of the unit. The members that were present at the point where the incident happened as well as Jeremy Martin, they, later claimed that the suspect had a weapon hidden somewhere nearby, a claim I seriously questioned as he (the suspect) was surrounded by more or less 10 police officers armed with rifles. The next day I was having dinner with Major-General Booysen, and I remember expressing my concern about this, but he replied that I just imagined the facts and that this was a clear case of resistance to arrest, and that the suspect was trying to shoot the police officers.

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OFFICIAL TRANSLATION

18.

I remember an incident where I used Major-General Booysen's gun to shoot a suspect. The incident happened at my store in Durban in 2001.

19.

My act was fully justified, because I stopped an armed robber who had attempted to kill a security guard and myself, after he had robbed my shop and threatened with a gun, me, a member of my staff, Major-General Booysen and his 16-year-old daughter. Major-General Booysen pulled his gun out of his case which he had on his ankle but froze, so I grabbed the gun out of his hands and ran after the armed robber. Then I saw that the armed robber tried to shoot the guard named Charles, with my own pistol, which he had removed earlier. He also turned against me. I shot two low shots and injured the robber. I shot low as I did not want to injure the passers-by.
The importance of referring to this incident, is because Major-General Booysen had altered the scene of the crime by ordering me to change my testimony to cover his cowardice and the fact that he, a senior police officer, had allowed me to use his weapon at a scene of a crime. He also threatened the investigator police officer Jack Muller, who did not want to change my original testimony. When I handed a copy of the armed robbery from my company's security recording system over to a newspaper journalist, and after the journalist published a negative commentary with the title, "Top Police Officer, a hero or a coward?", I was threatened by Major-General Booysen and the journalist who wrote the article was fired and from fear changed city.

20.

On February 26, 2004, I called Cato Manor police officers to come to my Technotronic store on Smith Street to arrest a guy who came to get a stolen laptop.

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OFFICIAL TRANSLATION

20.

The suspect was taken to the Cato Manor police station. I accompanied them, as I was the policeman who arrested him, and I wanted to take part in the investigation. It was also a way to accumulate more duty hours, as every search that I was conducting, it had to be done officially during duty hours. At the offices of the Cato Manor Serious and Violent Crimes Unit, they undressed the suspect, tied him to a chair, and went to the torture of drowning and hitting him. I remember that among the members that were present were, RC Maharaj and Varesh Panday. I recorded the incident secretly, using one of the first generation smart camera phones. At that moment, the unit members did not know that the phone had a camera. I pretended to have made a call and recorded the torture, because I realized that this was wrong and I had do something about it. This recording has been copied from my phone to my files and I handed it to Lieutenant–General Mabula. When I later showed the recording to Major-General Booysen, he just laughed and said to me "that's how things are done to get results." He also warned me not to show it to anyone as I would find myself in trouble. He asked me for a copy and a color photo of a specific snapshot that showed Viresh Panday, and told me that he wanted it in order to incriminate Panday, with whom he had personal differences. As far as I know, he had never pursued any disciplinary action against the members of his team, but I believe he warned them of the possibility that I would record the tortures in the future, because since then, they would avoid taking me with them in the interrogations. In 2008, I left South Africa due to the threats I was getting for my life and the sudden pressure I received from Booysen when members of his unit appeared in my home to suspend me and take my gun away, placing in this way my life at risk because, after hundreds of arrests of suspects at my business premises, I had been targeted by various criminals.

When I arrived in Greece at the end of 2008 and I felt secure, I tried to get in touch with various Government bodies and with various journalists to inform them of the tortures and mistreatment that was taking place as I thought it was wrong. But no one seemed to be interested in publishing anything against Booysen, so I uploaded excerpts from the recordings on YouTube REGARDING THE CASE NO. 297/02/04 (ARCHIVE "torture in office").

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21.

On March 30, 2004, a drunken man harassed the owner of the Pie Shop next to my own shop on Smith Street. Major-General Booysen happened to be in my store, grabbed the suspect and dragged him into my store with my help (ARCHIVE workshop blood VIDEO 1). Major-General Booysen took the suspect at the back of my store, where I saw him attacking the suspect with his feasts and threw him down unconscious, leaving a lot of blood on the floor. Later on, members of the police arrived, and under the orders of Major-General Booysen, took away the suspect. Immediately after, it must have been the next day, Major-General Booysen either dictated to me or gave to me an affidavit, I do not remember what it was of the two. In this affidavit it was falsely reported that the suspect had attacked one of us and tried to murder one of us with a screwdriver in my store, I do not remember if the affidavit was referring to myself or to him. That never happened, but I was obliged to sign it as Major-General Booysen ordered me to do so to justify the use of excessive and unnecessary violence, {It refers to 30-03-04 15:45 30-03-04 1900 SUSPECT ARRESTED AT THE POLICE STATION ON BKOAD STREET).

22.

On 21 January 2006, Major-General Booysen came to my shop and I told him a story about his officers, when I was in a car with Willie Olivier and Eugene van Tonder, senior members of the Cato Manor unit. They were driving around Smith Street in one of the discreet government cars that had been assigned to Cato Manor unit with tinted windows. It could have been a black Lumina or a silver BMW. Van Tonder lowered the window slightly, and started shooting with an air gun against the passers-by, aiming in particular at black passers-by, for fun, laughing as he fired at them. I remember throwing a guy down from a bike and injuring some others, including women. When I told this story to Major-General Booysen, he described to me in detail how he and his colleagues often did this and that he himself had participated in this. He laughed as he told me this story. He also told me that an injured citizen had opened a case and gave the vehicle registration number from which the shots were fired, in which vehicle I was also in, and that this number belonged to the Cato Manor unit. Major-General Booysen said the complaint had been sent to his office and "had been already sorted". From this I realized that he had covered it. (see video 2).

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23.

On 27 October 2006, at around 9 am, four suspects were arrested at Durban Airport's arrivals section by members of the Cato Manor unit. Some of the members who were present during these arrests were: Major-General Booysen, Mostert, Van Tonder, Vick Panday, Peter George, Shane Naidoo, Mukesh Panday, Anton Lokum, Sgt R Lee. This arrest was also attended by Adele Sonnekus, who was invited there by Major-General Booysen. Those arrested were taken to the Cato Manor police station and were interrogated one by one. During this interrogation I was present. I was witnessing the interrogation and the subsequent torture of one of the suspects which happened during my presence and the presence of Major-General Booysen. After a short while, Major-General Booysen said he should not been seen by anyone there and left. Major General-Booysen later said to me that Mostert had shot and killed two of the suspects after the one of them attempted to hit him with a shovel. In addition, Major General-Booysen said to me that he arrived at the scene immediately after the incident and that one of the suspects was still alive, waiting for the ambulance to come. General Major-Booysen further said that he had bent in the ear of the suspect who was dying and whispered, "I told you I would kill you if you were trying to come back."

24.

In April 2007, Major-General Booysen and Adele Sonnekus visited me in my house after he had received a phone call from one of the members of his unit who had reported a shooting incident in Malvern. Adele Sonnekus was a police officer of the Provincial Organized Crime Unit and the secretary. During the day of that incident, she and Major-General Booysen visited my home. They had a love affair. We went to the crime scene where I saw several members of the Cato Manor unit. I found two African men lying in the garage of a house. One was shot and killed in the car and the other was injured and still alive, but was in great pain and bleeding heavily. Major-General Booysen said to me that they would call the ambulance and the Independent Complaints Directorate only if the second suspect died, so everyone waited around the second suspect to succumb to his wounds. I was able to use a video camera to record the crime scene in the presence of Major-General Booysen and the rest of the officers involved in the shootout. I was always allowed to record crime scenes for the unit and later it became clear that this was how journalists were bribed, by giving them

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my own photos as exclusive publications in exchange for favorable stories. But I came to the conclusion that they wanted the films for their own private collections as well. That day, when I realized that the robber would die, I focused my camera on him so I would later have a recording on how the unit left a suspect to die. Later (2009) I posted this video on YouTube. I was also instructed by Mostert and Olivier to collect from the floor a number of spent large caliber cartridge casings. After I put them in my pocket, I handed them over to Mostert and Olivier as they requested me to do (file: Suspect Malvin dies). When I told Major-General Booysen that this was wrong, he became aggressive towards me and told me that it was not Cato Manor's duty to provide medical care to the criminals.

25.

The suspect died after a few minutes. I requested Major-General Booysen to call an ambulance three times before the suspect died. This can be heard in the video. Later I was informed by Major-General Booysen that the driver of the police car with which the robbers escaped was a police informant and had given information at Cato Manor's office for the planned burglary, and that he had left after he had dropped off the suspects at the house that they intended to break in. The suspects then were shot and killed by the unit.

26.

When we left the scene of the crime with Major-General Booysen and returned to my house, I played the video in the presence of other acquaintances of mine and he gave me the specific order of getting rid of the video, otherwise I would have a serious problem. I chose to keep it and uploaded it on YouTube in 2009.

27.

On November 15, 2007 robbers who were part of a gang that stole jewelry and watches shot a police officer at the Pavilion Shopping Center in Durban. I went to the scene along with Major-General Booysen. Other members of the unit that I remember being present there were, Mostert, Olivier, Van Tonder, Peter George, Rakesh Maharaj, Mukesh Panday, and Shane Naidoo. I was with Major-General Booysen when the incident happened. We may have also gone together with the car. I helped

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the forensic team to spot the scene of the crime and to gather evidence. This is kept in my file and I also have the photos of the scene of the crime.

28.

On November 23, 2007, a Greek citizen, Kostas Svourakis, was arrested at O.R. Tambo Airport on a flight of Olympic Airways to Athens, who was in possession of many watches later identified as those stolen from the Pavilion Shopping Center one week earlier. The suspect was taken to the police station of Cato Manor unit that night and was interrogated for about two hours. I was called by Major-General Booysen to attend the scene in order to act as an interpreter. Other members of the unit I remember to be present there were, Mostert, Eugene van Tonder, Mukesh Panday and the reservist Vick Panday.

29.

I saw the suspect been stripped off his clothes and been tied up on a chair naked. Immediately afterwards he was tortured and beaten by Cato Manor members, who also put a bag over his head and pouring water over his head tried to make him drown until he confessed about the various crimes he was accused of. During the interrogation of Svourakis, I slapped him when Major-General Booysen asked him his name and tried to fool us, claiming that his surname was "Malakas", which is a Greek swear word and means "a masturbator". This happened at the beginning of the interrogation while they were around a table with Major-General Booysen. I have no involvement in the torture of the suspect.

30.

On May 24, 2008, I received a phone call from Mostert to help in a crime scene on 5th Avenue in Morningside, Durban, where a suspect was allegedly died while Mostert and members of the Cato Manor unit were trying to capture him. When I arrived at the place they showed to me a corpse on the ground and I was refused to enter into the scene of the crime by Olivier. Later, Mostert told me that he had tried to shoot the suspect while the suspect tried to climb out of the window and fell out. (Reference MAY 2008 24-25 1 100 TO 0100).

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31.

The methods used by the members of the unit were to strip the suspect off his clothes, and physically attack him until he confesses or gives information. They would tie him naked on a chair and interrogate him. (Relevant video.) They would put a piece of leather or plastic or a hood over the head of the suspect, always sitting behind the suspect, causing in this way suffocation. The suspect could not really see who was attacking him. A standardized method was always used, that is, they shot to kill, hurt, tortured, altered the scenes of crime. Major-General Booysen was called by his members to the crime scene to confirm and manipulate the scene. I was present in some of the cases I mentioned earlier, when I was accompanying Major-General Booysen to the crime scene and ordered Major-General Booysen in front of me to his members to collect all the spent police rifle cartridge casings and hand them over to the responsible officer investigating the case. This usually happened after Major-General Booysen had arrived at the scene of the crime.

I would also like to testify that I have discussed my concerns regarding Major-General Booysen with Commissioner Pat Brown, the Head at that time of the Provincial Headquarters Investigators and his wife Tilly, who were close friends of mine. They warned me to be very careful with Booysen, as he was a very dangerous man and could harm me.

I would further like to testify that I had many personal conversations with Lettissa Booysen, ex-wife of Booysen and a close friend of mine, who had also warned me that Booysen was a very dangerous man and had destroyed the lives of many people and that he could hurt me seriously. The same message was given to me by Booysen's children.

I UNDERSTAND AND ACKNOWLEDGE THE CONTENT OF THIS AFFIDAVIT, I HAVE NO OBJECTIONS TAKING THE NECESSARY OATH.

I CONSIDER THE OATH BINDING TO MY CONSCIENCE.

Signature of Witness:

..... ΥΠΟΓΡΑΦΗ ΜΑΡΤΥΡΑ

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I do not have anything else to add to this affidavit.

After having been read this affidavit, the contents herewith were confirmed and signed by the following:

The deponent	The Investigator	The Secretary
Ο ΚΑΤΑΘΕΣΑΣ	Ο ΑΝΑΚΡΙΤΗΣ	Η ΓΡΑΜΜΑΤΕΑΣ

The authenticity of the signature of the Investigator of the Special Department of International Judicial Assistance, Panayiotis Karakonstantanis, President of Athens Court of First Instance, was certified, in Athens, on 24/10/2016.

The President of the Three-Member Board of Administration
of the Athens Court of First Instance
p.p.
Stavroula Beltheka
Magistrate of Athens Court of First Instance

Πρωτοδικείο Αθηνών
α.α.

ΣΤΑΥΡΟΥΛΑ ΜΠΕΛΘΕΚΑ
ΠΡΩΤΟΔΙΚΗΣ

Certified true translation / copy
Johannesburg, the _____ day of 12 OCT 2018
MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Case No: 2008/8872

I, the undersigned Marilena E.M. Piperides, sworn translator of the Supreme Court of South Africa, hereby certify that the above translation of the attached document, a Sworn Examination Report of a Witness, is true and correct. Reg. No: 2008/8872. In Johannesburg, the 12th of October 2018.

GSM

Certified true translation / copy
Johannesburg, this 12 OCT 2018 day of
MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Case No: 2008/867

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΠΡΩΤΟΔΙΚΕΙΟ ΑΘΗΝΩΝ
ΕΙΔΙΚΟ ΑΝΑΚΡΙΤΙΚΟ ΤΜΗΜΑ
Διεθνών Δικαστικών Συνδρομών

Πρώην Σχολή Ευελπίδων
Κτίριο 9, Γραφείο 127, Τ. Κ.: 113-62
Τηλέφωνο και Φαξ: 210-8840621

copy
OCT 2018
PIPERIDES
Sworn Translator
South Africa

ΕΚΘΕΣΗ ΕΝΟΡΚΗΣ ΕΞΕΤΑΣΗΣ ΜΑΡΤΥΡΑ

Στην Αθήνα σήμερα Δευτέρα, 24 Οκτωβρίου 2016 και ώρα 15:14 ενώπιον του Ειδικού Ανακριτή Διεθνών Δικαστικών Συνδρομών, Παναγιώτη Καρακωνσταντή Προέδρου Πρωτοδικών και της Γραμματέως Αδαμαντίας Μητρονίκα εμφανίστηκε ο μάρτυρας ο οποίος απάντησε ότι ονομάζεται *Αριστείδης (aka ARISTIOLIS – aka Άρης) ΔΑΝΙΚΑΣ του Βασιλείου,* που γεννήθηκε στην Αμαλιάδα στις *25-03-1971*, επάγγελμα επιχειρηματίας, κάτοχος του υπ' αριθ. 457793122 Διαβατηρίου εκδόσεως Αρχών Νοτίου Αφρικής, Έλληνας και Χριστιανός Ορθόδοξος. Του ανακοινώθηκε ότι εξετάζεται ως μάρτυρας στα πλαίσια Διεθνούς Δικαστικής Συνδρομής των Αρχών της Νοτίου Αφρικής που μας διαβιβάστηκε δυνάμει του υπ' αριθμ. ΕΚΔ 18199· ΦΔΣ 5493/16 εγγράφου της Εισαγγελίας Εφετών Αθηνών σύμφωνα με τις διατάξεις των άρθρων 457, 458§§1, 2 και σύμφωνα με τις διατάξεις της Σύμβασης της Χάγης σχετικά με την αμοιβαία συνδρομή σε ποινικά θέματα (1961) και του πρόσθετου πρωτοκόλλου αυτής.
Ορκίστηκε με πολιτικό όρκο, κατά το άρθρο 218 παρ.4 και 219 του Κώδικα Ποινικής Δικονομίας και κατέθεσε τα ακόλουθα:

Εμφανίζομαι σήμερα ενώπιον σας καθόσον πληροφορήθηκα ότι οι Αρχές της Νοτίου Αφρικής, της χώρας στην οποία έζησα για 20 χρόνια έχουν αποστείλει αίτημα δικαστικής συνδρομής σχετικά με μια ποινική υπόθεση

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εξαιρετικής σοβαρότητος. Θα ήθελα να δηλώσω ότι έχω ήδη συναντήσει αξιωματούχους της Νοτίου Αφρικής στην Πρεσβεία στην Αθήνα και τους έχω εξηγήσει αναλυτικά τι ακριβώς είχε συμβεί στη Νότιο Αφρική. Επαναλαμβάνω ότι ζητώ την υπαγωγή μου σε καθεστώς προστατευόμενου μάρτυρα και την βοήθεια τους σχετικά με την ασφάλεια εμού του ιδίου και της οικογενείας μου. Έχω μάλιστα αποστείλει στις Αρχές της Νοτίου Αφρικής και ειδικό αίτημα προς τούτο. Επειδή φοβάμαι για τη ζωή μου ως διεύθυνση μου δηλώνω την διεύθυνση του αντίκλητου δικηγόρου μου ο οποίος ονομάζεται Σπυρίδων Σπυρόπουλος με αριθμό Μητρώου ΔΣΑ 24610. Η διεύθυνση του είναι Δικηγορικός Σύλλογος Αθηνών Ακαδημίας 60 Αθήνα με ΤΚ 10679 και τηλ. 210 3398102. Το email του δικηγόρου μου είναι saspyropoulos@gmail.com και το προσωπικό του τηλέφωνο είναι +30 6977 943 138.

Επιθυμώ όλη η αλληλογραφία και οι κλήσεις προς εμένα νά έρχονται στην ανωτέρω διεύθυνση υπόψιν του ως άνω δικηγόρου.

Περαιτέρω και σχετικά με την υπόθεση έχω να δηλώσω τα ακόλουθα:

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MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Case No: 2008/8972

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Εγώ, ο Άρης Δανάκας, ετών 45, πράην μέλος της εταιρείας Technotronic Electronics στη Νότιο Αφρική, θα ήθελα να κάνω· την ακόλουθη δήλωση σχετικά με την εγκληματική δράση μελών της Μονάδας Οργανωμένου Εγκλήματος Cato Manor της οποίας έγινα μάρτυρας ως άφαδρος εθελοντής αστυνομικός στη μονάδα από το 1999 έως το 2008. Θα ήθελα να υπογραμμίσω τη βαθύτατη ανησυχία μου πως αυτή η δήλωση η οποία περιγράφει τις εγκληματικές ενέργειες στις οποίες έχω γίνει μάρτυρας θα μπορούσε να θέσει τη δική μου ζωή και τη ζωή της άμεσης οικογένειας μου, περιλαμβανόμενων των συγγενών της συζύγου μου στη Νότιο Αφρική, σε κίνδυνο και πραγματοποιώ την παρούσα δήλωση επί της συμφωνίας πως οι αρχές της Νοτίου Αφρικής θα πράξουν ότι περνά από το χέρι τους ώστε να διασφαλίσουν την προστασία και την ασφάλεια της άμεσης οικογένειας μου και εμού. Επιπλέον, ανησυχώ βαθύτατα πως η περιγραφή αυτών· των πράξεων θα με καταστήσει στόχο ψευδών κατηγοριών και θα με εμπλέξει στα εγκλήματα των μελών της μονάδας Cato Manor, των οποίων ήμουν μάρτυρας αλλά χωρίς να έχω συμμετοχή σε αυτά. Θα πρέπει επίσης να τονιστεί ότι οι όποιες αναλήθειες με σκοπό την προσβολή της αξιοπιστίας μου και την κηλίδωση του χαρακτήρα μου θα είναι ενορχηστρωμένες από τους ίδιους τους ανθρώπους που διέπραξαν τα εγκλήματα των οποίων έχω γίνει μάρτυρας και οι οποίοι είναι επίσης αξιωματούχοι αστυνομικοί και κατέχουν τα μέσα να παρακοπήσουν τα αποδεικτικά στοιχεία εναντίον εμού. Συνεπώς, κάνω αυτή τη δήλωση επί της συμφωνίας ότι θα προστατευτώ νομικά και θα διασφαλιστώ έναντι αυτών των προσπαθειών να με εμπλέξουν ψευδώς σε οποιαδήποτε εγκλήματα. Επίσης δέχομαι να εξεταστώ ως μάρτυρας αλλά όχι στην Νότιζα Αφρική ,παρά μόνο με βίντεο επικοινωνία και αφού μας προσφέρουν προστασία Μαρτύρων.

Certified true translation / copy
Johannesburg, this 09 OCT 2019 day of 12 OCT 2019
MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Cato No: 2009/0872

G.S.M

Certified true translation / copy
Johannesburg, this ..... day of 12 OCT 2016
MARILENA E.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Case No: 2008/[illegible]

2.

Τη δεκαετία του 1990 βοηθούσα την αστυνομία να συλλάβει διαφόρους κλέφτες καταστημάτων και μου ζητήθηκε από τον Υποστράτηγο Booysen να γίνω έφεδρος, μετά από συνάντησή μας. Κατόπιν μου είπε ότι θα με έπαιρνε στη δική του μονάδα υπό την προστασία του και ότι δεν θα ήμουν υποχρεωμένος ποτέ να φορέσω στολή ή να υπηρετήσω σε αστυνομικό τμήμα και ότι θα με χρησιμοποιούσε μόνο η δική του εκλεκτή και υψηλού προφίλ μονάδα, μιας και θεωρούμην από την κοινότητά μου ειδικός στα ηλεκτρονικά, εξαιτίας της εργασίας μου στον τομέα.

3.

Όλες οι αιτήσεις συμπληρώθηκαν από τη γραμματεία της μονάδος. Όλες οι εγκρίσεις και τα πιστοποιητικά ποινικού μητρώου, καθώς και οι αιτήσεις μου, συμπληρώθηκαν από τον ίδιο τον Ύπτγο Booysen.

4.

Ο υπτγος Booysen με μετέφερε προσωπικά με το αυτοκίνητό του στις διάφορες κυβερνητικές υπηρεσίες για τις αιτήσεις. Είχε επίσης μία σοβαρή διένεξη με τον διευθυντή του Αστυνομικού Τμήματος , όπου είχα εγγράφει ως έφεδρος, διότι από την πρώτη μέρα της εγγραφής μου ο υπτγος Booysen διέταξε τη μεταφορά μου στη μονάδα Cato Manor.

5.

Έχω υποβάλλει όλα τα λεπτομερή αρχεία μου με τους αριθμούς τοποθέσεων από το 2000 έως το 2008 σε ένα ηλεκτρονικο αρχειο το οποίο παρέδωσα στον υπτγο Mabula. Πρόκειται για τα ίδια αρχεία τα οποία υπέβαλα μηνιαίως εις διπλούν στο γραφείο του υπτγου Booysen στο Επαρχιακό Αρχηγείο. Τα ίδια αρχεία συνέλεγε επίσης αυτοπροσώπως μία φορά το μήνα ο Αστυνόμος Β' Mitsel, ο οποίος εργαζόταν στο κεντρικό γραφείο των εφέδρων υπό τη διοίκηση του Αστυνομικού Διευθυντή Kennedy.

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6.

Ποτέ δεν έχω πληρωθεί για τη θητεία μου ως έφεδρος της αστυνομίας. Επιπροσθέτως, έχω τραυματιστεί εν ώρα καθήκοντος πολλές φορές και έλαβα ιατρική περίθαλψη με έξοδα της Πολιτείας. Ως αποτέλεσμα, έχω μόνιμα τραύματα στην πλάτη, το γόνατο και τον αυχένα μου.

7.

Μου είχαν δοθεί αστυνομικα πυροβόλα όπλα, οπως μία Μπερέτα parabellum 9χιλ.,η οποία μου είχε παραχωρηθεί μόνιμα με ειδική άδεια από το γραφείο του υπτγου Boosyen, μου είχαν επίσης παραχωρηθεί ένα σκρέι πιπαριού, χειροπέδες, μία αστυνομική σειρήνα,αλεξίσφαιρο γιλεκο , φαρος για το ιδιαιτικο μου αυτοκίνητο, ένας ασύρματος της αστυνομία και ένα κοινό κιτ έρευνας σκηνής εγκλήματος ,όπως αυτά που είχαν όλα τα μέλη της μονάδας στα οχήματα τους. Έχω στην κατοχή μου επιστολές υπογεγραμμένες από τον ίδιο τον Boosyen οι οποίες εξουσιοδοτούν όλες τις παραπάνω παραχωρήσεις. Όταν καλούμουν να μετέχω σε επιχειρήσεις πεδίου μου παραχωρούνταν επίσης ένα τουφέκι R5 για τη διάρκεια της αποστολής.

8

Είχα εκπαιδευτεί στο χειρισμό πυροβόλων όπλων, στις μεθόδους των Ειδικών Μονάδων καθώς και στις διαδικασίες διερεύνησης τόπων εγκλήματος. Τα μέλη της μονάδας Cato Manor φορούσαν συνήθως κανονικά ρούχα.

9.

Εκείνη την εποχή ήμουν πολύ στενός φίλος της οικογένειας του Υπτγου Boosyen.

Του πούλησα ηλεκτρονικά είδη από το κατάστημά μου με έκπτωση, χάρισα ηλεκτρονικά είδη από το κατάστημά μου σε αυτόν και στην οικογένειά του,καθως και εκανα διαφορες επισκευες χωρις χρεωση και ξόδεψα ένα αξιόλογο ποσό σε άλλα δώρα και διασκεδάσεις για αυτόν και την Οικογενεια του. Ο Υπτγος Boosyen γενικά

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Είχε την απαίτηση από εμένα να διασκεδάζω τον ίδιο και την οικογένεια του με δικά μου έξοδα με αντάλλαγμα την προστασία μου από εγκληματίες,να του παραχωρω χρηση του διαμερισματος μου για να το χρησιμοποιει σε προσωπικες του στιγμες με ερωμενες του. Το αποκαλούσε: "A FAVOR FOR A FAVOR (ΜΙΑ ΧΑΡΗ ΓΙΑ ΚΑΘΕ ΕΞΥΠΗΡΕΤΗΣΗ). Είχε παρομοιες συμφωνίες και με άλλους επιχειρηματίες που γνώριζα. Πάντα απαιτούσε κάποια χάρη από αυτούς τους επιχειρηματίες και, εις αντάλλαγμα, κανόνιζε η ομάδα του από την Cato Manor να προστατεύει αυτή την επιχείρηση και να ταιριαζει όποια προβλήματα είχε ο επιχειρηματίας με τον νόμο ή την ασφάλεια. Για παράδειγμα, στις περισσότερες περιπτώσεις που ταξίδευα την Ελλάδα για διακοπές, ο Booysen τοποθετούσε έναν αστυνομικό από τη μονάδα Cato Manor για τη φρούρηση των εγκαταστάσεων της επιχείρησής μου, για όσο διάστημα εγώ έλειπα. Κάποιοι από τους αστυνομικούς που φρουρούσαν το κατάστημά μου ήταν οι Shane Naidoo και Panday Viresh. Οταν έπρεπε να στείλω τη σύζυγό μου στην τράπεζα με ένα μεγάλο ποσό μετρητών, ο Booysen έστελνε ένοπλα μέλη της μονάδας Cato Manor να τη συνοδεύσουν στην τράπεζα First National Bank στην Musgrave. Όταν έφταιναν στο Ντέρμπαν μέλη της Ιντερπόλ και του FBI, ο Booysen μου έδινε εντολή να τους συναντήσω για μεσημεριανό και δείπνο σε ένα Ελληνικό εστιατόριο και είχε την απαίτηση να καλύψω εγώ όλα τα έξοδα, ώστε να φαίνεται εκείνος καλός. Όταν ο Booysen ήθελε να αγοράσει μία Mercedes Benz από έναν τοπικό αντιπρόσωπο στο Ντέρμπαν, μου ζήτησε να τηλεφωνήσω στον ιδιοκτήτη της εταιρίας (έναν πλούσιο μουσουλμάνο της οικογένειας των ιδιοκτητών της αντιπροσωπείας NMI) και να του παράσω το μήνυμα ότι, σε αντάλλαγμα για τη βοήθεια από τα μέλη της μονάδας Cato Manor σε περίπτωση κλοπής ή πειρατείας των αυτοκινήτων της αντιπροσωπείας του, ήθελε να αγοράσει ένα καλό αυτοκίνητο σε καλή τιμή.

10.

Ο υπεγος Booysen ήταν ο υπεύθυνος για κάποια από τα περιστατικά που συνέβησαν στην μονάδα Οργανωμένου Εγκλήματος Cato Manor. Καλούνταν πάντα σε περιστατικά υψηλού προφίλ και σε οποιοδήποτε σοβαρό περιστατικό με πυροβολισμούς οποίο αφορούσε τη δολοφονία υπόπτων από τα μέλη του.

11.

Άλλες φορές, κατέφθανε μετά από κάποια ανταλλαγή πυροβολισμών όταν πολλοί ύποπτοι εγκλήματων είχαν σκοτωθεί. Βάν το επεισόδιο με τους πυροβολισμούς ήταν σε κοντινή απόσταση με το αυτοκίνητο, πάντα οδηγούσε μέχρι εκεί και σε πολλές περιπτώσεις μου τηλεφωνούσε για να τον συναντήσω κι εγώ εκεί. Συχνά μου ζητούσε να χρησιμοποιήσω τη σειρήνα μου ώστε να φτάσω στον τόπο του εγκλήματος γρηγορότερα. Κατόπιν οδηγιών του Υπεγου Booysen έλαβα επίσης φωτογραφίες από τον τόπο του εγκλήματος σε αρκετές περιπτώσεις, πριν την άφιξη του επίσημου φωτογράφου του εγκληματολογικού εργαστηρίου. Οι φωτογραφίες αυτές είναι διαθέσιμες προς εξέταση.

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12.

Τού ήμουν χρήσιμος καθώς είχα επιδείξει στη μονάδα ότι είμαι παρατηρητικός στις λεπτομέρειες και μπορούσα να χρησιμοποιώ στους τόπους των εγκλημάτων τον δικό μου τελευταίας τεχνολογίας ηλεκτρονικό εξοπλισμό αποκλειστικά για τη μονάδα.

13.

Μερικές φορές συνόδευα τον Ύπτγο Booysen απλά για συντροφιά, άλλες φορές ήταν πολύ μεθυσμένος για να οδηγήσει, ώστε τον πήγαινα εγώ με το αυτοκίνητο σε κάποιο τόπο εγκλήματος. Έχω καταγράψει μία συγκεκριμένη περίπτωση όπου ο Ύπτγος Booysen συνέβαινε να βρίσκεται στο σπίτι μου όταν κλήθη σε ένα τόπο εγκλήματος τριπλού φόνου και ακολούθησα εγώ με το δικό μου αυτοκίνητο πίσω από τον Ύπτγο Booysen, ο οποίος οδήγησε μέχρι τη σκηνή του εγκλήματος. Εκείνη τη στιγμή ήταν μεθυσμένος και προκάλεσε ένα ατύχημα περνάντας με κόκκινο στην περιοχή του Musgrave. Από εκεί κι έκειτα, προχώρησε στην επίθεση του οδηγού του άλλου οχήματος που εμπλεκόταν στο ατύχημα και ήμουν υποχρεωμένος να συγκρατήσω σωματικά τον Ύπτγο Booysen. Μετά, οδήγησα στον τόπο του εγκλήματος με αυτόν στο αυτοκίνητό μου. Προηγούμένως, είχε καταφέρει να οδηγήσει το καταστραμμένο αυτοκίνητό του πίσω στο σπίτι μου. Η φωτογραφία του καταστραμμένου αυτοκινήτου του σταθμευμένο έξω από το σπίτι μου είναι στη διάθεσή σας. Μετά το περιστατικό, μου τηλεφώνησε ένας ερευνητής ασφαλειών, ο οποίος ήταν κρύπτν αστυνομικός, και μου έκανε ερωτήσεις σχετικά με το αυτοκινητιστικό, αλλά είχα ήδη λάβει εντολές από τον Ύπτγο Booysen να του πω ψέματα και να καλύψω το γεγονός ότι ο Ύπτγος Booysen ήταν μεθυσμένος κατά τη στιγμή του ατυχήματος.

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Ο Υπτγος Boogsen ήταν πολύ υπερήφανος και καθισμένος με το έργο της μονάδας Cato Manor καθώς και με το γεγονός ότι πυροβολούσαν "εγκληματίες". Η αγαπημένη του φράση ήταν: "Μπορώ να κάνω ανθρώπους να εξαφανιστούν." Παρεμπιπτόντως, ο Αφρικανός ύποπτος που καταζητείτο για τη σύνδεσή του με τον παραπάνω τριπλό φόνο, πυροβολήθηκε και σκοτώθηκε από τα μέλη του και ο Υπαστυνόμος Β' Mossie Mostert μου έδωσε με υπερηφάνεια ψηφιακές φωτογραφίες στην επιχείρησή μου. Οι φωτογραφίες αυτές είναι αποθηκευμένες στον υπολογιστή μου και βρίσκονται στη διάθεσή σας.

15.

Τον Οκτώβριο του 2001 γευμάτιζα με τον Υπτγο Boogsen στο News Cafe στο εμπορικό κέντρο του Musgrave στο Ντέρμπαν. Ο Υπτγος Boogsen μου έδειξε μία φωτογραφία ενός υπόπτου που είχε δραπετεύσει, για τον οποίο ισχυρίστηκε ότι είχε στείλει με φαξ απειλητικό υλικό σε ανώτερους αξιωματούχους της δικαιοσύνης οι οποίοι τον είχαν καταδικάσει στο παρελθόν για διάφορα εγκλήματα. Ο Υπτγος Boogsen ταυτοποίησε τον ύποπτο ως "Jabulani" και μου είπε ότι εάν έβλεπα τον άντρα της φωτογραφίας, θα έπρεπε να του φωνάξω μία σφαίρα στο κεφάλι. Τον ρώτησα γιατί. Μου είπε ότι είχε έρθει μία διαταγή από πολύ ψηλά στους δικαστικούς κύκλους να μην συλληφθεί ζωντανός, γιατί θα απέδραμε από τη φυλακή και πάλι. Είπε ότι ο άντρας ήταν μέλος μιας συμμορίας διαρρήξεων σπιτιών η οποία είχε ξεφύγει του ελέγχου και βίαζε τις γυναίκες κατά τη διάρκεια των διαρρήξεων. Μετά τη σύλληψη και την απόδρασή του, τα ίδια τα μέλη της συμμορίας του άρχισαν να στρέφονται απέναντίον του και να δίνουν πληροφορίες στην αστυνομία σχετικά με τις δραστηριότητες του και το που βρίσκεται.

16.

Στις 18 Οκτωβρίου 2001 στις 12:30π.μ. ο Υπτγος Boogsen με κάλεσε να συμμετάσχω σε μια αποστολή . Αυτό συνέβη είτε το ίδιο απόγευμα που εγώ και ο Υπτγος Boogsen γευματίζαμε στο News Cafe, είτε μια-δυο μέρες αργότερα. Ανακαλώ στη μνήμη μου αυτή την ημερομηνία συμβουλεύομενος τα αρχεία μου και

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διότι ποτέ δεν θα ξεχάσω τι συνέβη εκείνη τη μέρα, μιας και ήταν η πρώτη μου επιχείρηση πεδίου στην οποία υπήρξε θάνατος. Δεν θυμαμαι εαν οδηγησα σε καποιο σημειο συγγεντρωσης με τους υπολοιπους αστυνομικους ,η με παραλαβανε απο την οικια μου. ο Υπτγος Booysen με κάλεσε να πάω μαζί του με το αυτοκίνητο σε μία μικρή πόλη. Πιστεύω ότι ονομαζόταν Umlazi. Μας ακολουθούσαν αρκετά μέλη της Cato Manor σε οχήματα χωρίς διακριτικά. Ο Υπτγος Booysen παρέμεινε στο αυτοκίνητο και εγώ συμμετείχα με τα άλλα μέλη στη διεξαγωγή εφόδων σε σπίτια προς αναζήτηση του υπόπτου JabuJani. Ο Υπτγος Booysen με πήγε εκεί ως μέλος της μονάδας.. Εκείνη τη νύχτα ήμουν οπλισμένος με ένα πιστόλι ,καθώς και με το δικό μου όπλο.

17.

Πάνω κάτω δέκα μέλη έφτασαν στο σπίτι του υπόπτου. Δεν μπορώ να θυμηθώ ποιος χρησιμοποιούσε τί είδους όπλο. Αυτό που θυμάμαι είναι ότι ο Jeremy Martin είχε ένα αυτόματο τουφέκι της αστυνομίας. Είδα τον Jeremy Martin να κλωτσά την πόρτα. Εκείνη τη στιγμή βρισκόμουν κοντά στην είσοδο του σπιτιού και μπορούσα να δω μια γυναίκα και παιδιά να είναι ξαπλωμένοι σε ένα κρεβάτι. Ο Martin έσυρε τον ύποπτο έξω από το σπίτι, μέσα στη βροχή, και φορουσε μονο ενα σκουρο εσώρουχο και εμείς στεκόμαστιν σε γύρω του σε ένα κύκλο, ενώ ο Martin προσπαθούσε να του φοράει χειροπέδες. Θυμάμαι ότι το άτομο αυτό ήταν ο Jabulani. Ήταν ξαπλωμένος μπρούμυτα. Ξαφνικά, ο Martin διέταξε τον ύποπτο να σταματήσει να κινείται αφού του περασε χειροπόδες και κινήθηκε προς αυτό και τον άρπαξε. Ο ύποπτος και ο Jeremy κατάπιν γλίστρησαν κατά μήκος μιας κατηφόρας 2-3 μέτρων εκτός του κύκλου. Εκείνη τη στιγμή, ένος άλλος αστυνομικός, νομίζω ότι λεγόταν Eddie van Rensburg, μου είπε σε υβριστική γλώσσα να "φύγω από κει". Κατόπιν άκουσα πυροβολισμούς και ο ύποπτος ήταν νεκρός. Προσωπικά πιστεύω πως, μέχρι και τη στιγμή του θανάτου του, ο ύποπτος δεν ήταν οπλισμένος. Ο Υπτγος Booysen ήταν ο γενικός διοικητής της επιχείρησης. Θυμάμαι ότι, μετά τους πυροβολισμούς, τηλεφώνησα στον Υπτγο Booysen, ο οποίος την τελευταία φορα που τον είδα στεκόταν σε κάποια απόσταση κάνω στο λόφο στο αυτοκίνητο του, δίπλα απο τα υπολοιπα παρκαρισμενα αυτοκίνητα του σωματος μας. Μετά, κατα το πρωι ήρθε στο σημείο και συνέχαρη τα μέλη της μονάδας. Τα μέλη που βρισκόταν στο σημείο και ο Jeremy Martin ισχυρίστηκαν αργότερα ότι ο ύποπτος εμφάνισε ένα όπλο που είχε κρυμμένο κάπου εκεί κοντά, ένας ισχυρισμός τον οποίο αμφισβητώ σοβαρά, καθώς ήταν περικυκλωμένος από πάνω κάτω 10

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αστυνομικούς οπλισμένους με τυφέκια. Την επόμενη μέρα γευμάτιζα με τον Ύπτγο Booysen και θυμάμαι ότι του εξέφρασα την ανησυχία μου αλλά, μου απάντησε ότι απλώς φανταζόμουν τα γεγονότα και ότι επρόκειτο για μια ξεκάθαρη περίπτωση αντίστάσης στη σύλληψη και ότι ο ύποπτος προσπάθησε να πυροβολήσει τους αστυνομικούς.

18.

Θυμάμαι ένα περιστατικό όπου χρησιμοποίησα το όπλο του Ύπτγου Booysen για να πυροβολήσω έναν ύποπτο . Το περιστατικό συνέβη στο κατάστημά μου στο Ντέρμπαν το 2001.

19.

Η πράξη μου ήταν πλήρως αιτιολογημένη, διότι σταμάτησα έναν ένοπλο ληστή ο οποίος είχε αποπειραθεί να σκοτώσει έναν φρουρό ασφαλείας και αμένα τον ίδιο, αφού προηγουμένως με είχε ληστέψει και απειλούσε με όπλο αμένα, ένα μέλος του προσωπικού μου, τον Ύπτγο Booysen και τη 16χρονη κόρη του. Ο Ύπτγος Booysen έβγαλε το όπλο του από τη θήκη που είχε στον ασφάλειό του αλλά πάγωσε, οπότε άρπαξα εγώ το όπλο από τα χέρια του και έτρεξα κατόπιν του ένοπλον ληστή. Μετά είδα ότι ο ένοπλος ληστής προσπαθούσε να πυροβολήσει τον φρουρό με το ονόμα Τσαρλς ,με το δικό μου πιστόλι, το οποίο είχε αφαιρέσει νωρίτερα. Εκείνος, γύρισε και εναντίον μου. Έριξα δύο χαμηλές βολές και τραυμάτισα το ληστή. Έριξα χαμηλά ώστε να μην τραυματίσω τους παραστικούς.

Η σημασία που αναφέρω αυτό το περιστατικό είναι διότι ο Ύπτγος Booysen αλλοίωσε το σκηνικό του εγκλήματος διατάζοντας με να αλλάξω την κατάθεσή μου, ώστε να καλυφθεί η δειλία του και το γεγονός ότι εκείνος, ένας ανάτερος αξιωματούχος της αστυνομίας, μου είχε επιτρέψει να χρησιμοποιήσω το όπλο του σε ένα έγκλημα. Εκφόβισε επίσης τον ερευνητή αστυνομικό Jack Muller, ο οποίος δεν ήθελε να αλλάξει την αρχική μου κατάθεση.Οταν παρέδωσα ενα αντιγραφο της ενοπλης ληστειας απο το καταγραφικο συστημα της Εταιρειας μου σε εναν δημοσιογραφο εφημεριδας ,και οφου δημοσιευτηκε αρνητικο σχολιο σε εφημεριδα με τιτλο ,Τοτ αστυομικος ,ηρωας η δειλος ? επειληθηκε απο τον Ύπτγος Boeysen και ο δημοσιογραφος που εγραψε αυτο το ρεπορταζ απολυθηκε και απο φοβο αλλαξε πολη.

20.

Στις 26 Φεβρουάριου 2004 κάλεσα τους αστυνομικούς της Cato Manor να έρθουν στο κατάστημά μου Technotronic στην οδό Smith, να συλλάβουν έναν άντρα που ήρθε να πάρει ένα κλεμμένο λάπτοπ.

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Ο ύποπτος οδηγήθηκε στο αστυνομικό τμήμα της Cato Manor. Τους συνόδευσα, καθώς εγώ ήμουν ο αστυνομικός που τον συνέλαβε, και ήθελα να λάβω μέρος στην έρευνα. Αυτός ήταν επίσης ένας τρόπος να γράψω περισσότερες ώρες, καθώς, για κάθε έρευνα που πραγματοποιούσα, έπρεπε να είναι επισήμως εν ώρα υπηρεσίας. Στα γραφεία της Μονάδας Σοβαράν και Βίαιων Εγκλημάτων της Cato Manor, έγδυσαν τον ύποπτο, τον έδεσαν σε μία καρέκλα και προχώρησαν στο βασανισμό του πνίγοντας και χτυπώντας τον. Θυμάμαι ότι μεταξύ των παρόντων μελών βρισκόταν οι RC Maharaj και Varesh Panday. Κατέγραψα το γεγονός μυστικά, χρησιμοποιώντας ένα από τα πρώτης γενιάς έξυπνα τηλέφωνα με κάμερα. Εκείνη τη στιγμή, τα μέλη της μονάδας δεν ήξεραν ότι το τηλέφωνο είχε κάμερα. Προσποιήθηκα ότι έκανα μία κλήση και κατέγραψα το βασανιστήριο, διότι αντιλήφθηκα ότι αυτό ήταν λάθος και ότι θα έπρεπε να κάνω κάτι για αυτό. Αυτή η καταγραφή έχει αντιγράφει από το τηλέφωνο στα αρχεία μου και την παρέδωσα στον Υπτγο Mabula. Όταν την έδειξα αργότερα, στον Υπτγο Boogsen, αυτός γέλασε και μου είπε "έτσι γίνονται τα πράγματα για να έχουν αποτέλεσμα". Με προειδοποίησε επίσης να μην το δείξω σε κανένα γιατί, θα έβρισκα το μπελά μου. Μου ζήτησε ένα αντίγραφο και μία έγχρωμη φωτογραφία ενός συγκεκριμένου στιγμιότυπου που έδειχνε τον Viresh Panday, την οποία μου είπε ότι την ήθελε για να ενοχοποιήσει τον Panday, με τον οποίο είχε προσωπικές διαφορές. Από ότι γνωρίζω δεν άσκησε ποτέ κάποια πειθαρχική δίωξη εναντίον των μελών της ομάδας του, αλλά, πιστεύω ότι τους προειδοποίησε για την πιθανότητα εγώ να καταγράψω μελλοντικά τους βασανισμούς, διότι από τότε κι έπειτα απέφευγαν να με παίρνουν στις ανακρίσεις. Το 2008 έφυγα από την Νότιο Αφρική, εξαιτίας των απειλών ενάντια στη ζωή μου και της αιφνίδιας πίεσης που έλαβα από τον Boogsen, όταν μέλη της μονάδας του εμφανίστηκαν στο σπίτι μου για να με θέσουν σε διαθεσιμότητα και να μου πάρουν το όπλο μου, θέτοντας με αυτό τον τρόπο τη ζωή μου σε κίνδυνο καθώς, μετά από εκατοντάδες συλλήψεις υπόπτων στις εγκαταστάσεις της επιχείρησής μου, είχα γίνει στόχος διαφόρων εγκληματιών. Όταν έφθασα στην Ελλάδα στα τέλη του 2008 και ένιωσα ασφαλής, προσπάθησα να έλθω σε επαφή με διάφορους Κυβερνητικούς φορείς, καθώς και με διάφορους δημοσιογράφους, για να αναφέρω αυτό το βασανιστήριο και την κακομεταχείριση, διότι πίστευα ότι ήταν λάθος. Όμως κανείς δεν ενδιαφερόταν να δημοσιεύσει τίποτε εναντίον του Boogsen, κι έτσι ανέβασα αποσπάσματα από τις καταγραφές στο YouTube ΣΧΕΤ. ΥΠΟΘΕΣΗ ΝΟ 297/02/04 (ΑΡΧΕΙΟ "torture in office").

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at the Supreme Court of South Africa
Case No: 2008/0872

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Johannesburg, the ..... day of 12 OCT 2018
MARILENA S.M. PIPERIDES
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Oaths No: 2008/8072

21.

Στις 30 Μαρτίου 2004 ένας μεθυσμένος άντρας παρενοχλούσε τον ιδιοκτήτη του καταστήματος Pie Shop δίπλα στο δικό μου κατάστημα στην οδό Smith. Ο Ύπτγος Booysen έτυχε να βρίσκεται στο κατάστημά μου και άρπαξε τον ύποπτο και τον έσυρε μέσα στο κατάστημά μου με τη δική μου βοήθεια (ΑΡΧΕΙΟ workshop blood ΒΙΝΙΤΗΟ 1). Ο Ύπτγος Booysen πήρε τον ύποπτο στο πίσω μέρος του καταστήματος μου, όπου τον είδα να επιτίθεται στον ύποπτο με τις γροθιές του και τον έριξε κάτω αναίσθητο, αφήνοντας πολύ αίμα στο πάτωμα. Αργότερα κατέφθασαν μέλη της αστυνομίας και, υπό τις διαταγές του Ύπτγου Booysen, παρέλαβαν τον ύποπτο. Αμέσως μετά, πρέπει να ήταν την επόμενη μέρα, ο Ύπτγος Booysen είτε μου υπαγόρευσε είτε μου έδωσε μία κατάθεση, δεν θυμάμαι τι από τα δύο. Σε αυτή την κατάθεση αναφερόταν ψευδώς ότι ο ύποπτος είχε επιτεθεί σε έναν από εμάς και προσπάθησε να δολοφονήσει έναν από εμάς με ένα κατσαβίδι μέσα στο κατάστημά μου, δεν θυμάμαι εάν η κατάθεση αναφερόταν σε εμένα ή σε εκείνον. Αυτό δε συνέβη ποτέ αλλά, ήμουν υποχρεωμένος να το υπογράψω διότι ο Ύπτγος Booysen με διέταξε να το κάνω, ώστε να δικαιολογηθεί η από πλευράς του χρήση υπερβολικής και περιττής βίας, (σχετικό 30- 03-04 15:45 30-03-04 1900 ΥΠΟΠΤΟΣ ΣΥΝΕΛΗΦΘΗ ΣΤΟ ΑΣΤΥΝΟΜΙΚΟ ΤΜΗΜΑ ΤΗΣ ΟΔΟΥ ΒΕΟΑD).

22.

Στις 21 Ιανουάριου 2006 ο Ύπτγος Booysen ήρθε στο κατάστημά μου και του είπα μία ιστορία σχετική με αξιωματικους του, ότι βρισκομουνα σε ένα αυτοκίνητο με τους Willie Olivier και Eugene van Tonder, ανώτερα μέλη της μονάδας Cato Manor. Οδηγούσαν γύρω από την οδό Smith μέσα σε ένα από τα κυβερνητικά αυτοκίνητα χωρίς διακριτικά που είχε παραχωρηθεί στη μονάδα Cato Manor, με φιμέ παράθυρα. Μπορεί να ήταν μία μαύρη Lumina ή μία ασήμι BMW. Ο Van Tonder κατέβασε το παράθυρο ελαφρώς, και άρχισε να πυροβολεί με ένα αεροβόλο εναντίον των περαστικών, στοχεύοντας ειδικότερα στους μαύρους περαστικούς, για διασκέδαση, γελάντας καθώς τους πυροβολούσε. Θυμάμαι ότι έριξε κάτω έναν άντρα σε ένα ποδήλατο και τραυμάτισε μερικούς ακόμα, συμπεριλαμβανομένων και γυναικών. Όταν συσχέτισα αυτή την ιστορία με τον Ύπτγο Booysen, μου περιέγραψε με λεπτομέρειες πώς, αυτός ο ίδιος και οι συνάδελφοί του, το έκαναν συχνά αυτό και πως είχε και ο ίδιος συμμετάσχει σε αυτό.

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Γελούσε καθώς μου έλεγε αυτή την ιστορία. Μου είπε επίσης πως ένας πολίτης που τραυματίστηκε είχε ανοίξει μία υπόθεση και είχε δώσει τον αριθμό κυκλοφορίας του οχήματος από όπου προέρχονταν οι πυροβολισμοί, μέσα στο οποίο βρισκόμουν εγώ και ότι αυτός ο αριθμός ανήκε στη μονάδα Cato Manor. Ο Υπτγος Booysen είπε πως η καταγγελία είχε σταλεί στο γραφείο του και είπε ότι "την τακτοποίησε". Από αυτό καταλάβα ότι τη συγκάλυψε. (βλέπε βίντεο 2).

23.

Στις 27 Οκτωβρίου 2006 περίπου στις 9 π.μ., τέσσερις άνοπτοι συνελήφθησαν στην αίθουσα αφίξεων του αεροδρομίου του Ντέρμπαν από τα μέλη της Cato Manor. Κάποια από τα μέλη που ήταν παρόντα κατά τη διάρκεια αυτών των συλλήψεων ήταν: ο Υπτγος Booysen, Mostert, Van Tonder, Vick Panday, Peter George, Shane Naidoo, Mukesh Panday, Anton Lokum, Sgt R Lee. Σε αυτή τη σύλληψη συμμετείχε επίσης ο Adele Sonnekus, κατόπιν πρόσκλησής του από τον Υπτγο Booysen. Οι συλληφθέντες οδηγήθηκαν το αστυνομικό τμήμα της Cato Manor και ανακρίθηκαν ένας ένας. Κατά τη διάρκεια αυτής της ανακρίσεως ήμουν παρών. Ήμουν μάρτυρας της ανάκρισης και του μετέπειτα βασανισμού ενός από τους υπόπτους, παρουσία εμού και του Υπτγου Booysen. Μετά από ένα σύντομο διάστημα, ο Υπτγος Booysen είπε πως δεν έπρεπε να τον δει κανείς εκεί και έφυγε. Ο Υπτγος Booysen μου είπε αργότερα πως ο Mostert είχε πυροβολήσει και σκοτώσει δύο από τους υπόπτους, μετά την απόπειρα του ενός να τον χτυπήσει με ένα φτυάρι. Επιπλέον, ο Υπτγος Booysen μου είπε ότι κατέφθασε στο σημείο αμέσως μετά και ότι ο ένας από τους υπόπτους ήταν ακόμα ζαντανός, περιμένοντας το ασθενοφόρο να έρθει. Ο Υπτγος Booysen μου είπε ότι είχε σκύψει στο αυτί του υπόπτου που πέθαινε και του ψιθύρισε: "Σου το είχα πει ότι θα σε σκοτώσω εάν επιχειρούσες να γυρίσεις."

24.

Τον Απρίλιο του 2007 με επισκέφθησαν στην οικία μου οι Υπτγος Booysen και Adele Sonnekus όταν αυτός είχε λάβει ένα τηλεφώνημα από ένα από τα μέλη του που τον πληροφορούσε για ένα περιστατικό με πυροβολισμούς στην περιοχή Malvern. Η Adele Sonnekus ήταν αστυνομικός την Επαρχιακής Μονάδας Οργανωμένου Εγκλήματος και ήταν γραμματέας.

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Johannesburg this 12 OCT 2018 day of
MARILENA E.M. FIPENDORS
Commissioner of Oaths and Sworn Translator
at the Supreme Court of South Africa
Cert. No. [illegible]

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IN THE HIGH COURT OF SOUTH AFRICA

(KWAZULU-NATAL LOCAL DIVISION)

Case No: CC11/13D

DATE OF APPEARANCE: 23/06/2015

In the matter between: -

THE STATE

and

Johan Wessel Booysen (Withdrawn)	Accused 1
Gonasagren Padayachee	Accused 2
Adriaan Jakobus Stoltz	Accused 3
Paul Jonathan Mostert	Accused 4
Eric Alfred Nel	Accused 5
Neville Eva (Deceased)	Accused 6
Adjithsingh Ghanness	Accused 7
Phumelela Makhanya	Accused 8
Willem Cornelius Olivier	Accused 9
Thembinkosi Mbhekiseni Mkhwanazi	Accused 10
Thatayiphi Enock Mdlalose	Accused 11
Bongani Zondi	Accused 12
Rubendran Naidoo	Accused 13
Raymond Christopher Lee	Accused 14
Anton Lockem	Accused 15
Jan Johannes Eugene van Tonder	Accused 16
Musawenkosi Emerst Nkabane	Accused 17
Nico Crouse	Accused 18
Felokwakhe Thomas Dlamuka	Accused 19
Sandile Stanley Mfene	Accused 20
William Sibongile Sikhulume	Accused 21
Vincent Auebarch (Deceased)	Accused 22
Peter William George	Accused 23
Mhlabunzima Wilbard Thabethe	Accused 24
Charles Johnson Smith	Accused 25
Jeremy Martem	Accused 26
Bruce David McInes	Accused 27
Shane John Smith	Accused 28
Asogram Pillay	Accused 29
Mukesh Panday	Accused 30

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FURTHER PARTICULARS REQUEST OF THE ACCUSED PERSONS

KINDLY TAKE NOTICE THAT the State hereby furnishes the following Further Particulars which the accused persons requested in terms of section 87 of Act 51 of 1977.

DATED AND SIGNED AT JOHANNESBURG ON THIS 15th DAY OF MAY 2015

G S MAEMA
Counsel for the State
C/O The Director of Prosecutions
4th Floor Southern Life Building
DURBAN
2745
Tel: 011 220 4208
Cell phone 084 294 7934
Reference: 9/2/4/4-35/2014

COPIES TO: THE REGISTRAR, CRIMINAL SECTION
HIGH COURT
PRIVATE BAG X
DURBAN

YOUR REF: CASE NUMBER: 11/13D

AND TO: CARL VAN DER MERWE ATTORNEYS
3RD FLOOR
6 DURBAN CLUB PLACE
DURBAN

Your Reference: CVDM/AS/CRIM

G SM

AD COUNT 1

ACCUSED NO. 9 OLIVIER

AD: CONTRAVENTION OF SECTION 2(1) (f) OF ACT 121 OF 1998 (POCA) MANAGING THE ACTIVITIES OF THE ENTERPRISE)

THE ENTERPRISE

1.

The Serious Violent Crime (SVC) section based at Cato Manor which was a section of the Durban Organised Crime Unit, which formed part of the KZN Provincial Organised Crime structure, is the enterprise as defined in the Act. The Organised Crime structures became part of the Directorate for Priority Crimes Investigations (DPCI) which was under the commandership of General Booysen as the Provincial Head: DPCI since 2010. Accused 9 was the section commander of the SVC section of Cato Manor and was at all times in charge of all the activities of the SVC section of Cato Manor. The South African Police Service (SAPS) is a legal entity established by legislation in terms of the South African Police Act 68 of 1995. It is comprised of a national office and provincial structures for each province. The SVC section as part of the Durban Organised Crime was supposed to report to Colonel Alyer as the Commander of Durban Organised Crime Unit but did not do so as a result of differences they had with Colonel Alyer, they instead bypassed him and worked under the direct control and direction of General Booysen.

The organisational structure of the SVC section was as follows:

Accused 9,Captain Olivier as the Section Commander;

Three (3) group commanders worked under Captain Olivier, namely Accused 6 Captain Eva; Accused 15, Captain Lockem and Accused 16, Captain van

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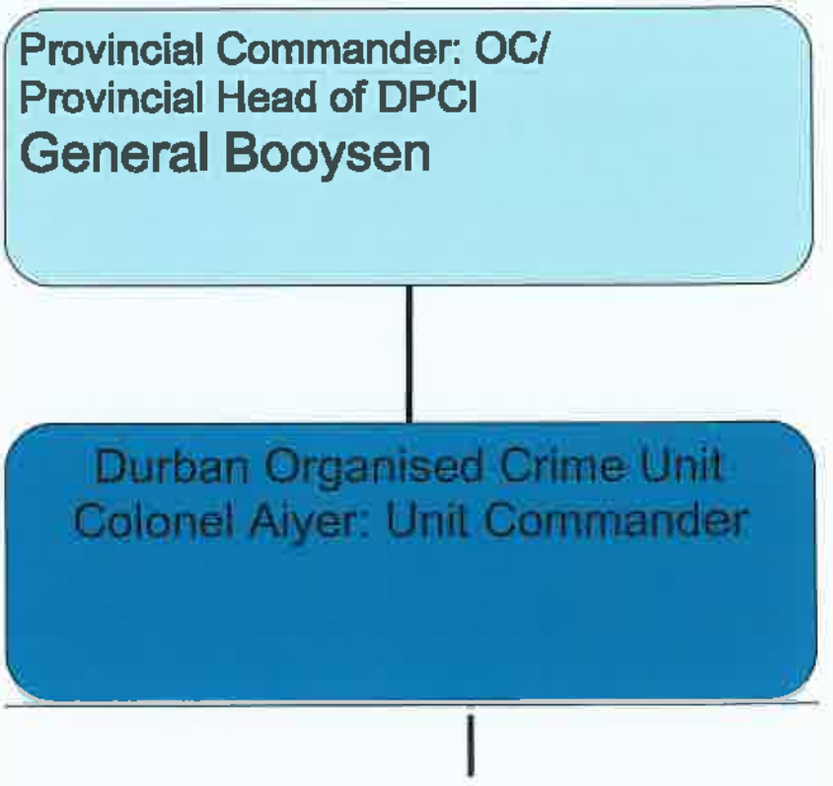
Tonder. In terms of operations, Captain Olivier (Accused 9) bypassed the Unit Commander, Colonel Aiyer and dealt directly with the Provincial Commander of DPCI, General Booysen, reducing Aiyer to a **de facto** commander.

The hierarchal structure of the enterprise was as follows:



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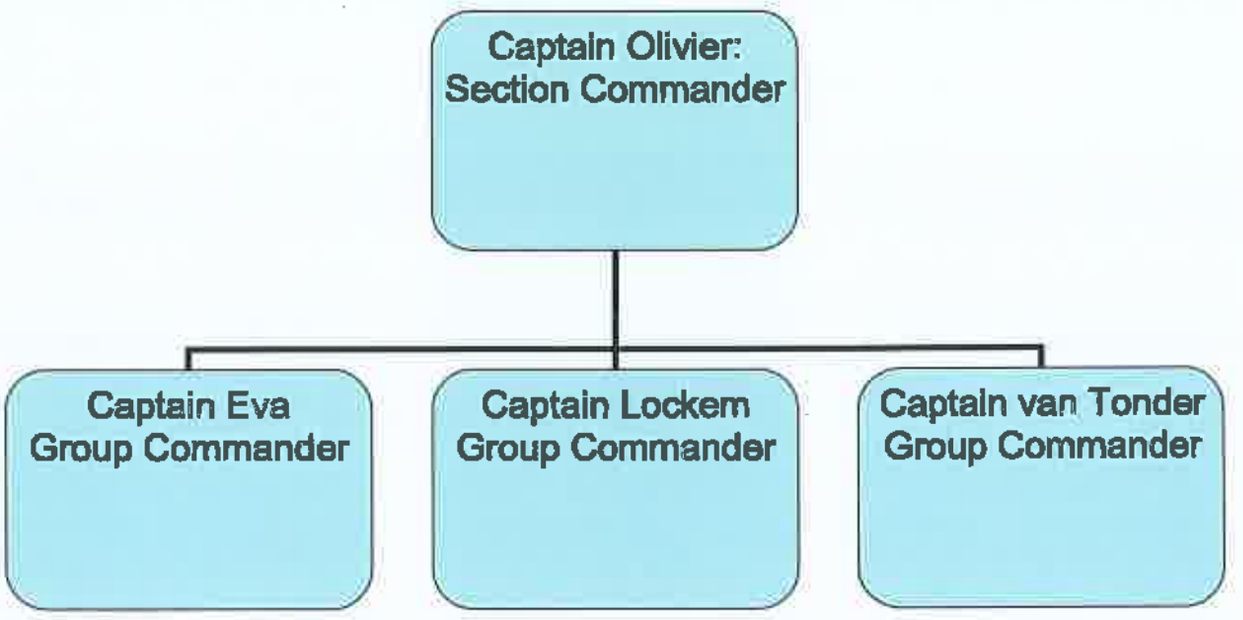

2.

The precise date(s) that each of the persons were in these positions is unknown to the State, safe to mention that since 2010 when the SVC section was incorporated into the Durban Organised Crime Unit, throughout the dates of the incidents mentioned in the indictment, May 2008 to September 2011, they occupied the positions in the hierarchy for the entire duration and participated in operation or activities which facilitated and advanced the objectives of the enterprise.

3.

3.1 Accused 9, in his capacity as the Section Commander was in charge of the section and directed and controlled the operations of the SVC with the operational guidance and support of General Booysen. The SVC section would plan various suspect raids as if they are looking for dangerous criminals in order to question them about alleged involvement in various offences, in most instances, without the knowledge or involvement of the investigating officer of the case in

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question. Most if not all of the persons they were seeking to question end up being killed. Their official capacity as members of the SAPS was used to cover the unlawful activities that they were conducting. The resources of the SAPS were used to cover up their unlawful activities and in most instances, they would doctor the scenes by placing a firearm next to the deceased to create an impression that the deceased was posing some sort of threat to them.

Accused 6, Accused 15 and Accused 16 (the Group Commanders) took turns depending on the member who had information from the informers by briefing the team members at different incident and on different dates whilst they were also keeping constant communication with the section commander, Accused 9 and General Booysen.

Accused 6 primarily took charge of most of the scenes after the shooting to ensure that no one accesses the scene before it is doctored by placing a firearm in the vicinity of the deceased at the various scenes so that there is always harmony in the allegation that the deceased was either producing a firearm, pointing a firearm, or firing shots in the direction of the police to make the shooting a justifiable killing in terms of section 49 of the Criminal Procedure Act.

3.2 The dates of the operations as well as the place of operation are the different date and places of incidents that are referred to in the predicate offences, Counts 3 to 116;

Date of Incident	Place of Incident	The Deceased
1. 24 May 2008	Berea	Thabo Msimango
2. 31 July 2008	KwaMashu	Mfanafuthi Zwane
3. 6 August 2008	Escourt	Sanele Majola
4. 3 September 2008	KwaDukuza	Lindelani Buthelezi
5. 16 September 2008	Howick	Magojela Ndimande Sibusiso Tembe
6. 18 September 2008	Mandini	Mzameni Ntuli Nkosinathi Mthembu
7. 18 October 2008	Umkomaas	Mduduzi Mkhize

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8. 12 November 2008	KwaMashu	Nhlanhla Masondo
9. 23 November 2008	Melmoth	Bongani Biyela Khayisani Biyela
10. 3 February 2009	Durban Central	Bongani Mkhize
11. 18 March 2009	Tongaat	Dan Phiri
12. 27 April 2009	KwaMashu	Thokozani Njapha
13. 23 May 2009	Pinetown	Badumile Ndimande
14. 10 August 2009	Phoenix	Lindokuhle Nzuza
15. 20 September 2009	Rustenburg	Sifiso Ndimande
16. 26 November 2009	KwaMashu	Prince Thabethe
17. 6 March 2010	KwaDukuza	Nhlanhla Mhlongo
18. 1April 2010	Esikhawini	Kwazi Ndlovu
19. 10 May 2010	Bhekithemba	Musawenkosi Ngcobo Xolisani Ngcobo Simphwe Shozi
20. 4 July 2011	Durban North	Jabulani Bhengu
21. 4 July 2011	Durban North	Dumisani Mgobhozi
22. 4 July 2011	Durban North	Boysie Mbonambi
23. 23 September 2011	Esikhaweni	Philangenkosi Gwala

3.3 The places of the operations are the various areas mentioned in Column 2 above and in the predicate offences, Counts 3 to 116 of the Indictment.

3.4 the enterprise as the vehicle through which the various offences are committed, remains the same in all the incidents, the only difference is that different members of the enterprise would be present in different incidents and different dates mentioned in the predicate offences. The managers of the enterprise remains the same irrespective of the different members who participate in the different incidents mentioned in the predicate offences, the most senior member on the date of the operation takes charge of the progress of the operation and there is constant telephonic or radio contact with the section commander :

Incident 1: Count 35 – 38 Thabo Msimango

On 24 May 2008, Accused 4, Paul Mostert, Accused 5 Eric Nel, Accused 7 Adjithsing Ghanness, , Accused 11 Enock Mdlalose broke and entered the deceased's apartment on 3rd Floor,32 Colesberg, 5th Avenue, Greyville Berea with a crowbar. Accused 8 Phumelele Makhanya and Accused 13 Rubendran Naidoo were keeping guard below the flat. Accused 4, 8 and 13 fired shots at the deceased whist he was

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running away. A further shot was fired at the deceased as he lay helpless on the ground. Accused 5 7 and 11assisted the other accused during the process.

Incident 2: Count 98 – 101 Fukwane Zwane

On 31 July 2008, Accused 4 Paul Moster, Accused 8 Phumelela Makhaya, Accused 10 Thembinkosi Mkhwanazi, Accused 11 Thathayipi Mdlalose and Accused 15 Anton Lockem proceeded to F section KwaMashu looking for the deceased Fukwane Zwane who was suspected of involvement in the ATM bombing at Hammersdale shopping complex, where two (2) security guards were held hostage and three (3) ATM blown open with explosives and a large amount of cash was forcibly removed from the ATM's. The accused proceeded on foot to the premises and found the deceased outside the premises seated in his silver 530i BMW car with his girlfriend. Captain Lockem took the girlfriend to the back of the house where Accused 8 and 11 were taking guard and returned to the vehicle to search the vehicle. Accused 10 Mkhwanazi positioned himself near a kombi to do guard duties. Accused 8 Makhaya and Mdlalose Accused 11 guarded the deceased's girlfriend at the back of the house. The deceased who was unarmed and who was already under police control, he raised his arms when he was ordered to do so and to get out of the car and was pushed towards the wall and subdued. Accused 4 fired numerous shots at him, claiming that he was either trying to shoot Accused 15 Lockem or pointing a firearm at Lockem and the deceased fell to the ground immediately with gunshot wounds on his upper body. Accused 15 then took charge of the scene and ensured that it is doctored by placing a firearm next to the deceased to make the shooting justifiable in terms of the law.

Incident 3: Counts 102 -103 Muzi Majola

On 6 August 2008, Accused 4 Paul Mostert, Accused 5 Eric Nel, Accused 13 Rubendren Naidoo and Accused 30 Mukesh Panday stopped at the Caltex garage in Dundee keeping observation when they noticed a vehicle with three (3) occupants. The vehicle left the garage towards Glencoe and the police followed it. Having identified that the driver of the vehicle was Muzi Majola and one of the passanger was Sicelo Mngimezulu who they were looking for on suspicions of being involved in ATM bombings, they decided to stop the vehicle. Muzi Majola and Sicelo Mngomezulu were detained whilst Innocent Mngomezulu was released. The accused then travelled in two (2) separate vehicles with the suspects. Sicelo Mngomezulu

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travelled with Accused 5 and Accused 30 in one car whilst Muzi Majola was travelling with Accused 4 and Accused 13 in the other car. Whist on route at the Midway Truck Stop Accused 30 required to stop for refuelling. The suspects wanted to use the toilet and Isp Panday and Monstert took Sicelo Mngomezulu to the toilet and Insp Nel and Cst Naidoo took Muzi Majola to the toilet. An incident took place which resulted in Insp Nel firing shots at the suspect and killing him. Cst Naidoo was uncuffing Muzi on one hand and he alleges that the deceased attacked him, hitting him with fists and grabbing his firearm as he was uncuffing him when this incident happened.

Incident 4: Counts 3 - 7 Lindelani Buthelezi

On 3 September 2008; Accused 4, Paul Jonathan Mostert; Accused 8 Phumelele Makhaya, Accused 13, Rubendren Naidoo and Accused 22 Vincent Auerbach were searching for the deceased as a suspect in the killing of Sup Choncho. They travelled to Stanger where they broke opened and entered house number 59 Rose Road Stanger Manor which was at the time rented by the deceased and his girlfriend, Thandeka Sokhulu whilst they were asleep. Accused 6 was keeping guard outside the house, whilst Accused 4, Accused 13 and Accused 8 entered the premises. Mostert fired shots at the deceased under the pretext that he was trying to shoot at them. The deceased had just woken up and was still dressing when the police entered; Vincent Auberch separated the girlfriend from the deceased as Mostert was with the deceased whose arms were raised. The deceased never had any weapon on him; the gun with an erased number was planted on the scene.

Incident 5: Counts 8 – 12 Magojela Ndimande and Sibusiso Tembe

On 29 August 2008, the deceased were arrested by detectives for the killing of Sup Choncho, and taken to Mthunzini police station for questioning. They were handed to members of Organised Crime and were thereafter released as they could not be linked. On 16 September 2008, at 08h30 members of Cato Manor pursued the deceased along the N3 Highway and caught up with them near Howick. Accused 4 Paul Mostert, Accused 5 Eric Nel and Accused 8 were in one car and the Captains, Accused 16 Eugene van Tonder, Accused 15 Anton Lockem and Accused 6 Neville Eva were in the other pursuing vehicle.

Accused 4 Paul Mostert was the driver of pursuit car 1, a silver BMW, he gave members a briefing at PMB, after the Hyundai was observed along the N3 near

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Cedara, he pulled his vehicle alongside it whilst his occupants were firing shots at the occupants of the Hyundai, when it came to a standstill, he went closer the driver's door and fired shots towards the driver at close range.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene.

Incident 6: Counts 13 – 18 Kopolota Ntuli and Nkosinathi Mthembu

On 18 September 2008, under the pretext of arresting suspects in the killing of Choncho, the accused proceeded to 4 Oribi Road, a flat of Joyce Gabi, a girlfriend of Kopolota Ntuli where the deceased were shot at and killed. Accused 15 Anton Lockem, Accused 6 Neville Eva, Accused 4 Paul Mostert, Accused 8 Phumelela Makhanya, Accused 11 Thathayiphi Mdlalose, Accused 3 Adriaan Stoltz, Accused 12 Bongani Zondi, Accused 10 Thembinkosi Mkhwanazi and Accused 13 Rubendren Naidoo formed part of this tracing team.

Accused 4 Paul Mostert called the teams together after he received information relating to the whereabouts of the suspects they were looking for around 15h30. He

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briefed them of the day's plan. He opened the security gate and entered the house through the sliding door in the veranda leading to the lounche, followed by Accused 3 Adriaan Stoltz and Accused13 Rubendren Naidoo. He instructed a child he saw in the passage to get out for own safety. He kicked open the bedroom door after Accused 3 Stoltz had tried unsuccessfully. He fired shots at both deceased. He screamed that it was safe to enter.

Accused 6 Neville Eva, Accused 8 Phumelela Makhaya, Accused 10 Thembinkosi Mkhwanazi, Accused 11 Thatayipi Mdlalose, Accused 12 Bongani Zondi and Accused 15 Anton Lockem were guarding the premises to check for any possible escapees. Accused 6 Neville Eva shouted at a person trying to open a window to get back inside. He also shouted asking if everything was safe. He took over the scene and called all the teams who had to be present. He later handed the scene to Accused 15 van Tonder.

Accused 3 Adriaan Stoltz opened the security gate, entered the bedroom and fired shots at the first deceased.

Accused 13 Rubendren Naidoo entered the bedroom and fired shots at the first deceased.

Accused 15 Anton Lockem took a position outside the house below a window of a room. He entered the room after the shooting.

Incident 7: Count 19 Mduduzi Mkhize

On 18 October 2008, Accused 17 Musawenkosi Nkabane and Accused 18 Nico Crouse arrested Mduduzi Mkhize as a suspect in the killing of Sup Chonco in Pietermaritzburg. During his questioning, he was willing to show the police a further suspect at KwaMaphutha, they drove to Scottburg for additional manpower. Mdu Mkhize repeated his willingness to Sup Nyuswa at Scottburg. He also requested to be handcuffed from the front of his hands instead of the back which made it difficult to sit. Capt Crouse removed the cuffs from the back and placed them on the front. Sup Nyuswa followed them in a separate vehicle. As they were driving to KwaMakhutha where the deceased would allegedly point out a further suspect, Nathi Khumalo, with the deceased handcuffed and seated behind the driver, Nico Crouse,

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the deceased kept talking to Nkabane on the front passenger seat. As Accused 18 was driving, Accused 17 pulled out his service pistol, pointed the deceased and shot at the deceased after he allegedly tried to grab and disarm accused 18 as he was driving. Accused 17 fired shots at the deceased.

Incident 8: Counts 104 – 108 Nhlanhla Masondo

On 12 November 2008 Accused 5 Eric Nel, Accused 6 Neville Eva and Accused 27 Bruce Mc Innes proceeded to the deceased's home in E1141 Ntuzuma Township. They suspected the deceased of involvement in a number of offences including ATM bombings. On arrival at the premises, Bruce McInnes identified themselves as SAPS members and the door was opened. The deceased also identified himself and Bruce Mc Innes followed by Eric Nel proceeded to the deceased's bedroom with him. Insp Nel proceeded to question the deceased. The deceased's mother pleaded with them to enter her son's room but was refused entry. Bruce Mc Innes continued looking around the room as Eric Nel was questioning the deceased. The deceased allegedly took out a firearm out of a pillow and pointed at Eric Nel, McInnes fired four (4) shots in his direction with his 9mm pistol.

Capt Eva took over the scene as usual and summoned the relevant units. The accused also stole certain properties belonging to the deceased, including a wrist watch.

A revolver was placed next to the deceased's body to affirm their allegation that he tried to shoot the police.

Incident 9: Counts 39 – 52 Khanyisani Biyela and Bongani Biyela

On 23 November 2008, Accused 2 Gonasagren Padayachee, Accused 4 Paul Mostert, Accused 5 Eric Nel, Accused 7 Adjithsing Ghanness, Accused 13 Rubendren Naidoo, Accused 14 Raymond Lee, Accused 19 Felokwakhe Dlamuka, Accused 25 Charles Smith, Accused 27 Bruce McInnes, Accused 28 Shane Smith and Accused 30 Mukesh Panday all went to the Biyela homestead in Melmoth in the early hours of the morning.

Accused 28 Shane Smith broke open the door of Richard Biyela's hut without knocking and used a rifle with a torch to shine on Biyela's face, asking where

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Bongani Biyela, the deceased was. Richard Biyela's wife wanted to wake up but was instructed to remain sleeping. Richard Biyela was instructed to come out of the hut, and to lie down by Shane's colleague, in this position he heard doors being banged, gunshots, he was instructed to stand and walk and came across Paul Mostert who hit him three (3) times with a fist on his face. Accused 4 asked for the whereabouts of Bongane Biyela and for firearms. When he answered it was under the pillow, He was assaulted, kicked with booted feet whilst on the ground and insulted. Paul Moster proceeded to Biyela's hut and he was driven to Bongani's hut where a group of police had guarded Bongani's wife. Bongani Biyela's wife was later locked in one of the police vehicles. Biyela asked to get to his hut to wear where he found Mostert who spoke to him about Bheki Cele. Accused 4 also spoke about killing Bongani's friend Mlu where ever he may find him. An African police officer also assaulted Biyela with a stick and Accused 4 reprimanded him. Accused 4 smashed one window with a big hammer. The police removed beer from their cars and started drinking, celebrating having killed Bongani. Meimoth police came and he only then saw that Bongani was killed. Windows and doors were broken and a lot of possessions were missing. Accused 4 left in Bongani's Kia motor vehicle.

Accused 5 Eric Nel fired shots in the direction of Bongane Biyela.

Sivuyile Ngodwana also fired three (3) shots from his R5 rifle in the direction of the rondavel.

Cst Nzama also fired shots at Bongane Biyela with his R5 rifle.

Accused 27, Bruce McInnes kicked open the door of one of the huts and fired shots with his R5 rifle towards Khanyisani Biyela.

Makhosazana Biyela, Bongani Biyela's wife was assaulted by the police as outlined in Count 43 and pointed with a firearm by police as outlined in Count 44. She will point the police that did so as their further particulars are not known to her at the moment.

Incident 10: Counts 20 – 24 Bongani Mkhize

Bongani Mkhize was the Chairman of KwaMaphumulo Taxi Association who had obtained an interdict from the High Court on 14 November 2008 against members of

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the police from killing him unlawfully, injuring threatening or in any unlawful manner intimidating him. His attorney had made an undertaking to hand him over to the police if they were to seek any questioning or arrest. Despite this extra ordinary interdict, the police conducted an operation on 3 February 2008 which led to the killing of Bongani Mkhize. On 3 February 2008, a joint operation between members of the NIU (National Intervention Unit) and those from Cato Manor pursued Bongani Mkhize on allegations that they needed to question him on Bhekithemba CAS113/9/2008 wherein iNkosi Zondi was killed. The investigating officer of that docket, Warrant Officer Zungu was not even aware of this operation and did not even have a warrant for the arrest of Bongani Mkhize.

Accused 2 Gonasagren Padayachee, Accused 3 Adriaan Stoltz, Accused 14 Raymond Lee, Accused 19 Felokwakhe Dlamuka, Accused 20 Sandile Mfene and Accused 21 Sibongile Sikhulume were in this operation.

Accused 14 Raymond Lee was the driver of a police vehicle accompanied by accused 3 Adriaan Stoltz who followed the deceased's Lexus car towards Overport City along the Ridge Road, the vehicle was followed past a number of intersections. Members of the Tactical Intervention unit who were in the vicinity also joined in the pursuit. Accused 3 and14 decided to shoot at the vehicle, allegedly aiming at the tyres of the vehicle. Allegations by Accused 3 and 14 are that the deceased ignored instructions from them to stop and started shooting at the police vehicles at the time. The car slowed down in Umgeni Road next to the BP Garage after there was shootings at the tyres thereof and more shots were fired in the direction of the deceased's car. Accused 3 and 14 also fired shots in the direction of the deceased.

Accused 2 Gonasagren Padayachee who was in a separate police vehicle with R C Maharaj also joined in pursuit of the deceased's car and fired shots with his 9mm Beretta pistol in the direction of the deceased's car as the deceased was allegedly firing shots at them. R C Maharaj (who later passed on) also fired shots in the direction of the deceased with his R5 rifle. Accused 2 fired shots at the deceased after instructing him to get out of the car; as the deceased was in the process of getting out; Accused 2 fired shots at him, causing him to collapse back into the driver's seat.

Accused 19 Felokwakhe Dlamuka of the National Interventions Unit was also part of the pursuit team following Bongani Mkhize and was travelling in a kombi

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accompanied by his colleagues, Sandile Mfene Accused 20 and Sibongile Sikhulume Accused 21. Accused 19 also fired shots with his R5 rifle in the direction of the deceased after the deceased allegedly fired shots in their direction. Accused 19 prevented the deceased's widow and child to get to the deceased's vehicle or to remove the deceased's personal belongings from the deceased's car.

Accused 20 also fired shots with his R5 in the direction of the deceased on allegations that the deceased was firing shots in their direction. Accused 21 also fired shots in the direction of the deceased with his R5 rifle on the allegations that the deceased was firing shots at them.

The accused placed a 9mm Z88 pistol with obliterated serial numbers next to the deceased to accord with their allegation that the deceased was firing shots at them when the deceased never had a firearm in the first place. None of the cartridges found on the scene matched the firearm that was allegedly in the possession of the deceased.

Accused 3 removed the deceased's two (2) cell phones from the deceased's car on allegations that some investigations were going to be done. The phones were never handed in the SAP 13 register and have since disappeared without any investigation having been done. In any event, if any investigations were to be done, the IPID which does these kinds of investigations were on the scene and could have taken the phones for such purposes.

Incident 11: Counts 109 - 112 Dan Phiri

On 18 March 2009, Accused 5 Eric Nel, Accused 15 Anton Lockem and Accused 25 Charles Smith cornered the deceased along Noordberg road, Tongaat whilst the deceased was in the company of his companions in the vehicle. The deceased who was a paraplegic using cratches, was driving his vehicle to Tongaat to do some groceries for his friend's shop. The deceased was stopped by the police who were driving a BMW, a Quantum and a Corolla vehicle, along the way and the companions were pulled out of the car and made to lie down next to the car. The police in the BMW pointed them with rifles as they were parallel to them and the deceased stopped immediately. The deceased in his paraplegic condition could not come out at the time his companions did as a result of his condition. The police went to him

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informing him that they have been looking for him for a long time and that he was going to die on that day. The deceased was crying and begging them not to kill him.

Accused 5 then fired two (2) shots at the deceased at close range as he was crying and begging not to be killed. The deceased's companions were taken to Cato Manor where they were shown pictures of people that were killed and threatened that they would be killed if they do not confess to the ATM bombing they were arrested for.

The accused placed a 9mm pistol next to the body of the deceased to create an impression that that firearm was pointed at them and to justify their unlawful shooting of the deceased.

Incident 12: Counts 53 – 57 Thokozani Njapha

On 27 April 2009, Accused 2 Gonasegren Padayachee, Accused 4 Paul Mostert, Accused 5 Eric Nel and Accused 6 Neville Eva proceeded to G1216 Sandlwana Road, Kwa-Mashu where the deceased was staying. The deceased had just returned home from Johannesburg in the early hours of the morning and was sleeping with his wife when the police burst into his home. As the deceased's wife was struggling to find the keys to the burglar door, the police were shouting at her to open. She was pulled outside and some police officers were instructed to guard her. One police officer shouted the word start inside the house and the police started firing shots inside the house. The deceased went to the room where his son Njabulo and the three (3) year old son Mongameli were sleeping and picked him up, holding him against his chest and went with him to his bedroom. An African policeman instructed the deceased to remove the child from his chest and instructed Njabulo to take the child and pushed them outside. He was armed with a pistol when the others were armed with rifles. Before Njabulo took his younger brother from his father, his father was holding Mongameli with both hands and did not have any firearm in any of his hands.

Accused 4 Paul Moster is the one who pulled the deceased's wife outside after the door to the house was opened. Accused 5 Eric Nel and Accused 2 Gonasagren Padayachee were inside the house at the time of the shooting. Neville Eva took over the scene after the shooting. Accused 4 prevented the father-in-law of the deceased, Ephraim Khubeka from entering the house when he arrived at the premises. When he forced his way inside the room, he saw the deceased lying dead on the bed and

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was shown a bullet hole in the wall as the one that was caused by the deceased as he was shooting at the police. There was no firearm there and he was not shown any. The police took the deceased's cell phones as well as a large amount of cash that was collected from the social club. The deceased did not have a firearm or any explosives when he arrived in the early hours of the morning as his wife searched his bags to remove the dirty clothes that were to be washed in the morning and no such weapons were in there. The police later placed a firearm next to the deceased's arm so that it becomes clear that he was posing a real threat at the police and to make their shooting of the deceased justifiable. The firearm was placed next to the hand that the deceased does not ordinarily use, the right hand instead of the left one.

Incident 13: Counts 25 – 30 Badumile Ndimande

In the early morning of 23 May 2009, Accused 2 Gonasegren Padayachee, Accused 3 Adriaan Stoltz, Accused 9 Willem Olivier, Accused 13 Rubendren Naidoo and Accused16 Eugene van Tonder proceeded to the deceased's premises at Emerald Green, 87 Ridge Road New Germany on an operation searching for suspects in the killing of Inkosi Zondi. The deceased was sleeping with his wife and children when they heard noise of people trying to open the door. The deceased's wife woke up the children and handed the child to his husband who held the baby on his chest. The wife then opened the door and the police came in. The deceased came out of the bedroom with the child in his arms asking the police not to shoot him as he has a small child. The police shouted that the deceased must give the child to me, instead of arresting him whilst holding the child.

Accused 2 then took the child from the deceased and threw the baby to the deceased's wife and told her to get out of the house. When she said she has another child, another police official instructed her to take that other child outside too. As she was in the passage next to the kitchen door, she heard gunshots in the bedroom where the deceased was.

Accused 16, 3 and 2 entered the premises, accused 16 fired shots at the deceased with his 9mm Baretta pistol. Accused 3 fired shots at the deceased with his 9mm Z88 pistol. Accused 2 fired shots at the deceased with his R5 rifle.

Accused 9 monitored the 1st level of the premises for possible escapees.

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Incident 14: Counts 58 – 61 Lindokuhle Nzuzo

On 10 August 2009 Accused 4 Paul Moster, Accused 13 Rubendren Naidoo, Accused 15 Anton Lockem were in a police vehicle driven by Accused 15 looking for Lindokuhle Nzuzo in connection with a number of armed robbery cases in Umbilo and Phoenix. The information at their disposal was that Nzuzo was driving a white Honda Ballade in the vicinity of Phoenix. The vehicle was spotted along the Malandela road at 12h00 and they followed it. The police allege that the deceased ignored various instructions to stop and he produced a firearm and fired in the direction of the police, whereupon they returned fire. The deceased collapsed in the driver's seat.

Accused 4 fired shots at the deceased with his 9mm Berreta pistol.
Accused 13 fired shots at the deceased with his R5 rifle.
Accused 15 took charge of the scene after the deceased's vehicle came to a halt. The police placed a revolver next to the deceased to accord with their allegation that the deceased had a firearm and fired shots in their direction

Incident 15: Counts 31 – 34 Sifiso Ndimande

Accused 2 Gonasagren Padayachee, Accused 4 Paul Mostert and Accused 6 Nevile Eva travelled to 58 Shelding Road, Rustenburg on 20 September 2009 looking for the Sifiso Ndimande in relation to the killing of Inkosi Zondi. The deceased was taken to Rustenburg as he feared being killed by Cato Manor police, in particular Accused 4 who told him that there is no place to hide as South Africa is in their hands. Cato Manor police went to his home alleging that they were searching for firearms and the family knew that they were on the deceased's tracks. They were at the premises at 23h10.

Accused 2 and Accused 4 took positions at the front door when other member took positions to prevent possible escapes. Accused 2 broke the kitchen door and entered the premises and together with Accused 4 fired shots at the deceased on allegations that the deceased had a firearm in his possession and was firing at them. Accused 2 fired shots at the deceased with his 9mm Berreta pistol. Accused 2 fired shots at the deceased with his R5 rifle. Accused 6 took control of the scene and invited all the relevant units after they made sure that they place a firearm next to the deceased on the scene to harmonise with their allegation that the deceased was shooting at them.

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Accused 8 Phumelele Makhaya, Accused 7 Adjitsingh Ghaness and Accused 10 Thembinkosi Mkhwanazi also travelled to Rustenburg from Durban for the same purpose of looking for Sifiso Ndimande for questioning regarding the killing of Sup Choncho and they provided back up around the vicinity of the deceased's house or the premises where he was staying to prevent any possible escapees.

Incident 16: Counts 62 – 65 Sakhile Prince Thabede

At 01h00 on 26 November 2009, Accused 2 Gonasgren Padayachee, Accused 3 Adriaan Stoltz and Accused 4 Paul Moster conducted a suspect raid in the Kwa-Mashu Township looking for suspects who were allegedly involved in armed robberies in the Durban area. Nkanyiso Ntenja (Nka) was awoken by sounds of people shouting his name and breaking doors and windows, instructing him to open the door. As soon as the door was opened, he was kicked by Accused 4 on the chest and landed at the entrance of the main bedroom. Accused 4 lifted him up and asked him if he is "Nka" and if he knows him. Accused 4 asked if he knew Nqaba and Mtako. He answered affirmative and Accused 4 who was in the company of Accused 2 and Matthews Mkhize handcuffed him with cable tights at the back. He was asked whose the Detta vehicle that was parked outside and he replied that it was his mother's. Accused 2 and Mkhize searched it and found nothing. In the Quantum wherein he was taken, he found Nqaba Mdlulí inside and sat next to him.

Accused 4 sat in the front seat of the Toyota Quantum and the vehicles drove to "G" section where they stopped at a corner house, G187, Kwa-Mashu, that was rented by Sakhile Prince Thabethe. Accused 4 went into that house leaving Nka with Mkhize and others; he came back running to the Quantum asking Mkhize where his "mbombayi" or "spoek" is. At the time he was carrying a R5 rifle and he pulled a handgun under the seat and ran back into the house. Accused 4 and accused 2 broke down the door and entered the Thabethe's bedroom, as he was crying "Do not shoot" Accused 2 and 4 shot at him at close range. The deceased's girlfriend was pulled out of the bedroom with her hair. Accused 4 was shouting the words die as they were shooting at the deceased. The deceased's girlfriend is a nurse and she asked to assist the deceased when she saw a firearm being thrown next to the deceased by one of the white policemen who were there. Accused 4 came back and told Nqaba that he is lucky he was not killed. Accused 4 took Nqaba into the house and he returned terrified, saying Mtako has been killed. Accused 4 took Nqaba into

GSM

Sakhile Thabethe's rented place and forced him to look at the deceased, saying the same will happen to him if he continues with his deeds. Accused 4 said Mtako was a criminal and deserved to die. Accused 4 told Nka that he was lucky they were not killed; Accused 15 said they could not be killed as they were seen by people when they were arrested.

Accused 4 also chased away members of the local police station who were responding to the radio call to render assistance.

Nqaba Mdluli was arrested earlier at his home by Accused 4 and Accused 15 and placed inside the BMW before they drove to Mtako and Nka's place.

Incident 17 Counts 113 – 116 Nhlanhla Lucky Mhlongo

On 6 March 2010 at 01h00 – 02h30 Accused 15 Anton Lockem and Accused 13 Rubendren Naidoo and R C Maharaj went to a house in Groutville Stanger where they had information that an escapee from Westville prison was hiding out. Accused 13 and RC Maharaj broke and entered the premises whilst Accused 15 kept guard outside the premises. Accused 13 fired shots at the deceased with an R5 rifle on allegations that the deceased had pointed them with a firearm and fired shots in their direction, ignoring all the warnings they gave him. A revolver was placed next to the deceased to confirm the allegations that he had a firearm which he pointed and fired towards the police. Accused 15 took over the scene and ensured that it is doctored to accord with their allegation that the deceased had a firearm and fired shots in their direction so that their version is justifiable.

Incident 18 Counts 66 - 69 Kwazi Wiseboy Ndlovu

In the early hours on 1 April 2010 members of Cato Manor including Accused 2 Gonasagren Padayachee, Accused 4 Paul Mostert, Accused 7 Adjitsing Ghaness, Accused 8 Phumelele Makhaya, Accused 9 Willem Olivier, Accused 11 Thatayiphi Mdlalose, Accused 16 Eugene van Tonder, Accused 23 Peter George and Accused 24 Mhlabunzima Thabethe drove to Groutville where a hijacking suspect was arrested. The team then proceed to J63 Esikhaweni in the company of the arrested suspect who was going to point out possible hide out areas for the escapees and the prison guards whose task were to confirm the identity of the escapees. Information that was provided was that the escapees were going to travel to Johannesburg the

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next day and that they were armed with AK47 and R5 rifles. Vehicles were parked a distance from the pointed house in H section and the members walked on foot to the house in question.

Accused 2, Accused 5 and Accused 7 entered the premises in question when Accused 9 and Accused 23 took positions outside to take care of possible escapees. Accused 5 kicked the door open and Accused 2 entered the house, followed by Accused 5 and 7. Accused 2 fired shots at the deceased with an R5 rifle on allegations that the deceased had pointed them with a firearm and fired shots in their direction, ignoring all the warnings they gave him. A 9mm Norinco pistol was placed next to the deceased to confirm the allegations that he had a firearm which he pointed and fired towards the police.

The deceased, a sixteen (16) year old young boy was left watching television around 21h00 on 30 March 2010 when the parents went to sleep. He was likely asleep on the coach when the police broke into the premises and fired shots at him, killing him. The police ordered the father to lie down in the passage after he came out of the bedroom and they took him to another room. They were asking the whereabouts of Tlilli and the mother to the deceased was not aware who that person was. The police prevented her and her husband from entering the lounge where her son was killed already. Accused 4 asked the deceased's father who was the person who was sitting in the lounge, how old he was and whether he attends school. He asked this a number of times. A false report was given when the deceased's father wanted to see the police official who shot his son, that he has been injured and has driven to the hospital; they could not explain why they did not take the deceased with to hospital.

Incident 19 Counts 70 – 79 Musawenkosi Ngcobo and Xolisani Ngcobo

On the 10 May 2010members of Cato Manor including Accused 6 Neville Eva, Accused 7 Adjithsigh Ghaness and Accused 13 Rubendren Naidoo proceeded to K232 Dloko, J section in Bhekithemba looking for suspects who were likely involved in the killing of Captain Reddy during a hijacking incident. Accused 7 and accused 13 broke into the house whilst Accused 6 and other members took positions outside the house to prevent possible escapes. Accused 7 and 13 came across Sibongiseni Ngcobo and continued searching through the rooms until they heard movement in one room which the door of which was broken down and Accused 13 entered and found a male who allegedly pointed a firearm in their direction whereupon Accused

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13 fired shots at him and he fell. Another suspect was trying to reach the firearm next to the table and Accused 13 also fired shots at him.

Accused 6 took charge of the scene and ensured that the scene is doctored to accord with their allegation that the deceased had a firearm and fired shots in their direction so that their version is justifiable.

Incident 20 Count 80 Jabulani Bhengu
Incident 21 Count 81 Dumisane Blessing Mgobhozi and
Incident 22 Counts 82 Boysie Sibusiso Mbonambi

On 4 July 2011 the following members of Cato Manor, Accused 4 Paul Mostert, Accused 7 Adjitsingh Ghaness, Accused 13 Rubendren Naidoo, Accused14 Raymond Lee, Accused 15 Anton Lockem and Accused 26 Jeremy Martens reportedly had information about suspects in a brown Hyunday vehicle who were planning to commit a robbery. The vehicle was spotted on the N2 freeway and Accused 4 saw one of the occupants well known to him, being Jabulani Bhengu (Mjay), Boysie Mkhize Mbonambi and Sbusiso Khumalo. Accused 15 who was driving the unmarked police vehicle engaged the sirene and the occupants fired shots in their direction and sped away. They were chased towards Mount Edgecombe area, KwaMashu and Phoenix. A report relating to a white Mercedes Benz motor vehicle belonging to a doctor that was hijacked from the doctor in Phoenix, was received. The vehicle was dumped at the Buxton shopping Centre and the suspects fled in their private vehicle. They followed the car that fitted the description of the white Golf and gave chase. Accused 4 spotted the vehicle in Ann Abor and Ypsilanti road in Durban North. When the driver saw the police vehicle, he came out of his car, produced a firearm and Accused 4 fired shot at him using his 9mm pistol wounding deceased Jabulani Bhengu fatally. Accused 4 fired more shots at the deceased who had fallen down. He remained on the scene until the paramedics arrived.

There was a second scene at Glastonbury Street, Sommerset Park, Accused 7, Accused 13 and Accused 15 had followed a suspect into the premises and the suspect fired in his direction and he returned fire, wounding the deceased fatally. Accused 26 also fired shots at the deceased with his R5 rifle. The deceased in the second scene Dumisane Mgobhozi was talking on his phone when the police shot at him. The deceased in the third scene, Boysie Mbonambi was in his room downstairs

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when Dumisane Mgobhozi entered his premises. The boys who were in the house did not see a firearm in Mgobhozi's possession. Boysie Mbonambi must have heard the gunshots as he was downstairs in his room and used the sliding door to escape from his house. There were bullet holes on the sliding door and the window was shattered.

The third scene was at a complex in Midsummer Cresent, where Boysie Mbonambi was spotted by a domestic worker trying to jump one of the back walls. A domestic worker drew the police's attention to where Mbonambi was hiding in the dustbin and Accused 14 fired shots inside the dustbin with his R5 rifle, wounding Mbonambi fatally. The deceased did not have any firearms in his hands as he tried to jump over the wall fencing of the adjacent property.

Various firearms were placed next to the deceased to confirm the allegations that they had a firearm which they either pointed or fired towards the police when the police shot them. Accused 15 took over the scene and ensured that it is doctored to accord with their allegation that the deceased had a firearm and fired shots in their direction so that their version is justifiable.
Boysie Mbonambi's children confirm that their father had been in his bedroom the entire morning until Dumisani Mgobhozi came to their home in a white Polo and they opened the gate for him. Dumisane asked them about their father and he was directed to the bedroom where the father was. After Dumisane spoke to his father he came out and was talking on his phone waiting for the boy to close the garage door when police burst into the house and fired shots at Dumisane who was still on the cell phone. Dumisane never had any firearm with him, only the cell phone through which he was talking when the police came in. The father, Boysie Mbonambi escaped through the sliding door and did not also have any firearms in his possession. The police also took Boysie's black Prada bag.

Incident 23 Counts 94 – 97 Qinisani Philangenkosi Gwala

On 4 September 2011, Accused 4 Paul Moster, Accused 8 Phumelela Makhaya, Accused 11 Thatayiphi Mdlalose, Accused 16 Eugene van Tonder Accused 25 Charles Smith and Accused 26 Jeremy Martem went to Mabuyeni Community Hall at Esikhaweni and took the deceased away, saying that he was Philani Ndlovu "Bha". The deceased told them that he was Qinisani Gwala and that they were mistaken but

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this fell on deaf ears. Even witnesses who were there conformed that he was Qinisani Gwala but the police took him away any way.

The accused hand cuffed him and took him to his home, likely to search his premises, They entered into the house and shot at the deceased whilst he was handcuffed. The Accused covered his brother who was present during the shooting with a washing basin.

Accused 25 fired shots at the deceased with his R5 rifle on the basis of their allegation that the deceased produced a gun next to the cupboards; as they were searching his room and tried to shoot at them. Accused 26 also fired shots at the deceased with his 9mm Berreta pistol. Accused 2 took over the scene and invited the relevant units to the scene after they made sure that they place a revolver next to the deceased on the scene to harmonise with their allegation that the deceased was shooting at them.

4. The Activities

These are the same as the operations which were conducted by the members of the enterprise which are outlined in paragraph 3 above. The Accused would, on the basis that they were conducting suspect raids, looking for suspects that they wanted to question relating to their involvement in some offence, break and enter the residences of most of the deceased who are mentioned in the table in paragraph 3 during the early hours of the morning as stated fully in paragraph 3 and at places mentioned in column 3 of the table and instead of questioning the suspects, they end up shooting and killing all of them on allegations that they were attempting to shoot at them or produced a firearm to endanger their lives. The tracing of the suspects would take place without the investigating officer knowing of the suspect raid and mostly without a warrant for the arrest of that suspect. Even if that docket in respect of which the suspect would be sought were to be presented to a prosecutor for consideration of a J50 warrant of arrest, it would be declined on the basis of insufficiency of evidence that links that suspect with the commission of the offence. In all the incidents mentioned in paragraph 3, all the suspects that were required for questioning ended up being killed, which was part of the initial plan.

The parties that participated in all the operations have been mentioned more fully in the incident 1 – 23 mentioned above.

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5. Persons employed by or associated with the Enterprise

5.1 Accused 2 Gonasagren Padayachee

5.2 Participated in the following Counts
Counts 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 62, 63, 64, 65, 66, 67, 68, and 69. In most of the incidents Accused 2 would be part of the members that enters the premises and who would do the shooting. It is alleged that his conduct of being part of the penetrating team accelerated the objective of the enterprise, namely to eliminate the suspects without taking them properly to a court of law where their guilt or otherwise could be determined by a court of law.

5.3 and 5.1 the conduct of Accused 2 which formed part of the pattern of racketeering activity as defined in section 1 of Act 121 of 1998 has been outlined more fully in Incidents 9;10; 12; 13; 15; 16 and 18 above
5.5 the date, time and place of the Acts has also been dealt with in incidents outlined above.

Accused 3 Adriaan Stoltz participated in the following Counts:
Counts 13; 14;15;16;17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 62; 63; 64 and 65. Accused 3 executed various actions which formed part of a pattern of racketeering activity which accelerated the objectives of the enterprise:

In Counts 13 – 18, Accused 3 opened the security gate, entered the bedroom of the deceased, Kopolota Ntuli and fired shots at him. In Counts 20 – 24, Accused 3 was part of vehicles that followed Bongani Mkhize's black Lexus towards Overpoort City along the Ridge Road and he also fired shots in the direction of the deceased. Accused 3 also removed the deceased's two cell phones from the deceased's car and never handed them in the SAP 13 register.

In Counts 25 – 30 Accused 3 together with Accused 2 and 16 entered the premises of Badumile Ndimande's place at New Germany and fired shots in the direction of the deceased who was sleeping with his wife. If they indeed wanted to arrest the deceased, they could easily have done so whilst he was holding his child against his

G SM

chest area, instead they shouted him to hand over the child to the wife and later fired shots at him. Accused 3 fired shots at the deceased with his 9mm Z88 pistol.

In Counts 62 – 65 Accused 3 formed the necessary support to the penetration teams when they conducted suspect's raids in the KwaMashu area.

Accused 4 Paul Mostert took part in the following Counts which formed a pattern of racketeering activities:
Counts 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16 ;17; 18; 31; 32; 33; 34; 35; 36 37; 38; 39; 40; 41; 42; 43; 44; 45; 46; 47; 48; 49; 50; 51; 52; 53 54; 55; 56;57; 58; 59; 60; 61; 62 ;63; 64; 65; 66; 67 ;68; 69; 80; 81; 82; 83; 84; 85 ;86 ; 87; 88; 89; 90; 91; 92; 93; 94; 95; 96; 97; 98; 99; 100; 101; 102; 103

In Counts 3 - 7 (Incident 4) Accused 4 was part of the three (3) officers, Accused 8, 13 and 22 who entered the premises of Lindelani Buthelezi at 00h00 on 3 September 2008, Accused 4 was in the front, he entered the back room of the deceased, after kicking the door open and followed the deceased to the other room at which Accused 4 fired shots at the deceased, killing him. It is the state case that the deceased was not armed and that the firearm that the deceased is alleged to have possessed was planted by the police on the scene. The late Captain Eva, Accused 6 then took over the scene and ensured that all related units are summoned to the scene.

In Counts 8 –12 (Incident 5) Accused 4, Paul Mostert confronted Warren Julies, the owner of the security company that provided protection to KwaMaphumulo Taxi association members and instructed him to remove their bodyguards from the KwaMaphumulo members. A week prior to this incident, the deceased were arrested by members of the CID (Ndlovu and Gabela) and handed to Insp Mostert (Accused 4, 8 and 16) who just tortured them and released them. On the 16 September 2008 at around 08h30, Insp Mostert (Accused 4) gave the members a briefing at the Pietermaritzburg office, he was also the driver of pursuit car 1, a silver BMW vehicle together with Insp Nel (Accused 5) and Makhanya (Accused 8) when they observed the deceased's Hyundai travelling along the N3 near Cedara. Captains Eva (Accused 6), Lockem, (Accused 15) and Van Tonder (Accused 16) were following in a separate vehicle. He pulled alongside the Hyundai vehicle and Accused 5 Eric Nel fired shots in the direction of the deceased's Hyundai vehicle with his R1 rifle until it came to a standstill, Accused 4 then went close to the driver's door of the deceased's vehicle and fired shots towards the driver at close range. Accused 4 also kept regular contact

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with General Booysen on the whereabouts of Magojela until he was located on the N3 highway.

In Counts 13 – 18; Accused 4 Paul Mostert called the teams together after he received information relating to the whereabouts of the suspects they were looking for around 15h30 in this incident. He briefed them of the day's plan. He opened the security gate at 4 Oribi road, Mandini and entered the house through the sliding door in the veranda leading to the lounche, followed by Accused 3 Adriaan Stoltz and Accused13 Rubendren Naidoo. He instructed a child he saw in the passage to get out for own safety. He kicked open the bedroom door after Accused 3 Stoltz had tried unsuccessfully. He fired shots at both deceased. He screamed that it was safe to enter.

In Counts 31 – 34, Accused 4 Paul Mostert accompanied by Accused 2 and 6 travelled to 58 Sheiling Road Rustenburg on 20 September 2009 looking for Sifiso Ndimande in relation to the killing of Inkosi Zondi and arrived around 23h10. Accused 2 and 4 took positions at the front of the door when other members took aother positions to prevent possible escapes. Accused 2 and 4 broke the kitchen door and entered the premises. Accused 4 fired shots at the deceased on allegations that the deceased had a firearm in his possession and was trying to fire at them.

In Counts 35 – 38, Accused 4 was part of the team that visited the deceased's apartment on the 3rd floor, 32 Colesberg, 5th Avenue, Greyville Berea. Accused 4 entered the flat together with Accused 5, 7 and 11 whilst Accused 8 and 13 were keeping guard below the flat. Accused 4, 8 and 13 fired shots at the deceased whilst he was running away and as he lay helpless on the ground, one of them fired a shot at him, striking the floor under him.

In Counts 39 – 52, Accused 4 was part of the group of Cato Manor police who visited the Biyela homestead in Debe village, Melmorth in the early hours of 23 November 2008. Accused 4 was accompanied by amongst others Accused 2, 5, 7, 13, 14, 19, 25, 27, 28 and 30 to the Biyela homestead. Accused 4 hit Richard Biyela three (3) times with a fist on his face as he was asking for the whereabouts of Bongane Biyela and any firearms on the premises.

In August 2008 when the case against Bongani Biyela was withdrawn in court in Durban Accused 4 was in the company of an Indian police officer (Shane Naidoo)

G SM

when he approached the deceased, Bongani Biyela and told him in front of his co-accused that he will hunt him and kill him. When Bongani Biyela was in custody awaiting trial, Accused 4 summoned Richard Biyela to Cato Manor offices as he was verifying residential addresses of Bongani Biyela. Shane Naidoo and Bongani Biyela were present as Accused 4 questioned Richard Biyela about his residential address and possessions.

On 22 November 2008 after Bongani was released,a group of Cato Manor police including Shane Naidoo arrived at the Biyela homestead at about 02h00, asking for the whereabouts of Bongani Biyela and firearms. Richard Biyela was pointed with firearms and Shane Naidoo told his colleagues not to do so and they did. Richard Biyela told them Bongani Biyela might be in his hut and they proceeded there. He then heard gunshots in that area. When he was taken to a steepy area he met Accused 4 who asked where Bingani Biyela was and hit him with clenched fists on his face. Richard was asked about firearms and kicked by the police until he fell to the ground. Accused 4 insulted him with his mother's private parts. Accused 4 also had a conversation with Richard about Bheki Cele, who was the Commissioner of Police who had given him permission to kill people. Police officer Smith pulled him with his hair. Accused 4 said he was going to kill all Bongani's friends at KwaMashu, including Mlu. A certain black officer brought a bolt cutter and wanted to open his legs forcefully with a view to cut his testicles. Accused 4 took a big hammer and smashed the door of a rondavel that was not tampered with. The police then brought cases of beer and bottles of brandy to drink in celebration. Accused 4 also took Richard Biyela's cell phone, unlocked it and made calls and never returned it. Accused 4 also took away a Kia motor vehicle which was used by Bongani and never returned it without any explanation. When Melmorth police arrived at the scene, Richard Biyela realised that Khanyisani Biyela, his nephew was killed inside his father's rondavel. He also realised that his licenced firearm, his possessions and cash were missing. Although he does not know the names of other police officers who were there, he can identify them.

Accused 5, Eric Nel fired two (2) shots towards Bongani Biyela with a 9mm pistol with serial number Q050151, Accused 27; Bruce McInnes fired two (2) shots with his R5 rifle with serial number 333691. Constable Nzama also fired shots whilst being outside the rondavels with his R5 rifle.

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In Counts 53 – 57 Accused 4 Paul Mostert was part of the team that went to KwaMashu looking for Thokozani Njapha, Accused 4 pulled the deceased's wife outside after the door was opened. Accused 4 also prevented the father-in-law of the deceased, Ephraim Khubeheka from entering the house when he arrived at the premises. When he forced his way into the house in the room where the deceased was, he saw the deceased lying on the bed. There was no firearm next to the deceased at the time.

In Counts 58 – 61 Accused 4 was part of the team that were looking for Lindokuhle Nzuzo for armed robberies in Umbili and Phoenix. The Honda Ballade vehicle that he was driving was spotted in Malandela road and Accused 4 fired shots at the deceased with his 9mm pistol. Accused 13 also fired shots at the deceased with his R5 rifle.

In Counts 62 - 65 Accused 4 was part of the Cato Manor team that went to do suspect raids in KwaMashu township, looking for suspects allegedly involved in robberies around the Durban area. On arrival at Nkanyiso Ntenja's place, Accused 4 kicked him on the chest and he landed at the entrance of the main bedroom. Accused 4 lifted him up and asked him if he is "Nka" and if he knows him. Accused 4 asked if he knew Nqaba and Mtako. He answered affirmative and Accused 4 who was in the company of Accused 2 and Matthews Mkhize handcuffed him with cable ties at the back. He was asked whose the Detta vehicle that was parked outside was and he replied that it was his mother's. Accused 2 and Mkhize searched it and found nothing. In the Quantum wherein he was taken, he found Nqaba Mdluli inside and sat next to him.

Accused 4 sat in the front seat of the Toyota Quantum and the vehicles drove to "G" section where they stopped at a corner house, G187, Kwa-Mashu, that was rented by Sakhile Prince Thabethe. Accused 4 went into that house leaving Nka with Mkhize and others; he came back running to the Quantum asking Mkhize where his "mbombayi" or "spoek" is. At the time he was carrying a R5 rifle and he pulled a handgun under the seat and ran back into the house. Accused 4 and accused 2 broke down the door and entered the Thabethe's bedroom, as he was crying "Do not shoot" Accused 2 and 4 shot at him at close range. The deceased's girlfriend was pulled out of the bedroom with her hair. Accused 4 was shouting the words die as they were shooting at the deceased. The deceased's girlfriend is a nurse and she asked to assist the deceased when she saw a firearm being thrown next to the deceased by one of the white policemen who were there. Accused 4 came back and

G SM

told Nqaba that he is lucky he was not killed. Accused 4 took Nqaba into the house and he returned terrified, saying Mtako has been killed. Accused 4 took Nqaba into Sakhile Thabethe's rented place and forced him to look at the deceased, saying the same will happen to him if he continues with his deeds. Accused 4 said Mtako was a criminal and deserved to die. Accused 4 told Nka that he was lucky they were not killed; Accused 15 said they could not be killed as they were seen by people when they were arrested.

Accused 4 also chased away members of the local police station who were responding to the radio call to render assistance.

Nqaba Mdluli was arrested earlier at his home by Accused 4 and Accused 15 and placed inside the BMW before they drove to Mtako and Nka's place.

In Counts 66 – 69 Accused 4 briefed Cato Manor members on 31March 2010 regarding an operation of tracing escapees from Westville prison. Accused 4 had information of two (2) of the escapees and Lucky Mjuluka of Groutville with whom he was in contact, who was offering to show them the escapees hideout areas. Lucky led Cato Manor members to a house at J section in Esikhawini. Accused 5, 7 and 2 formed the penetration team. Accused 5 kicked the door open as Accused 2 entered and fired four (4) shots at the deceased with his R5 rifle with serial number 334103. A 9mm pistol was placed on the left hand side of the deceased when he is right handed, this was to create the impression that he was posing some form of danger to the police to make their shooting justifiable. Accused 4 asked the deceased's father many times who it was who was sitting in the lounge. When the deceased's father wanted to see the police official who had shot at his son, a false report was given that he had been injured and has been driven to hospital. Captain Ncube, the duty officer was also given the same false explanation and he visited Garden City clinic and Bay hospital to see if Accused 2 received any medical treatment at their facility and did not find any records.

In Counts 80 – 93 Accused 4 was part of Cato Manor team who were on the lookout for a brown Hyunday whose occupants were planning to commit a robbery. Accused 4 saw the occupants of the vehicle being Jabulani Bhengu (Mjay), Boysie Mkhize Mbonambi and Sbusiso Khumalo. After a brief exchange of shooting, the vehicle disappeared. Accused 4 spotted a white Golf in Ann Abor and Ypsilanti road in Durban North. When the driver saw the police, he came out of his vehicle and

G SM

Accused 4 fired shots at him using his 9mm firearm, the deceased was fatally wounded. Accused 4 remained at that scene until the paramedics arrived whilst his colleagues proceeded to Dumisane Mgobhozi and Boysie Mbonambi.

In Counts 94 – 97 Accused 4 was part of the team of Cato Manor police that went to Mabuyeni Community Hall on 4 September 2011 looking for Philani Ndlovu (Bha). The deceased informed them that he was Qinisani Gwala and that they were mistaken as his identity but this fell on deaf ears, despite confirmation from witnesses who were present who confirmed that he was Qinisani Gwala. They took him to his home likely to conduct a search of his residence when Accused 25 and 26 fired shots at him, alleging that produced a gun from one of the cupboards.

In Counts 98 – 101 Accused 4 was part of the team of Cato Manor police who went to Mfanafuthi Zwane (Fukwane) in KwaMashu on 31 July 2008. The deceased was found whilst seated in his car with his girlfriend. He was ordered out of the vehicle with arms raised and he obliged. He was pushed in the direction of the wall. He was already under their control and unarmed. Numerous shots were fired at the deceased.

In Counts 102 – 103 Accused 4 was keeping observation at the Caritex garage in Dundee when they noticed Muzi Majola and Sicelo Mngomezulu travelling in a car fitting the description they had. They were looking for Muzi Majola for alleged involvement in ATM bombings. They arrested Muzi Majola and Sicelo Mngomezulu, the third occupant, Innocent Mngomezulu was released. The police transported the detainees in separate vehicles and stopped at Midway truck stop for refuelling where the detainees requested to use toilet facilities. Accused 30 and 13 took Muzi Majola to the toilet. An incident happened that resulted in Accused 5 firing shots at the deceased killing him. Accused 13 alleges that as he was uncuffing the deceased from one hand, the deceased attacked him hitting him with fists and grabbing his firearm.

Accused 5 Eric Nel participated in the following activities which formed a pattern of racketeering activities:

Counts 8 – 12; 35 – 38; 39 – 52; 53 – 57; 102- 103; 104 – 108 and 109 – 112.

In Counts 8 – 12 Accused 5 was an occupant in pursuit car 1 that was following Magojela and Tembe along the N3 highway. As the vehicle approached Howick, it changed to a slower lane and the occupants were allegedly firing shots in the

G SM

direction of the other pursuit vehicle. Accused 5 also fired shots in the direction of the occupants of the Hyundai with his R1 rifle and the vehicle came to a standstill.

In Counts 35 – 38 Accused 5 was part of the team that broke and entered the deceased's premises on the 3rd Floor Colesburg 5th Avenue at Greyville, Berea. Accused 5 only lended support to the members, accused 4,8 and 13 fired shots at the deceased as he was running away, posing no danger to anyone.

In Counts 39 – 52 Accused 5 was part of the team that travelled to the Biyela homestead in the early hours of 23 November 2008 together with amongst others Accused 2, 4, 7, 13, 14, 19, 25, 27, 28,30 and members of the National Intervention Units. Accused 9 was in charge of the Cato Manor team. The homestead was cordoned off as early as 03h00 on 23 November 2008. The deceased Bongani Biyela and his wife were woken up by strange noise of people shouting as they were sleeping in the rondavel. The deceased Bongani Biyela stood up and went out to check what was happening. The deceased's wife heard gunshots outside, as she was getting up, three (3) males entered the rondavel, pointing her with firearms. They ordered her to sit and demanded the deceased's cell phone and car keys. They pulled her outside, hit her with open hands on her face and kicked her on her buttocks. They locked her up in one of the police Condor. Later some policemen reported to her that her husband has been killed and she could come and see him. Accused 5 fired two (2) shots at Bongani Biyela with his 9mm pistol with serial number Q050151. Accused 27 fired shots with his R5 rifle in the direction of the deceased and Cst Nzama also fired shots with his R5 rifle in the direction of the deceased.

In Counts 53 – 57 Accused 5 was part of the Cato Manor team that proceeded to KwaMashu looking for the deceased, Thokozani Njapha, who had just returned from Johannesburg where he worked at the time. The deceased was sleeping with his wife when the accused burst into the house. The deceased went to the room where his son Njabulo was sleeping with his three (3) year old son Mongameli and held Mongameli closer to his chest. The deceased was instructed to let go of the child and Njabulo was instructed to take the child and to go outside. Accused 2 and 5 fired shots at the deceased. The police took the deceased's cell phone and a large amount of cash that was collected from the social club. The police then place a firearm next to the deceased's left hand, which the deceased does not ordinarily use, to create an impression that the deceased posed some danger to them.

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In Counts 104 – 108 Accused 5 accompanied by Accused 6 and 27 proceeded to the deceased's home in Ntuzuma township as they suspected him of involvement in ATM bombings. Accused 27 identified themselves as police and the door was opened. Accused 27 and 5 accompanied the deceased to his bedroom to conduct a search. Accused 5 was questioning the deceased as Accused 27 was continuing with the search. The deceased allegedly took out a firearm from a pillow and pointed it at Accused 6 and Accused 27 fired four (4) shots in the direction of the deceased with his 9mm pistol. They then placed a revolver next to the deceased's body to create an impression that the deceased was posing some danger to them.

In Counts 109 – 112 Accused 5, accompanied by Accused 15 and 25 cornered the deceased along Noordberg road in Tongaat as the deceased was on route to buy groceries in Tongaat for his friend's shop. The deceased as he was a paraplegic took a while to get out of the car as they were instructed to do so, his companions who jumped out and lied down next to the car, were pointed with firearms. The police told the deceased that they have been looking for him for a long time and he was going to die on that day. The deceased was crying and begging the police not to kill him. Accused 5 fired two (2) shots at the deceased at close range as he was crying and begging not to be killed. The deceased's companions were taken to Cato Manor offices where they were shown pictures of people that they killed and threatened them that they will be killed if they do not confess to the ATM bombing that they were arrested for. The accused placed a 9mm pistol next to the body of the deceased to create an impression that the deceased posed some danger to them that justified their unlawful shooting of the deceased.

Accused 6 participated in the following incidents which formed a pattern of racketeering activities:
Counts 3 – 7; Counts 8 – 12; Counts 13 – 18; Counts 31 – 34; Counts 35 – 38; Counts 53 – 57; Counts 70 – 79 and Counts 104 – 108. In most of the incidents accused 6 would take over the scene immediately after the shooting to make sure that it is doctored by placing a firearm next to the body of the deceased to accord with their version that the deceased posed some form of danger to them and to make their shooting justifiable in terms of section 49 of the Criminal Procedure Act 51 of 1977. The conduct of Accused 6 which formed part of a pattern of racketeering activities as defined in section 1 of the POCA Act 121 of 1998 has been outlined more fully in Incidents 1, 4, 5, 6, 8,12, 15 and 19.

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The Accused knew

7.1 It is the State case that all the accused knew that they were participating in unlawful activities by associating themselves directly or indirectly with the enterprise and getting involved in conduct or activities which were advancing the objectives of the enterprise.

7.2 Prior to May 2008, a lot of incidents took place some of which are not even included in the indictment. On 24 May 2008 when the initial suspects were traced, it was already getting clear that Cato Manor was not interested in arresting the suspects and bringing them before the courts for their guilt to be determined properly by means of presenting evidence which has been properly obtained by the police. On 24 May 2008 when Thabo Msimango was located at his flat and he escaped, the police fired shots at him despite the fact that the flat is within an enclosure which was already cordoned off to an extent that there were no chances of escape. When he is struck by bullets as he falls down from the upper levels of his flat, making it easier to arrest a wounded suspect, the pursuers fires a shot at him lying helplessly on the ground to an extent that the tarred ground on which he fell sustains a hole from the shot fired, dispelling any myth that the intention is to arrest and making it very clear that the suspect is being finished off.

The killing of Supt Govender, Supt Choncho, Inkozi Zondi which were serving South African Police members and ex-members drove Cato Manor outside the ambit of the legal structure created by the SA Police Act and they decided then that they will stop at nothing to track the killers of police officers. It is the State case that Cato Manor at this stage decided that they will stop at nothing in tracking and eliminating people that they suspect of involvement in the continuing taxi feud between Stanger Taxi Association and KwaMaphumulo Taxi Association. It is the State case that Cato Manor members knew that they will use the authority or cover of the legal entity of SAPS to clothe their unlawful activities.

7.2.2 The accused knew that they were participating in conduct that pursues the objectives of the enterprise from the briefings which Superintendent Olivier, (Accused 9 Captain Eva (accused 6), Captain Lockem, (accused 15) and Captain van Tonder accused 16 were giving them prior to most of the operations. General Booysen and Sup Olivier would arrive at most scenes and congratulate the members for a job well done. The utterances of influencial members of Cato Manor who were close to General Booysen such as accused 4 that he or Kito as they were well known would track and kill the suspects when they are released, made all members who took part

G SM

in the operations know that they were busy with activities of an enterprise. For instance when Accused 4 told witness 127 that his appointment card was a license from Bheki Cele, the former Commissioner of Police to kill people. Bongani Velaphi Biyela (deceased in Count 39) had a criminal case for which he was attending court in Durban. When he was awaiting trial in custody, Cato Manor police said to witness 127 in broken fanakalo language that if Bongani were to apply for bail and be released, the police would "kill him". On a subsequent appearance in the same matter when the case was withdrawn and the deceased went to fetch his bail money, Accused 4 approached him and told him in the presence of his companions including witness 128 that even if he may be released, "they will hunt him (deceased) and kill him". This makes it clear that their intention in tracing suspects was not to bring them to the courts for their guilt to be determined but to kill them.

7.2.3 the precise nature, extent or ambit of the knowledge is very clear when the totality of the evidence and the number of the suspects killed is evaluated. It is sufficient just to state that the accused knew that they were participating in conduct that accelerates the objective of the enterprise.

8. The accused ought reasonably to have known

8.1 It is the State case that the accused "ought reasonably to have known that they were associating with an enterprise in contravention of section 2 (e) of Act 121 of 1998. The South African Police Act 68 of 1995 imposes a legal duty on every member of the service to protect the community and to perform official duty subject to Constitution and with due regard to the rights of every person which is enshrined in the Constitution. All the accused persons had an obligation to observe the rights of every person in particular those that are suspected of involvement in crime. It is the State case that the accused conducted themselves in a manner that contradicts their duties and obligations which flow from the Constitution and the Police Act. The accused ought to have known that in engaging in activities that they were taking part in, they were associating with unlawful conduct of the enterprise.

AD CONTRAVENTION OF SECTION 2 (1) (f) OF ACT 121 OF 1998

ACCUSED 15 (ANTON LOCKEM) ACCUSED 16 (EUGENE VAN TONDER) AND ACCUSED 6 (THE LATE NEVILLE EVA)

Managing the operation or activities of the Enterprise

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1. The Enterprise

The enterprise is the same and continues to be the same in both contravention of section 2 (1) (e) and 2 (1) (f) and in all predicate offences. The only difference is that on specific days when various incidents or transactions take place, different members of the enterprise who are available or who are on duty would take part and has been specified in the different incidents, which have been listed. The State argues that the enterprise is a legal entity established in terms of the South African Police Act 68 of 1995. It is the Serious Violent Crime section based at Cato Manor which forms part of the KZN Provincial Organised Crime structure. The Organised Crime structure became part of the Directorate for Priority Crimes Investigations (DPCI) which was under the commandership of General Booysen as the Provincial Head of DPCI since March 2010.

The organisational structure, operational structure and hierarchal structure, detailing all persons in actual positions management and authority has been outlined on pages 3 – 5 of this submission and continues to be same in both Counts 1 and 2.

2. The precise date(s) each persons were in the positions of authority have also been outlined on pages 3 – 5 of this submission.

3. The dates of the operations or incidents, place of operations or incidents and parties involved in the various operations or incidents have also been outlined on pages 3 – 5 of this submission.

4. The activities in so far as the managers, the various incidents in which the members of the enterprise took part, the various dates and places of the activities and the specific members who took part in the various activities have been outlined in detail in the various incident that have been listed above.

5. Persons employed by the Enterprise

   The persons who were employed by the Enterprise in the various roles, the activities that they took part in, the dates of the operations or incident and the place where it took place have been outlined in detail in the incidents themselves and more particularly when the specific role of the person in

GSM

advancing or accelerating the objectives of the enterprise, was considered in pages 7 – 34 of this submission.

6. Persons associated with the Enterprise
   Persons who associated with the enterprise, the details of the association, the activities which they were engaged in which associated with the enterprise and accelerated the objectives of the enterprise has been outlined in details when the incidents were dealt with. The manner in which they associated with the enterprise which formed a pattern of racketeering activity has also been stated in the incidents.

7. The concept of knowledge
   The accused persons knowledge that they were participating in activities of the enterprise has been dealt with in detail on page 34 of this submission.

8. The concept of the accused having reasonably to have known of their participation in activities of the enterprise has been dealt with in detail on pages 34 – 35 of this submission.

AD COUNTS 8 – 9

INCIDENT DATE: 16 SEPTEMBER 2008

ACCUSED PERSONS INVOLVED

ACCUSED1: JOHAN BOOYSEN (WITHDRAWN)

ACCUSED 4: PAUL JONATHAN MOSTERT

ACCUSED 5: ERIC ALFRED NEL

ACCUSED 6: NEVILLE EVA (DECEASED)

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ACCUSED 8: PHUMELELA MAKHAYA

ACCUSED 9: CORNELIUS OLIVIER

ACCUSED 15: ANTON LOCKEM AND

ACCUSED 16: EUGENE VAN TONDER

DECEASED 1: MAGOJELA NDIMANDE

DECEASED 2 SIBUSISO TEMBE

It is clear from the Accused request for further particulars that deceased 1, Magojela Timson Ndimande and deceased 2, Sibusiso Tembe have been separated in the Accused's request documents. The State submits that it cannot happen as the incident relating to Magojela, which forms Count 8 and the incident relating to Sibusiso Tembe, which forms Count 9 happened at the same time, with same accused persons involved. Both Magojela and Tembe were travelling together in the same vehicle and the same conduct of the accused that contributed to the death of the one, is the same conduct the contributed to the death of the other. It is for this reason that the response relating to the further particulars have been dealt with together, particularly because the questions are also the same.

AD MURDER : ACCUSED 4

DECEASED 1 : MAGOJELA TIMSON NDIMANDE

DECEASED 2: SIBUSISO TEMBE

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1.1 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,
- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,
- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,
- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008
- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport
- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute
- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose
- It is the state case that Accused 4 fired a number of shots at the deceased when no danger was posed to him or his colleagues and that the shooting cannot be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977 .

1.2 The act that the State relies on to found a conviction of murder occurred:

1.2.1 on the dates, the 29 August 2008 and 16 September 2008

1.2.2 the time of the act is around 10h10 and

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1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.3 The State is relying on an act, not an omission.

1.4 Yes.

1.5 It is alleged that the accused that Accused 4 fired shots on at least more than one occasion.

1.6 Yes.

1.7 It is alleged that the shots that struck the deceased at least more than once, considering that Accused 4 was not the only person firing shots at the deceased at the time.

1.8 Considering that Accused 4 was not the only person firing shots at the deceased at the time, it is not possible to state precisely upon which part of the body the deceased was struck by the gunshots fired by Accused 4. The State will argue that as the accused were acting in concert with one another, it is not necessary to prove which gunshot caused which wound, safe to state that Accused 4 associated himself with the conduct of his co-accused.

1.9 Yes.

2. AD: PATTERN OF RACKETEERING ACTIVITY: MURDER

2.1 Yes

2.2.2 It is not certain at which place or time Accused 4 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State.

2.2.4 Yes.

2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

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2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the Incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation has been dealt with in Incident 5 dealing with Counts 8 – 12

3. PATTERN OF RACKETEERING ACTIVITY AND THE RELATIONSHIP WITH PREDICATE OFFENCES

3.1 Yes, Accused 4's conduct is related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about

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In the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

4.2 Accused 4 as a member of the Cato Manor police had close ties with the Section Commander, Sup. Olivier, accused 9 as well as General Booysen. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

4.3 – 4.8 Yes It is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The

G SM

killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, It is alleged that Accused 4 was involved in the killing of Magojela and Tembe.

4.10 Accused 4 was involved in questioning of Magojela and Tembe after they were handed over to him on 29 August 2008 by witnesses 22 and 25, Cst Gebela Nad Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4 drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range.

5. WHILST MANAGING THE ENTERPRISE

5.1 No it is not alleged that Accused 4 committed the murder whilst managing the enterprise.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

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5.2.3 – 5.2.5 The organizational and hierarchal structure of the enterprise remains the same throughout, only the participants are different depending on who is on duty and available on the day. The participants have been listed in 5.2.1 above.
5.3 Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. The participants have been listed in 5.2.1.

5.4 Yes each member of the enterprise formed a common purpose to engage in the killing of the deceased. Each member took an active role to associate with the objective of the enterprise by facilitating and or accelerating the objectives of the enterprise.
5.5.1 It is not clear when the common purpose was formed
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

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Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

6 WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes it is alleged that Accused 4 committed the murder of the deceased whist employed or associated with the enterprise.

6.2.1 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

6.2.2 there were no full terms of an employment contract.

6.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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6.2.4 Accused 4 kept a close and loyal and friendly relationship with both Sup Olivier and General Booysen. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

6.3.1 It is alleged that at the time of the murder of Magojela and Tembe the enterprise which was the SVC section of Cato Manor was made up of the following members:-

Accused 4 – Paul Mostert

Accused 5 – Eric Nel

Accused 6 – Neville Eva

Accused 8 – Phumelela Makhanya

Accused 15 – Anton Lockem and

Accused 16- Eugene van Tonder

6.3.2 The duties which were executed by each of the accused person is the following:-

Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4 drove his silver BMW vehicle (pursuit vehicle 1) behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

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Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.4 Yes it is alleged that each person of the enterprise formed a common purpose to engage in the killing of Magojela and Tembe.

6.5.1 It is not certain when the common purpose was formed by other members with Accused 4. Accused 4 already had intended killing Magojela when he instructed witness 29, the owner of VIP Protection which was providing security services for members of KwaMaphumulo Taxi Association with security guards, to remove their guards from them. Other members of Cato Manor associated with the conduct of Accused 4 when they committed the actions outlined above which accelerated the objectives of the enterprise.

6.5.2 The parties to the common purpose were:-
Accused 4 – Paul Mostert
Accused 5 – Eric Nel
Accused 6 – Neville Eva
Accused 8 – Phumelela Makhanya
Accused 15 – Anton Lockem and
Accused 16- Eugene van Tonder

6.5.3 the conduct agreed upon was to fire shots at Magojela and Tembe and to kill him.

6.5.4 – 6.5.6 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

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6.5.7 The accused who associated with the enterprise performed the following tasks in pursuit of the objectives of the enterprise, has been listed in 6.3.2 above.

6.5.8 The affairs or objectives of the enterprise appear to be the elimination of members of KwaMaphumulo Taxi Association who are suspected of involvement in the killing of Sup Choncho.

6.6 Yes, the State argues in the main that the enterprise is a legal entity established by legislation.The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

6.7 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 The State argues in the alternative that members of the enterprise acted outside the legal mandate of the SAPS and engaged in frolics of their own, which were never and would never be authorised lawfully, thereby operating as a non-legal entity.

6.9 The SA Police Service will never legally authorise the unlawful killing of human beings, it is a legal structure that works within the framework of the Constitution, when its members act outside the scope of their lawful functions, such conduct will under no circumstances be authorised.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 4 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars followed him, they converge to stop him and they all fire shots in his direction.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with both Sup Olivier and General Booysen. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

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7.9 Same as 7.6 above.

8 Conducting the affairs of the enterprise

The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.4 – 8.5 The extent of participation of Accused 4 in these activities have been outlined in the Incidents.

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23

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Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bonglzwe Mhlongo raised an amount of R750 000,00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 8 MURDER
DECEASED MAGOJELA AND TEMBE
ACCUSED 5 ERIC NEL

1.1 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,
- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,
- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,
- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008

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- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport
- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute
- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose
- It is the state case that Accused 5 fired a number of shots at the deceased when no danger was posed to him or his colleagues and that the shooting cannot be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977

1.2 The act that the State relies on to found a conviction of murder occurred: 1.2.1 on the dates, the 29 August 2008 and 16 September 2008

1.2.2 the time of the act is around 10h10 and

1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.3 The State is relying on an act, not an omission.

1.4 Yes.

1.5 It is alleged that the accused that Accused 5 fired shots on at least more than one occasion.

1.6 Yes.

1.7 It is alleged that the shots that struck the deceased at least more than once, considering that Accused 5 was not the only person firing shots at the deceased at the time.

1.8 Considering that Accused 5 was not the only person firing shots at the deceased at the time, it is not possible to state precisely upon which part of the body the deceased was struck by the gunshots fired by Accused 4. The State will argue that as the accused were acting in concert with one another, it is not necessary to prove which gunshot caused which wound, safe to state that Accused 5 associated himself with the conduct of his co-accused.

1.9 Yes.

AD PATTERN OF RACKETEERING ACTIVITY: MURDER

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2.1 Yes

2.2.2 It is not certain at which place or time Accused 5 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State.

2.2.4 Yes.

2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the Incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in Incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation have been dealt with in Incident 5 dealing with Counts 8 – 12.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA PREDOCATE OFFENCES

3.1 Yes, Accused 5's conduct is related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4 PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

G SM

- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about in the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

4.2 Accused 5 as a member of the Cato Manor police had close ties with the Section Commander, Sup. Olivier, accused 9 as well as General Booysen. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

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4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, It is alleged that Accused 5 was involved in the killing of Magojela and Tembe.

4.10 Accused 5 was involved in questioning of Magojela and Tembe after they were handed over to Cato Manor on 29 August 2008 by witnesses 22 and 25, Cst Gebela Nad Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4, accompanied by Accused 5, drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range. Accused 5 also

G SM

fired ten (10) shots with his official R1rifle in the direction of the deceased, in association with the conduct of Accused 4.

5. WHILST MANGING THE ENTERPRISE

5.1 No, Accused 5 participated in the activities of the enterprise and was working under the management and direction of Accused 1, 6,9,15 and 16, who were the managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that role. In Count 8, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. Accused 5 was a passanger in pursuit car 1, driven by Accused 4.

5.2 No, Accused 5 participated in the activities of the enterprise

5.3 There was no house breaking in Count 8 – 12, the deceased vehicle in which he was travelling with his bodyguard was pursued along the N3 Highway. Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

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Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

6 WHILST EMPLOYED BY THE ENTERPRISE

6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Msotert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

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6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierachial structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 5 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise,

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these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars followed him, they converge to stop him and they all fire shots in his direction.

7.2.3 Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 5 kept a close and loyal and friendly relationship with both Sup Olivier and General Booysen. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8. **CONDUCTS THE AFFAIRS OF THE ENTERPRISE**

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8.1The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2 – 8.5 The extent of participation of Accused 5 in these activities have been outlined in the Incidents.

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

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8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000,00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 8

AD MURDER

DECEASED: MAGOJELA NDIMANDE AND SIBUSISO TEMBE

ACCUSED 8 PHUMELELA MAKHANYA

1.1 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,
- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,
- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,
- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008
- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport

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- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute
- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose
- It is the state case that Accused 8 fired a number of shots at the deceased when no danger was posed to him or his colleagues and that the shooting cannot be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977

1.2 The act that the State relies on to found a conviction of murder occurred:

1.2.1 on the dates, the 29 August 2008 and 16 September 2008
1.2.2 the time of the act is around 10h10 and
1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.3 The State is relying on an act, not an omission.
1.4 Yes.
1.5 It is alleged that the accused that Accused 8 fired shots on at least more than one occasion.
1.6 Yes.

1.7 It is alleged that the shots that struck the deceased at least more than once, considering that Accused 8 was not the only person firing shots at the deceased at the time.
1.8 Considering that Accused 8 was not the only person firing shots at the deceased at the time, it is not possible to state precisely upon which part of the body the deceased was struck by the gunshots fired by Accused 4. The State will argue that as the accused were acting in concert with one another, it is not necessary to prove which gunshot caused which wound, safe to state that Accused 8 associated himself with the conduct of his co-accused.

1.9 Yes.
2. AD PATTERN OF RACKETEERING ACTIVITY: MURDER
2.1 Yes

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2.2.2 It is not certain at which place or time Accused 8 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State, it is a matter of evidence.

2.2.4 Yes.

2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation has been dealt with in incident 5 dealing with Counts 8 – 12.

3. PATTERN OF RACKETEERING ACTIVITIES
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, Accused 8's conduct is related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

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- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about in the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

4.2 Accused 8 as a member of the Cato Manor police had close ties with the Section Commander, Sup. Olivier, accused 9 as well as General Booysen. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

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4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, It is alleged that Accused 8 was involved in the killing of Magojela and Tembe.

4.10 Accused 5 was involved in questioning of Magojela and Tembe after they were handed over to Cato Manor on 29 August 2008 by witnesses 22 and 25, Cst Gebela and Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4, accompanied by Accused 8, drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range. Accused 8 also

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fired shot in the direction of the deceased, in association with the conduct of Accused 4 and 5.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 8 participated in the activities of the enterprise and was working under the management and direction of Accused 1, 6,9,15 and 16, who were the managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that role. In Count 8, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. Accused 8 was a passenger in pursuit car 1, driven by Accused 4.

5.2 No, Accused 8 participated in the activities of the enterprise

5.3 There was no house breaking in Count 8 – 12, the deceased vehicle in which he was travelling with his bodyguard was pursued along the N3 Highway. Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

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Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the work and functions of each person employed by the enterprise or associated with the enterprise can be summarized as follows:

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6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Msotert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

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6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierachial structure of the enterprise has been outlined on page 4 of this submission

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise,

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these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with both Sup Olivier and General Booysen. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

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CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

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Counts 8 – 12 the killing of Magojela and Tembe
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Counts 31 – 34 the killing of Sifiso Ndimande
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Counts 102 – 103 the killing of Sanele Majola

8.2 – 8.5 The extent of participation of Accused 5 in these activities have been outlined in the Incidents.

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Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
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Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and

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Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000,00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 8: MURDER
ACCUSED 9 WILLEM OLIVIER
DECEASED 1 MAGOGELA TIMSON NDIMANDE
DECEASED 2 SIBUSISO TEMBE

1.2 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,
- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,
- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,
- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008

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- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport
- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute
- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose
- It is the state case that Accused 5 fired a number of shots at the deceased when no danger was posed to him or his colleagues and that the shooting cannot be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977
- Whereas section 16 of Act 68 of 1995 places a duty on the police to prevent and investigate organised crime, Accused 9, instead of utilising the resources at his disposal to tackle organised crime, used the resources to commit crime. It is the State's case that the Cato Manor section took the law in their arms and killed suspects instead of bringing them before the courts for their guilt to be determined.

1.2 The act that the State relies on to found a conviction of murder occurred:

1.2.1 on the dates, the 29 August 2008 and 16 September 2008
1.2.2 the time of the act is around 10h10 and
1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.3 In so far as Accused 9 is concerned, the State is relying on his omission as the Section Commander to ensure that his members deal with the arrests in a lawful and constitutional manner that upholds and protects the rights of the arrested persons. When the accused were being killed instead of being arrested and placed before the courts, Accused 9 had a legal duty to determine why when his members are involded in these kinds of police operations, the suspects ended up being shot and killed. In fact on his arrival on the scene with General Booysen, they congradulated the members for the work done.

1.3.1 the date of the omission is 16 September 2009

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1.3.2 the time of the omission is around 08h30 and

1.3.3 the place of the omission is the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.4 No

1.5 Not applicable

1.6 No

1.7 Not applicable

1.8 Not applicable

1.9 Not applicable.

AD PATTERN OF RACKETEERING ACTIVITY: MURDER

2.1 Yes

2.2.2 It is not certain at which place or time Accused 9 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State, it is a matter of evidence.

2.2.4 Yes.

2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the Incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in Incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation have been dealt with in Incident 5 dealing with Counts 8 – 12.

AD PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, Accused 8's conduct and those of the other co-accused are related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about in the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

- Sibusiso Tembe was a bodyguard who was protecting Magojela whose company VIP Protection was warned by Cato Manor police to remove

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him, Cato Manor had to eliminate him too to be able to get to Magojela Ndimande.

4.2 Accused 9 as Section Commander of the Cato Manor section of Durban Organised Crime Unit had close ties with the Provincial Commander of Organised Crime, General Booysen which dates back for many years when they worked in various Units together. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime and other sections of SA Police Service where they worked together.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo

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Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, It is alleged that Accused 9 was involved in the killing of Magojela and Tembe, either on the basis of having omitted to prevent it from happening when there was a legal duty to do so, or on the basis of being an accessory after the fact, since on arrival, he together with General Booysen congratulated the members for a job well done instead of considering the unlawfulness or otherwise of their conduct.

4.10 Accused 5 was involved in questioning of Magojela and Tembe after they were handed over to Cato Manor on 29 August 2008 by witnesses 22 and 25, Cst Gebela and Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4, accompanied by Accused 8, drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range. Accused 8 also fired shot in the direction of the deceased, in association with the conduct of Accused 4 and 5. Accused 9 associated himself with the conduct of his men on arrival at the scene.

5. WHILST MANAGING THE AFFAIRS OF THE ENTERPRISE

5.1 Yes, Accused 9 managed the activities of the enterprise together with Accused 1, 6,15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Count 8, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

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5.2 Yes, Accused 9 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. in this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.
Accused 9 as the Section Commander created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.3 There was no house breaking in Count 8 – 12, the deceased vehicle in which he was travelling with his bodyguard was pursued along the N3 Highway. Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework and mandate of the legal entity and associated themselves in fact.

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WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the work and functions of each person employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 4 Paul Msotert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 9 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction.

7.2.3 Accused 9 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 9 kept a close and loyal and friendly relationship with General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8. CONDUCTING THE AFFARS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 9 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2 – 8.5 The extent of participation of Accused 9 in these activities have been outlined in the Incidents.

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14

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Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 8: MURDER
DECEASED MAGOJELA TIMSON NDIMANDE
DECEASED SIBUSISO TEMBE
ACCUSED 15: ANTON LOCKEM

1.1 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,

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- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,

- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,

- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008,

- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport,

- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute,

- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose,

- It is the state case that Accused 5 as a Group Commander created an environment where the Cato Manor members could commit offences and advance the objectives of the enterprise, he did nothing to look closely at the shootings to determine whether they can be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977,

- Whereas section 16 of Act 68 of 1995 places a duty on the police to prevent and investigate organised crime, Accused 15, instead of utilising the resources at his disposal to tackle organised crime, used the resources to commit crime. It is the State's case that the Cato Manor section took the law in their arms and killed suspects instead of bringing them before the courts for their guilt to be determined.

1.2 The act that the State relies on to found a conviction of murder occurred:

1.2.1 on the dates, the 29 August 2008 and 16 September 2008

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1.2.2 the time of the act is around 10h10 and

1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

7.8 In so far as Accused 15 is concerned, the State is relying on his omission as the Section Commander to ensure that his members deal with the arrests in a lawful and constitutional manner that upholds and protects the rights of the arrested persons. When the accused were being killed instead of being arrested and placed before the courts, Accused 9 had a legal duty to determine why when his members are involded in these kinds of police operations, the suspects ended up being shot and killed.

1.3.1 the date of the omission is 16 September 2009

1.3.2 the time of the omission is around 08h30 and

1.3.3 the place of the omission is the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.4 No

1.5 Not applicable

1.6 No

1.7Not applicable

1.8 Not applicable

1.9 Not applicable.

AD PATTERN OF RACKETEERING ACTIVITY: MURDER

2.1 Yes

2.2.2 It is not certain at which place or time Accused 15 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection by Accused 4 to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State, it is a matter of evidence.

2.2.4 Yes.

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2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the Incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in Incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation have been dealt with in incident 5 dealing with Counts 8 – 12.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA OFFENCES

3.1 Yes, Accused 15's conduct and those of the other co-accused are related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one

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the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about in the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

- Sibusiso Tembe was a bodyguard who was protecting Magojela whose company VIP Protection was warned by Cato Manor police to remove him, Cato Manor had to eliminate him too to be able to get to Magojela Ndimande.

4.2 Accused 15 as Group Commander of the Cato Manor section of Durban Organised Crime Unit had close ties with the Section Commander, Captain Olivier and the Provincial Commander of Organised Crime, General Booysen which dates back for many years when they worked in various Units together. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime and other sections of SA Police Service where they worked together.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by

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legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, it is alleged that Accused 15 was involved in the killing of Magojela and Tembe, either on the basis of having omitted to prevent it from happening when there was a legal duty to do so, or on the basis of being party to the tracking, chasing, capture and ultimate shooting of Magojela and Tembe

4.10 Accused 5 was involved in questioning of Magojela and Tembe after they were handed over to Cato Manor on 29 August 2008 by witnesses 22 and 25, Cst Gebela and Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4, accompanied by Accused 8, drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range. Accused 8 also

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fired shot in the direction of the deceased, in association with the conduct of Accused 4 and 5. Accused 9 associated himself with the conduct of his men on arrival at the scene. Accused 15 also associate himself with the conduct of his men by taking part in the chasing, as he was the driver of the pursuit vehicle 2, the gold Toyota Corolla with registration ND 309-345.

WHILST MANAGING THE ACTIVITIES OF AN ENTERPRISE

5.1 Yes, Accused 15 managed the activities of the enterprise together with Accused 1, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Count 8, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9 and 15 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9 and 15 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9 and 15 as the Section Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

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5.3 There was no house breaking in Count 8 – 12, the deceased vehicle in which he was travelling with his bodyguard was pursued along the N3 Highway. Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP

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protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework and mandate of the legal entity and associated themselves in fact.

WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the work and functions of each person employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

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Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Msotert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 –

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38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

CONDUCTS THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:
Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango

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Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2 – 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents.

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

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COUNT 8: MURDER
DECEASED 1 MAGOJELA TIMSON NDIMANDE
DECEASED 2: SIBUSISO TEMBE
ACCUSED 16 : EUGENE VAN TONDER

1.1 The state relies on the following evidence in order to prove the offence of murder:

- Viva voce evidence of witness 27 and witness 28 the owner of the VIP Protection, the security company that was providing protection to members of the KwaMaphumulo Taxi Association,
- Viva voce evidence of witness 20, the brother to the deceased,
- Observations of the scene where the incident took place and the photos which were taken by witness 17, a member of the SAPS based at the Local Criminal Record Centre, Pietermaritzburg,
- Observations and findings of witness 30, Mr Steyl, a forensic ballistic expert in private practise,
- Aerial photos taken by witness 26, a member of SAPS based at the Local Criminal Record Centre, Howick,
- Ballistic findings of witness 19, a forensic analyst and member of SA Police Service based at the Ballistic Unit, Amanzimtoti,
- Viva voce evidence of witness 25, Cst Gabela and witness 22, Insp. Ndlovuof the K9 Unit, Empangeni ,
- Findings of the post mortem enquiry conducted by witness 16, a district surgeon who conducted a post mortem on the body of the deceased on 17 August 2008,
- Viva voce evidence of witness 31, an Airborne Law Enforcement Officer attached to the Airwing at the Virginia Airport,
- Other statements which are in the docket a copy of which has been supplied to the defence, depending on what is placed in dispute,

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- The principles of law relied upon is circumstantial evidence, the doctrine of common purpose,

- It is the state case that Accused 16 as a Group Commander created an environment where the Cato Manor members could commit offences and advance the objectives of the enterprise, he did nothing to look closely at the shootings to determine whether they can be justified in terms of section 49 (2) of the Criminal Procedure Act 51 of 1977,

- Whereas section 16 of Act 68 of 1995 places a duty on the police to prevent and investigate organised crime, Accused 15, instead of utilising the resources at his disposal to tackle organised crime, used the resources to commit crime. It is the State's case that the Cato Manor section took the law in their arms and killed suspects instead of bringing them before the courts for their guilt to be determined.

1.2 The act that the State relies on to found a conviction of murder occurred:

1.2.1 on the dates, the 29 August 2008 and 16 September 2008
1.2.2 the time of the act is around 10h10 and
1.2.3 the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

7.9 In so far as Accused 16 is concerned, the State is relying on his omission as the Section Commander to ensure that his members deal with the arrests in a lawful and constitutional manner that upholds and protects the rights of the arrested persons. When the accused were being killed instead of being arrested and placed before the courts, Accused 9 had a legal duty to determine why when his members are involved in these kinds of police operations, the suspects ended up being shot and killed.

1.3.1 the date of the omission is 16 September 2009
1.3.2 the time of the omission is around 08h30 and

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1.3.3 the place of the omission is the place where it happened is along the N3 Highway near Cedara after Merrivale off ramp in Howick.

1.4 No

1.5 Not applicable

1.6 No

1.7Not applicable

1.8 Not applicable

1.9 Not applicable.

AD PATTERN OF RACKETEERING ACTIVITY: MURDER

2.1 Yes

2.2.2 It is not certain at which place or time Accused 16 and other members of Cato Manor formed the plan to commit the crime of murder safe to state that at least when the accused requested witness 29, the owner of VIP Protection by Accused 4 to remove his security officers from the members of KwaMaphumulo Taxi association and on 16 September 2008 when the deceased was spotted, chased, during the pursuit and until the deceased was shot dead.

2.2.3 The terms of the plan are not known to the State, it is a matter of evidence.

2.2.4 Yes.

2.3.1 The precise identities of the persons who planned to kill the deceased are not clear to the State safe to state that the members of Cato Manor that took part in the pursuit and fired shots at the deceased and associated themselves with the shooting of the deceased.

2.3.2 The precise acts of participation or involvement of each person is outlined in some detail in the Incident 5 dealing with Counts 8 - 12.

2.3.3 The conduct of each accused has been outlined in Incident 5 dealing with Counts 8 – 12 above

2.3.4 The acts of participation have been dealt with in Incident 5 dealing with Counts 8 – 12.

PATTERN OF RACKETEERING ACTIVITY

RELATIONSHIP QUA OFFENCES

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3.1 Yes, Accused 16's conduct and those of the other co-accused are related to other actus reus in the indictment.

3.2 The State alleges that the shooting of the deceased, Magojela and Tembe is part of the list of targets that the Chairman of KwaMaphumulo taxi association was referring to in the court interdict that he successfully applied for in the Durban High court.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes,the murder of Timson Magojela is connected or related to the other activities of the enterprise as required in terms of section 2(1) of Act 121 of 1998 in that:-

- Magojela was an executive member of the KwaMaphumulo Taxi association which was in conflict with the Stanger Taxi Association and was suspected by Cato Manor of either having funded the killing of Sup Choncho just in the same way as Mkhize, the Chairman of the KwaMaphumulo Taxi Association was suspected.

- Magojela was suspected of involvement in the planning of the Choncho killing as his number was allegedly one of the numbers that Dumisani Ndlovu was in regular communication with. Dumisani Ndlovu was one the assailants who attacked Sup Choncho who was shot and killed on the Choncho scene by Insp Khanyile. His cell phone was recovered from the scene and used by Cato Manor as an investigation tool.

- Magojela was one of the KwaMaphumulo members who was allegedly on the list of people to be killed that Bongane Mkhize complained about in the court interdict, Bongane Mkhize in his affidavit in support of the interdict mentioned that according to the hit list allegedly in possession of Cato Manor, he is next to be killed. It is the State case that the Magojela killing was part of the plan by Cato Manor to eliminate members of KwaMaphumulo Taxi Association that they suspected of involvement in the killing of Sup Choncho.

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- Sibusiso Tembe was a bodyguard who was protecting Magojela whose company VIP Protection was warned by Cato Manor police to remove him, Cato Manor had to eliminate him too to be able to get to Magojela Ndimande.

4.2 Accused 16 as Group Commander of the Cato Manor section of Durban Organised Crime Unit had close ties with the Section Commander, Captain Olivier and the Provincial Commander of Organised Crime, General Booysen which dates back for many years when they worked in various Units together. This closeness and trusting working relation dates back from the times when they were together at the Serious Violent Crime Unit before its incorporation into Organised Crime and other sections of SA Police Service where they worked together.

4.2.2 – 4.2.4 It is the State case that the enterprise remains the same in all the incidents, the difference will only be the members who participated will difference depending on who is available and on duty on the day, who will then be briefed to engage in conduct that would advance the objectives of the enterprise. The organisational structure, operational structure and hierarchal structure of the enterprise and people employed by or associated with the enterprise has been outlined in detail on pages 3 – 5 of this submission.

4.2.5 It is the State's main case that the enterprise operated as a legal entity under the auspices or cover of the SA Police Service as a legal entity established by legislation in terms of the SA Police Act 68 of 1995. It is the State submission that the Serious Violent Crime section based at Cato Manor, which was a section of the Durban Organised Crime Unit, formed the enterprise.

4.2.6 The State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal entity and associated themselves in fact.

4.2.7 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

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4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 Yes, It is alleged that Accused 16 was involved in the killing of Magojela and Tembe, either on the basis of having omitted to prevent it from happening when there was a legal duty to do so, or on the basis of being party to the tracking, chasing, capture and ultimate shooting of Magojela and Tembe.

4.10 Accused 5 was involved in questioning of Magojela and Tembe after they were handed over to Cato Manor on 29 August 2008 by witnesses 22 and 25, Cst Gebela and Warrant Officer Ndlovu. On 16 September 2008 around 08h55, Accused 4 briefed other members of Cato Manor Unit about information at his disposal. Accused 4, accompanied by Accused 8, drove his silver BMW vehicle behind the deceased's Hyundai Tuscon and pulled next to it as his crew were shooting in the direction of the deceased, when the deceased's vehicle came to a standstill, Accused 4 went closer to the driver's door and fired shots towards the driver at close range. Accused 8 also fired shot in the direction of the deceased, in association with the conduct of Accused 4 and 5. Accused 9 associated himself with the conduct of his men on arrival at the scene. Accused 15 also associate himself with the conduct of his men by taking part in the chasing, as he was the driver of the pursuit vehicle 2, the gold Toyota Corolla with registration ND 309-345.

WHILST MANAGING THE ACTIVITIES OF AN ENTERPRISE

5.1 Yes, Accused 16 managed the activities of the enterprise together with Accused 1, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Count 8, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set

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on tracking Magojela and Tembe. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.
Accused 9, 15 and 16 as the Section Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.3 There was no house breaking in Count 8 – 12, the deceased vehicle in which he was travelling with his bodyguard was pursued along the N3 Highway. Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

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Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

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Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995. Yes, it is alleged that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework and mandate of the legal entity and associated themselves in fact.

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Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

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6.3 dealt with at 6.1 above

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Msotert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7.1 Yes It is alleged that Accused 16 committed the murder of the deceased whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction.

7.2.3 Accused 16 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA

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Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.10 Same as 7.6 above

7.9 Same as 7.6 above.

CONDUCTS THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the murder of Magojela and Tembe that was committed on 16 September 2008. The activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzamani Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.3 – 8.4 The extent of participation of Accused 15 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4

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Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 9
MURDER OF SIBUSISO TEMBE

This count was dealt with together with Count 8, the death of Magojela as both were travelling together in the same vehicle and the conduct which led to the death of the one, led to the death of the other and it is the same accused persons who were involved in both counts.

PAGES 52 – 102 of the Accused 's Request, dealing with the murder of Sibusiso Tembe has been dealt with pages 1- 51 of the Accused's Request for Further Particulars

It is the State's view that both Magojela and Tembe were travelling together vin the same car and the conduct that caused their death is the same conduct

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perpetrated by the same accused persons, with slight differences here and there. It was convenient to deal with them together.

AD COUNT 10: CONTRAVENTION OF SECTION 3 OF ACT 60 OF 2000
AD COUNT 11: CONTRAVENTION OF SECTION 90 OF ACT 60 OF 2000
ACCUSED 4 PAUL MOSTERT

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms

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concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

1.2.1 16 September 2008

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1.2.2 Around 10h00

1.2.3 On the N3 Highway after Merrivale offramp

1.3 No the State does not rely on an omission.

1.4.1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.2 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

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2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them get injured nor any of their vehicles get damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle was possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem

G.S.M

Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier
2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects

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without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1

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Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 was involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

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5.1 Yes and No Accused 4 did not manage the activities of the enterprise, they were managed by Accused 1, 9, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Section Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.
5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

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Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel

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Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Phiangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

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7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

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7.8 -7.9 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5

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Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 10 -11: ACCUSED ERIC NEL
COUNT 10: UNLAWFUL POSSESSION OF FIREARMS
COUNT 11: UNLAWFUL POSSESSION OF AMMUNITION

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial

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evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No the State does not rely on an omission.

1.4 .1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.3 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

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2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

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- the firearms and ammunition would be brought with to all their suspect raids
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them get injured nor any of their vehicles get damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid

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itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and

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Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes. It is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes and No Accused 5 did not manage the activities of the enterprise, they were managed by Accused 1, 9, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an

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environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Section Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful

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possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

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6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 5 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and

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Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 5 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 5 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.

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- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 5 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 5 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18

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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 10 - 11: ACCUSED 8 PHUMELELA MAKHANYA
COUNT 10 UNLAWFUL POSSESSION OF FIREARMS
COUNT 11 UNLAWFUL POSSESSION OF AMMUNITION

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

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- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No the State does not rely on an omission.

1.4.1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.2 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that

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unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

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- It is not surprising that not a single one of them get injured nor any of their vehicles get damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

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3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
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Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes It is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the

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incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 8 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes and No Accused 8 did not manage the activities of the enterprise, they were managed by Accused 1, 9, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Section Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.

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5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned

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to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

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Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.
6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 –

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38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.5 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 8 participated in include the predicate offences that are listed on Page 25 of this submission:

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Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndlmande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
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Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in

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particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 10 – 11: ACCUSED 15 ANTON LOCKEM
COUNT 10 UNLAWFUL POSSESSION OF FIREARMS
COUNT 11 UNLAWFUL POSSESSION OF AMMUNITION

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or

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"spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No the State does not rely on an omission.

1.4.1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.2 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person

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concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them get injured nor any of their vehicles get damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

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2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

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4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police

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officials when their deeds are in fact those of criminals, which would never be authorised as police action.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police

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units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes, Accused 15 did manage the activities of the enterprise in his capacity as a Group Commander at SVC section, together with Accused 1, 9, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle

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came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 9 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the

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Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

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7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.5 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 8 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela

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Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

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AD COUNT 10 – 11: EUGENE VAN TONDER

COUNT 10: UNLAWFUL POSSESSION OF FIREARMS

COUNT 11: UNLAWFUL POSSESSION OF ARMS

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

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1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No the State does not rely on an omission.

1.4.1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.2 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they

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hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, It is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids
- Immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them get injured nor any of their vehicles get damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, who are the following:-

Accused 4 Paul Mostert

Accused 5 Eric Nel

Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho

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killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4

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Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 16 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes, Accused 16 did manage the activities of the enterprise in his capacity as a Group Commander at SVC section, together with Accused 1, 9, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

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5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.
5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

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Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

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6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
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6.3 dealt with at 6.1 above
6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.
6.5.1 It is not clear when the common purpose was formed.

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6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 16 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 16 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists

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under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.5 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 16 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

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8.2- 8.4 The extent of participation of Accused 16 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 10 – 11: ACCUSED 9: WILLEM CORNELIUS OLIVIER AND ACCUSED 1: JOHAN BOOYSEN
COUNT 10: UNLAWFUL POSSESSION OF FIREARMS
COUNT 11 UNLAWFUL POSSESSION OF AMMUNITION

Although the accused separated Count 10 from Count 11 in their request, the State deals with both Counts 10 and 11 at the same time as both were committed at the same time by the same accused persons, the ammunition being inside the firearms

G SM

concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 The basis of liability of accused 1 and 9 is that they managed the activities of the enterprise and created an environment where the enterprise was able to perform activities that advanced the objectives of the enterprise. They both worked the Branch Commander of the Durban Organised Crime Unit, Colonel Aiyer out of the processes of granting approvals so that it is unnecessary to obtain his (Aiyer's) consent to approve the trip authorities of the members, the operational plans of the Cato Manor members and ensured that the members are resourced directly by them. The State relies on the doctrine of joint possession in respect of the managers of the enterprise who were never at the scene. In racketeering charges, it is not a requirement that the managers must be present with the members of the enterprise, as long as it can be proved that the manager has sufficient knowledge, or oght to have known about the activities of the enterprise.

1.2 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum,

G S M

only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 Yes, it is the State's case that Accused 1 and 9 omitted to question their members sufficiently to determine the lawfulness or otherwise of their conduct. They omitted to exercise their supervisory responsibilities on their members, thereby giving them a carte blanche to conduct themselves in a manner that caused citizens that they were duty bound to protect, their precious lives. Yes most of the victims could have been suspects in serious cases, but no one has a right to take their constitutionally protected lives, they ought to have been brought to the courts to determine their guilt or otherwise.

1.4.1 This is the 7,62 X39 mm Calibre Russian manufactured Model AK47 Assault Rifle with serial number 1975-849754

1.4.2 with one (1) magazine and eighteen (18) rounds as ammunition.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they

GSM

prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.
2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.
2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots

G S M

at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10 and 11, the date is the 16 September 2008 at around 08h30 to 10h00.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

G S M

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this

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submission until the 23 September 2011 with the killing of Phiangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 16 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes, Accused 16 did manage the activities of the enterprise in his capacity as a Group Commander at SVC section, together with Accused 1, 9, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without

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engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

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5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

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Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornellus Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela

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6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 16 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and

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Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 16 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 9 and 1 are alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.

G SM

- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 1 and 9 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 1 and 9 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9

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Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 12: ACCUSED 4

COUNT 12: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

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1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

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1.3 No, the State's case is not based on an omission in respect of Accused 4.

AD: PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.
2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they

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would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and

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Accused 9 Willem Ollvier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 8 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, 11 and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho

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killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4

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Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

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5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

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Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornellus Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela

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Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 12: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 5: ERIC NEL

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1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

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1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No, the State's case is not based on an omission in respect of Accused 5.

AD: PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, It is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

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2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem

G SM

Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, 11 and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the Indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, It is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law

and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3. 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of

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a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 5 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10, 11 and 12, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the

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members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

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Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 5 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 5 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 5 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande

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Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 5 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

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AD COUNT 12: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
AD ACCUSED 8: PHUMELELA MAKHANYA

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

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1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No, the State's case is not based on an omission in respect of Accused 8.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with Information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

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2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva

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Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, 11 and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

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4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 8 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police

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units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10, 11 and 12, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle

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came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5:2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the

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environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

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The other activities that Accused 8 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 12: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
AD ACCUSED 9: WILLEM CORNELIUS OLIVIER AND
AD ACCUSED 1: JOHAN BOOYSEN

1.1The basis of liability of accused 1 and 9 is that they managed the activities of the enterprise and created an environment where the enterprise was able to perform activities that advanced the objectives of the enterprise. They both worked the Branch Commander of the Durban Organised Crime Unit, Colonel Aiyer out of the processes of granting approvals so that it is unnecessary to obtain his (Aiyer's) consent to approve the trip authorities of the members, the operational plans of the Cato Manor members and ensured that the members are resourced directly by them. The State relies on the doctrine of joint possession in respect of the managers of the enterprise who were never at the scene. In racketeering charges, it is not a requirement that the managers must be present with the members of the enterprise, as long as it can be proved that the manager has sufficient knowledge, or ought to have known about the activities of the enterprise.

1.2 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

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- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

1.2.3 The date of the act is16 September 2008

1.2.4 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 Yes, the State's case is based on an omission in respect of Accused 9 and 1. It is the State's case that they omitted to question the conduct of their members sufficiently to determine whether the conduct was lawful or otherwise, thereby creating an environment where their members could commit offences instead of arresting the persons they suspected of committing offences and bringing them befor the courts for their guilt to be determined.

AD: PATTERN OF RACKETEERING ACTIVITY

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DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

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2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

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2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, 11 and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho

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killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4

Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 8 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 1 and 9 did manage the activities of the enterprise, Accused 9, in his capacity as Section Commander and Accused 1 displaced Col Aiyer in his position as Branch Commander of the Durban Organised Crime and fulfilled the role in person. Accused 6, 15 and 16, who were the co-managers of the enterprise in their capacity as Group Commanders participated actively in the operations of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10, 11 and 12, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the

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members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

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Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 1 and 9 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 1 and associated themselves sufficiently with the enterprise to the extent of associating fully whith the operations performed and executed by the members of the enterprise which tasks advanced the objectives of the enterprise.

7.2.4 Accused 9 kept a close and loyal and friendly relationship with Accused 1, General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 9 and 1 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 9 and 1 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande

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Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 9 and 1 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

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AD COUNT 12: DEFEATING OR OBSTYRUCTING THE COURSE OF JUSTICE
ACCUSED 15: ANTON LOCKEM

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

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1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No, the State's case is not based on an omission in respect of Accused 15.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

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2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva

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Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Ollvier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, 11 and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of

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KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 8 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of

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a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 15 did manage the activities of the enterprise, in conjunction with Accused 9, in his capacity as Section Commander and Accused 1 displaced Col Aiyer in his position as Branch Commander of the Durban Organised Crime and fulfilled the role in person. Accused 6, 15 and 16, who were the co-managers of the enterprise in their capacity as Group Commanders participated actively in the operations of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10, 11 and 12, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

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Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

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Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

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6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 1 and 9 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

7.2.3 Accused 1 and associated themselves sufficiently with the enterprise to the extent of associating fully whith the operations performed and executed by the members of the enterprise which tasks advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9 and Accused 1, General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

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7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.2 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 15 associated himself with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

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Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanylsani Blyela and Bongani Blyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in

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particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 12 DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
AD ACCUSED 16: EUGENE VAN TONDER

1.1 It is the State's case that the AK47 assault rifle with serial number 1975-849754 with one (1) magazine and eighteen (18) rounds, which was allegedly found at the scene of Magojela and Tembe's shooting incident on the Ne Highway on 16 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The deceased Sibusiso Tembe was working for VIP Protection, a security company which was providing security services to the members of the KwaMaphumulo Taxi Association.

- He was issued with two (2) firearms for this purpose, namely a 9mm pistol and a Mini Ruger 14 rifle for which permits were issued and no other firearms.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as the scene of Prince Thabede's death at KwaMashu township when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- The principle of joint possession by one person on behalf of others.

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- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the rifles (the AK47 and the Mini Ruger 14) and cartridges were depicted on the scene.

1.2.1 The date of the act is16 September 2008

1.2.2 The time of the act is around 10h00

1.2.3 The place of the act is on the N3 Highway after Merrivale offramp

1.3 No, the State's case is not based on an omission in respect of Accused 16.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed

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on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.
2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.
2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

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2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 16 September 2008 when this AK47 rifle and its ammunition were possessed by the members who took part in the tracking and shooting of Magojela from Pietermaritzburg to Howick on the N3 Highway, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen and
Accused 9 Willem Olivier

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 10, **11** and 12 the date is the 16 September 2008 at around 08h30 to 10h00.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law.

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The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban

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Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The

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nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 16 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 16 did manage the activities of the enterprise, in conjunction with Accused 9, in his capacity as Section Commander and Accused 1 displaced Col Alyer in his position as Branch Commander of the Durban Organised Crime and fulfilled the role in person. Accused 6, 15 and 16, who were the co-managers of the enterprise in their capacity as Group Commanders participated actively in the operations of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10, 11 and 12, Accused 4 had more information from his informer and then shared it in the briefing with other members at Pietermaritzburg before they set on tracking Magojela and Tembe. He was the driver of pursuit car 1, the silver BMW vehicle. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation. Accused 8 was a passenger in pursuit car 1, driven by Accused 4. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 1, 4, 5, 6, 8, 9, 15 and 16.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He was the driver of pursuit car 1, the silver BMW; he pulled his vehicle alongside that of the deceased whilst his companions were firing shots at the deceased and when the deceased's vehicle came to a standstill, he went closer to the drivers' door and fired shots towards the driver at close range.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 1, 4, 5, 8, 9, 15, and 16. Accused 4, 5, 8, 15 and 16 followed Magojela and Tembe from Pietermaritzburg until they located him closer to Howick and shot and killed them, thereafter placed this AK47 rifle next to the body of Sibusiso Tembe.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Magojela and Tembe.

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5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their

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securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

Accused 8 Phumelela Makhanya was part of pursuit car 1and also fired shots in the direction of the Hyundai.

Accused 15 Anton Lockem was the driver of pursuit car 2, Corolla police vehicle who was driving behind the silver BMW.

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Accused 16 Eugene van Tonder was part of pursuit car 2, the gold Toyota Corolla with registration ND 309-345 and fired about 7 shots towards the Hyundai with his R5 rifle.

Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.
Olivier accompanied Booysen in the helicopter and alighted at the scene.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Magojela and Tembe.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Magojela
6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence

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6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 1 and 9 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 16 September 2008 when the deceased was pursued and caught along the N3 Highway.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Magojela together, when he is spotted along the N3 Highway, both pursuit cars driven by Accused 4 (the silver BMW) and Accused 15 (a gold Toyota Corolla) followed him, they converge to stop him and they all fired shots in his direction. It was known to the Cato Manor police that Magojela was accompanied by an armed bodyguard from the VIP Protection Services, which company they had warned to remove the security guard.

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7.2.3 Accused 1 and associated themselves sufficiently with the enterprise to the extent of associating fully whith the operations performed and executed by the members of the enterprise which tasks advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9 and Accused 1, General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.3 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Magojela that was committed on 16 September 2008.
- Murder of Tembe committed on the same day.

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- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 16 associated himself with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 16 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9

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Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COMMON PURPOSE

AD INCIDENT ON THE 16 SEPTEMBER 2008: THE SHOOTING OF MAGOJELA NDIMANDE AND SIBUSISO TEMBE: COUNTS 8 – 12

ACCUSED 4: PAUL MOSTERT

ACCUSED 5: ERIC NEL

ACCUSED 6: NEVILLE EVA

ACCUSED 8: PHUMELELA MAKHANYA

ACCUSED 9 CORNELIUS OLIVIER

ACCUSED 15 ANTON LOCKEM AND

ACCUSED 16 EUGENE VAN TONDER

It appears from the predominant facts at the State's disposal that a common pupose to commit the offences outlined can be inferred from the conduct of the members of the enterprise in the commission of the offences which form part of the pattern of racketeering acivity. The incident on the 16 September 2008 cannot be taken in isolation of other incidents or operations of the enterprise, it must be considered in the light of all the incidents as outlines in the table on Page 6 of this submission, Incident 1 on 24 May 2008 (the killing of Thabo Msimango) until Incident 23 on 23 September 2008 (the killing of Philangenkosi Gwala). One must also not loose sight of the regular briefings which the members of the enterprise get involved in prior to each and every operation where suspects are traced.

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1. The accused which form part of the particular incident as outlined on Pages 7 to 23 formed a prior agreement in respect of that particular incident in which they were involved for instance in Count 8 – 12, It is the State's case that the following accused persons did form a common purpose to kill Magojela and Tembe:-

   Accused 4: Paul Mostert
   Accused 5: Eric Nel
   Accused 6 Neville Eva
   Accused 8 Phumelela Makhanya
   Accused 9 Cornelius Olivier
   Accused 15 Anton Lockem
   Accused 16 Eugene van Tonder and
   Accused 1 Johan Booysen

1.1 The is not precisely certain about the time that the accused became party to the prior agreement to commit the offences on 16 September 2008, safe to state that when they left the Cato Manor offices and when they met again at a place in Pietermaritzburg where Accused 4 gave them a briefing after Accused 4 had constant telephonic conversations with Accused 1, Johan Booysen and when Magojela's Hyundai Tuscon was spotted along the N3 Highway north bound, a prior agreement to commit the offences that have been listed in Count 8-12 was formed by the accused persons.

1.2 Same as in paragraph 1.1 above

1.3 The terms of the agreement is a matter of evidence.

1.4 All the parties involved in the agreement and their roles can be repeated as follows:

1.4.1 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness

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29 and 30 to the scene to come and see what he did to their employee. He also held a briefing with all the members to update them with all the information at his disposal.

1.4.2 Accused 5 Eric Nel was part of pursuit car 1, fired shots in the direction of the Hyundai with his R1, after the vehicle came to a standstill, he secured the scene.

1.4.3 Accused 8 Phumelela Makhanya was part of pursuit car 1 and also fired shots in the direction of the Hyundai.

1.4.4 Accused 15 Anton Lockem was the driver of pursuit car 2, the gold Toyota Corolla police vehicle with registration ND 309-345 and was driving behind the silver BMW driven by Accused 4.

1.4.5 Accused 16 Eugene van Tonder was part of pursuit car 2 and fired about 7 shots towards the Hyundai with his R5 rifle.

1.4.6 Accused 1, Booysen supplied information on Magojela's whereabouts to Paul Mostert and arranged the helicopter flight after Magojela was located on the N3 highway, where he landed immediately after the shooting.

1.4.7 Accused 9, Olivier accompanied Booysen in the helicopter and alighted at the scene. The AK47 rifle was placed next to the body of the deceased Tembe immediately after the shooting. It is the State case that the shooting of both deceased, the unlawful possession of the firearms and ammunition and the defeating the ends of justice are part of the same conduct of the accused to accelerate and achieve the objectives of the enterprise.

1.5 Same as in 1.4 above

1.6 The date, time and place of the act are the same as in paragraph 1.1 above.

2. Yes it is alleged that the accused formed an act of association with one another.

2.1.1 Same as in paragraph 1.4 above.

2.1.2 Same as in paragraph 1.1 above.

2.1.3 Same as in paragraph 1.1 above.

2.1.4 Same as in paragraph 1.4 above.

2.1.5 Same as in paragraph 1.4 above.

3. The State relies on prior agreement in the main argument, in the alternative the State will argue that it can be inferred from the proven facts.

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INCIDENT DATE: 18 SEPTEMBER 2008

DECEASED 1: NZAMENI NTULI

DECEASED 2: NKOSINATHI MTHEMBU

ACCUSED 3: ADRIAAN STOLTZ

ACCUSED 4: JONATHAN MOSTERT

ACCUSED 8: PHUMELELA MAKHANYA

ACCUSED 10: THEMBINKOSI MKHWANAZI

ACCUSED 11: THATAYIPHI MDLALOSE

ACCUSED 12: BONGANI ZONDI

ACCUSED 13: RUBENDRAN NAIDOO

ACCUSED 15: ANTON LOCKEM

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COUNTS 13 – 18

AD COUNT 13 - 14
HOUSEBREAKING WITH INTENT TO COMMIT MURDER AND MURDER
DECEASED: MZAMENI NTULI AND NKOSINATHI MTHEMBU
ACCUSED 3: ADRIAAN STOLTZ

The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Ntuli and Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of

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police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

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- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

1.2.2 the time is between 13h00 and 14h00.

1.2.3 the place where it happened is 4 Oribi road, Mandini.

1.3 The State does not rely on an omission in respect of Accused 3's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

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2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:-

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindle Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

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- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is alleged that the accusad conduct is related to other conduct in the indictment.

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3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4. **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE**

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang

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violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police

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officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 3 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police

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units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 3 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom

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that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, **11,** 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

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6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 3 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 3 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 3 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.9 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 3 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 3 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

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8.2- 8.4 The extent of participation of Accused 3 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
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Counts 35 – 38 dealt with in Incident 1
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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 13 - 14
AD HOUSEBREAKING WITH INTENT TO MURDER AND MURDER DECEASED MZAMENI NTULI AND NKOSINATHI MTHEMBU
ACCUSED 4: PAUL MOSTERT

The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Ntuli and Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

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The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, In the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

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- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the

GSM

premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

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- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.2 the date of the incident is 18 September 2008.

1.1.3 the time is between 13h00 and 14h00.

1.1.4 the place where it happened is 4 Oribi road, Mandini.

1.2 The State does not rely on an omission in respect of Accused 4's liability.

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2 AD PATTERN OF RACKETEERING ACTIVITY HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.
- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.
- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the

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premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.
- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.
- Accused 6 then took charge of the scene.
- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

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3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho

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killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the

G-5 M

legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in incident 4
Counts 8 – 12 dealt with in incident 5
Counts 13 – 18 dealt with in incident 6
Counts 31 – 34 dealt with in incident 15
Counts 35 – 38 dealt with in incident 1
Count 39 – 52 dealt with in incident 9
Counts 53 – 57 dealt with in incident 12
Counts 58 – 61 dealt with in incident 14
Counts 62 – 65 dealt with in incident 16
Counts 66 – 69 dealt with in incident 18
Counts 80 – 93 dealt with in incident 20 - 22
Counts 94 – 97 dealt with in incident 23
Counts 98 – 101 dealt with in incident 2 and
Counts 102 – 103 dealt with in incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police

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units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for

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his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

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6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

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8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 2: NKOSINATHI MTHEMBU
ACCUSED: PHUMELELA MAKHANYA

The State will deal with the offence of Housebreaking with Intent to commit murder and murder of both Ntuli and Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

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The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road, Mandini with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

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- The team proceeded to 4 Oribi, Mandini, a residence of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

1.1.2 the time is between 13h00 and 14h00.

1.1.3 the place where it happened is 4 Oribi road, Mandini.

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1.2 The State does not rely on an omission in respect of Accused 4's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.
- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

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- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.
- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES**

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RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

5. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

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4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

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4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

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5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

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5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7.– 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bonganl Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzamenl Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA

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Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

3.3 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 8 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu

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Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNTS 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 2: NKOSINATHI MTHEMBU
ACCUSED 10: THEMBINKOSI MKHWANAZI

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The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Mzameni Ntuli and Nkosinathi Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road, Mandini with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

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- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a residence of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a

lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.2.1 the date of the incident is 18 September 2008.

1.2.2 the time is between 13h00 and 14h00.

1.2.3 the place where it happened is 4 Oribi road, Mandini.

1.3 The State does not rely on an omission in respect of Accused 10's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.2 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.3 As regards the plan:

2.3.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.3.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.3.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.3.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.4 The participants to the offences are:

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2.4.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.4.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head

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(deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.4.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES

3.2 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.3 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets

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before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation.

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The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16

GSM

Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 10 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused

G SM

4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the

GSM

Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

G SM

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and

G SM

both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence

GSM

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes It is alleged that Accused 10 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

G SM

7.2.3 Accused 10 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 10 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

3.4 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 10 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.

GSM

- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 10 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 98 – 101 the killing of Mfanafuthi Zwane and

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 98 – 101 dealt with in Incident 2.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 1: NKOSINATHI MTHEMBU
ACCUSED 11: THATHAYIPHI MDLALOSE

The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Mzameni Ntuli and Nkosinathi Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking

GSM

and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road, Mandini with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

GSM

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a residence of Lindie Joyce Gabi where Accused 6, 8, 10, 11, 12, and 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

GSM

1.1.2 the time is between 13h00 and 14h00.

1.1.3 the place where it happened is 4 Oribi road, Mandini.

1.2 The State does not rely on an omission in respect of Accused 11's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

GSM

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56 calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75

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degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their

GSM

conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the

GSM

Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 11 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

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5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the

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Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

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Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.

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6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 11 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 11 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

4.1 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

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The other activities that Accused 11 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 35 – 38 the killing of Thabo Msimango
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 94 – 97 the killing of Qinisani Gwala and
Counts 98 – 101 the killing of Mfanafuthi Zwane.

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the incidents:

Counts 13 – 18 dealt with in Incident 6
Counts 35 – 38 dealt with in Incident 1
Counts 66 – 69 dealt with in Incident 18
Counts 94 – 97 dealt with in Inciedent 23
Counts 98 – 101 dealt with in Incident 2.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNTS 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 2: NKOSINATHI MTHEMBU
ACCUSED 12: BONGANI ZONDI

The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Mzameni Ntuli and Nkosinathi Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the

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same accused at the same venue and it makes more sense to deal with them together in our view.

The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road, Mandini with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

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- The team proceeded to 4 Oribi, Mandini, a residence of Lindie Joyce Gabi where Accused 6, 8, 10, 11, 12, and 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

1.1.2 the time is between 13h00 and 14h00.

1.1.3 the place where it happened is 4 Oribi road, Mandini.

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1.2 The State does not rely on an omission in respect of Accused 12's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

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- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a residence of Lindie Joyce Gabi where Accused 6, 8, 10, 11, 12 and 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75

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degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above.

2.4 No, it is alleged that Accused 12 took guard outside the premesis to prevent any possible escapees from inside the house.

2.5 Not applicable.

2.6 Not applicable.

2.7 Not applicable.

2.8 Not applicable.

2.9 Not applicable.

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it

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would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4 **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation.

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The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16

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Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 12 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused

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4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hiding. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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GSM

Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

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Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and

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both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

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6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 12 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whilst employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

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7.2.3 Accused 12 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 12 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

4.1 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 12 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.

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- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 12 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu

8.2- 8.4 The extent of participation of Accused 12 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 2: NKOSINATHI MTHEMBU
ACCUSED 13: RUBENDREN NAIDOO

The State will deal with the offence of Housebreaking with intent to commit murder and murder of both Ntuli and Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whilst taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into

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the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56 calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5, 56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

1.1.2 the time is between 13h00 and 14h00.

1.1.3 the place where it happened is 4 Oribi road, Mandini.

1.2 The State does not rely on an omission in respect of Accused 13's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**

HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

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2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindle Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the

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premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the bugiar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

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3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4 **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE**

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law

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and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and

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other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together

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with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

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5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 3 Adriaan Stoits
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission

6.5.5 the operational structure of the enterprise is a matter of evidence

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Phiangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 13 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 13 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 13 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists

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under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8 CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 13 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 13 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 25 – 30 the killing of Sibongiseni Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 70 – 79 the killing of Simphiwe Shozi
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 102 – 103 the killing of Sanele Majola
Counts 112 – 116 the killing Nhlanhla Mhlongo

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8.2- 8.4 The extent of participation of Accused 13 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 13 – 14
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER
DECEASED 1: MZAMENI NTULI
DECEASED 2: NKOSINATHI MTHEMBU
ACCUSED 15: ANTON LOCKEM

The State will deal with the offence of Housebreaking with Intent to commit murder and murder of both Ntuli and Mthembu together in stead of separating it as Housebreaking and murder and separating the deceased as the accused have done in their request, both the housebreaking and the murder of both deceased persons took place at the same time by the same accused at the same venue and it makes more sense to deal with them together in our view.

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The case against the accused must be understood against the following background:-

There was taxi violence between the Stanger Taxi Association and the KwaMaphumulo taxi Association which became the focus of investigation by a task team headed by Sup Choncho. On 27 August 2008 when he was ambushed whisit taking suspects to KwaDukuza court from Kanskop police station, Cato Manor section of the Durban Organised Crime took over the investigation and followed leads from a phone recovered from Dumisane Ndlovu, one of the suspects, who was shot and killed at the scene. This killing of Supt Choncho (KwaMaphumulo CAS 99/8/2008), the killing of Inkosi Zondi(Bhekithemba 113/09/09) followed the killing of Supt Govender where the suspects remained untraced, in the light of the number of police officials that were killed post 1994, Cato Manor police took it upon themselves to track down the killers of Choncho to the extent that they overstepped the bounds of lawfulness and shot and killed people that they suspected of involvement in the killing of Choncho in stead of collecting the evidence and bringing them before the courts for their guilt or otherwise to be determined. The suspects that were tracked were people that had some conversation with the deceased (Dumisane Ndlovu) prior to his killing.

1.1 It is the State's case that the breaking or pushing open of the sliding door and security door which is closed at the deceased's premises would amount to housebreaking if the State can prove that the plan to get to the premises was unlawful from the beginning. It is the State's case that Cato Manor went to 4 Oribi road with the intention to shoot and kill the two suspects, not a lawful suspect raid with a view to arrest. Against this backgroung, the State does not rely on an omission but relies on the following acts by the Accused:

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

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- The team proceeded to 4 Oribi, Mandini, a resident of Lindie Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56 calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5, 56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

1.1.1 the date of the incident is 18 September 2008.

1.1.2 the time is between 13h00 and 14h00.

1.1.3 the place where it happened is 4 Oribi road, Mandini.

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1.2 The State does not rely on an omission in respect of Accused 15's liability.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
HOUSEBREAKING WITH INTENT TO MURDER AND MURDER

2.1 Yes, it is alleged that the accused's conduct formed part of a pattern of racketeering activity as defined in Section 1 of Act 121 of 1998 and was part of a bigger plan by the accused to eliminate people who they suspected of involvememnt in the killing of Supt Choncho.

2.2 As regards the plan:

2.2.1 It is not precisely cear when the accused formed the plan to eliminate people who they suspected of involvement in the killing of Supt Choncho, safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.2 It is not precisely clear where the plan was formed safe to state that when the accused did the suspect raid on 18 September 2008 and entered the premises and fired shots at the deceased, the plan to commit the offences was formed already.

2.2.3 The terms of the plan to eliminate the deceased is a matter of evidence.

2.2.4 Yes. It is alleged that more that one person was involved in the plan to commit the offence of housebreaking with intent to murder and murder.

2.3 The participants to the offences are:

2.3.1 Accused 4, Accused 3, Accused 8, Accused 10, Accused 11, Accused 12, Accused 13 and Accused 15.

2.3.2 The act committed by the respective accused persons in carrying out the plan are the following:-

- Accused 4 having received information of the whereabouts of the two (2) suspects that he was looking for, called the Cato Manor colleagues and they proceeded to Mandini.

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- Accused 4 briefed the members including Accused 3, 6, 8, 10, 11, 12 13 and 15 about the latest information at his disposal.

- The team proceeded to 4 Oribi, Mandini, a resident of Lindle Joyce Gabi where Accused 6, 8, 10, 12, 15 took guard positions outside the premises whilst Accused 3, 4 an 13 entered the premises. Accused 4 saw a person wearing an orange shirt running from the veranda into the house, Accused 3, 4 and 13 followed him into the house through the buglar and sliding door.

- A child who was in the passage pointed out the room where the accused were hiding. The door to the main bedroom where the suspects were hiding was locked and Accused 3 tried to force it open without avail. Accused 4 stepped in and broke it open. As they were approaching the door, they heard glasses breaking and someone shouting a person to go back inside. As the door was kicked open, a gunshot was heard.

- As Accused 3 and 13 entered the bedroom, a male person alighted from the wardrobe, allegedly carrying a gun. Accused 3 and 13 fired shots at him killing him instantly. Another suspect also emerged from the wardrobe allegedly with a firearm in his hand and Accused 4 fired shots at him.

- Accused 6 then took charge of the scene.

- Mr Steyl retrieved a 9mm bullet fragments that had impacted into the carpet directly underneath the position of the deceased's head (deceased with the orange shirt). A further 5.56calibre fragmented projectile was retrievedfrom the carpet in the vicinity of the position of the deceased's waist of the same deceased. These two (2) shots inside the carpet (9mm and 5,56 calibre) in the vicinity of the blood stains in the carpet indicate a sharp downward trajectory (70 – 75 degrees). These indicate that the deceased sustained gunwounds in a lying position, in addition to the other gunshot wounds that were sustained in a standing position.

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2.3.3 The date, time and place of participation of each accused person is the same as in paragraph 1.2.1 above

3 **PATTERN OF RACKETEERING ACTIVITIES RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is alleged that the accused conduct is related to other conduct in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of Supt Choncho. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

- All the suspects that Cato Manor were looking for to connect with the Choncho killing are members of KwaMaphumulo Taxi Association which was in conflict with the Stanger Taxi Association and the informers who were providing Cato Manor with information that formed the basis of their conduct, were predominantly members of the Stanger Taxi Association, who could be harbouring their own grudges with the KwaMaphumulo Taxi Association and could be biased against them.

4 **PATTERN OF RACKETEERING ACTIVITY**

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RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Housebreaking with intent to murder and Murder are related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to

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commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE

5.1 Yes, Accused 15 did manage the activities of the enterprise, Accused 9, together with Accused 1, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 10 and 11, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they proceeded to 4 Oribi road, Mandini where the two deceased were likely hididng. Accused 4 briefed the members present around the information at his disposal and the team proceeded to the address. Accused 9, 15 and 16 created an environment where other members of the enterprise could function to advance the objectives of the enterprise.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding. Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Axccused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called the Cato Manor members to assemble and get them ready to travel to Mandini for a suspect raid.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Housebreaking with intent to murder and murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu. He started when he called in the members of Cato Manor to assist in the operation at Mandini.
6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stolts
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission
6.5.5 the operational structure of the enterprise is a matter of evidence
6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission
6.5.7 the same as in paragraph 6.1 above.
6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the

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Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the crime of Housebreaking with intent to murder and murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased were traced and found at 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together at 4 Oribi road in Mandini and ensuring that they are shot and killed.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8 CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- breaking into the premises where the deceased were hiding.
- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu committed on the same day.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 15 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 25 – 30 the killing of Sibongiseni Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 58 – 61 the killing of Lindokuhle Nzuzo

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Counts 70 – 79 the killing of Simphiwe Shozi
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 102 – 103 the killing of Sanele Majola
Counts 112 – 116 the killing Nhlanhla Mhlongo

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Mzameni Ntuli and Nkosinathi Mthembu. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 3: ADRIAAN STOLTZ

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were

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committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

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- the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges
- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

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2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

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2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- Immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi

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Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, It is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, It is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes

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it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, It is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15

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Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Phiangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

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5.1 No, Accused 3 did not manage the activities of the enterprise, Accused 6, 15 and 16, in their capacity as a Group Commander at SVC section and Accused 9, the Section Commander at SVC section were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.
5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.
5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under

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Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

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6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 3 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzamani Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 3 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 3 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the

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environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 3 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

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The other activities that Accused 3 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 20 – 24 the killing of Bongane Mkhize
Counts 25 – 30 the killing of Sibongiseni Ndimande
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe

8.2- 8.4 The extent of participation of Accused 3 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6
Counts 20 – 24 dealt with in Incident 10
Counts 25 – 30 dealt with in Incident 13
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 4: PAUL MOSTERT

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

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1.2 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking

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Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.4.1 The date of the act is 18 September 2008

1.4.2 The time of the act is around 16h30

1.4.3 The place of the act is on the 4 Oribi road Mandini.

1.5 No the State does not rely on an omission.

1.6 The firearm concerned are:-

- a 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

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2.1 Yes, It is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

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2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

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- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of

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other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

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3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

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4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

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4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
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Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14

GSM

Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes It is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to

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18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

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Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

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6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the

G SM

environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 4 participated in include the predicate offences that are listed on Page 25 of this submission:

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Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in

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particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 8: PHUMELA MAKHAYA

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

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- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

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1.4 The firearm concerned are:-

- a 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, It is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure

GSM

these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

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2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

3. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

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4.1 Yes, It is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, It is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal

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entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
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Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police

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units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzamani Ntuli and Nkosinathi Mthembu.

5.5.4 It is not clear when the common purpose was formed.

5.5.5 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.6 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the

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doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13,

GSM

proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

GSM

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise,

GSM

these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

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8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 8 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15

GSM

Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

1.2 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 10: THEMBINKOSI MKHWANAZI

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

GSM

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

G SM

found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Cailbre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they

G SM

prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger

GSM

to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

G SM

3. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised

GSM

Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

GSM

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 10 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without

GSM

engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.7 It is not clear when the common purpose was formed.

5.5.8 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.9 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

GSM

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

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6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

GSM

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the

GSM

Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 10 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 10 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 10 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.10 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 10 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 10 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 98 – 101 the killing of Mfanafuthi Zwane and

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the incidents:

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Counts 13 – 18 dealt with in Incident 6 and
Counts 98 – 101 dealt with in Incident 2.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

1.2 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 10: THATHAYIPHI MDLALOSE

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were

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brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

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- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Cailbre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

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2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

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- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, It is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes It is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo

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Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No; Accused 11 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each

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person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

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Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

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6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes It is alleged that Accused 11 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzamani Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 11 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that

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SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.11 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 11 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 35 – 38 the killings of Thabo Msimango
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6

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Counts 35 – 38 dealt with in Incident 1
Counts 66 – 69 dealt with in Incident 18
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

1.2 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 12: BONGANI ZONDI

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful

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shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

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- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Cailbre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

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2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

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- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo

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Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 12 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 15 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzamani Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each

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person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

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Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes It is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

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6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 12 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 12 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 12 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that

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SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.12 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 12 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 12 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe

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Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

1.2 – 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 13: RUBENDREN NAIDOO

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and

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similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213

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found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho

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was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- Immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many

police officials who would be part of the pursuit team or the police raid.

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2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

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Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the

Incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 13 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 15 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.4.1 It is not clear when the common purpose was formed.

5.4.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.4.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi

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road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 13 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 13 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 13 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.13 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 13 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 13 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 25 – 30 the killing of Sibongiseni Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Bonagi Biyela and Khanyisani Biyela
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 70 – 79 the killing of Simphiwe Shozi
Counts 80 – 93 the killings of Jabulani Bhengu, Dumisani Mghobozi and Boysie Mbonambi
Counts 102 – 103 the killing of Sanele Majola and
Counts 113 – 116 the killing of Nhlanhla Mhlongo

8.2- 8.4 The extent of participation of Accused 13 in these activities have been outlined in the Incidents:

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Counts 3 – 7 dealt with in Incident 4
Counts 13 – 18 dealt with in Incident 6
Counts 25 – 30 dealt with in Incident 13
Counts 35 – 38 dealt with in Incident 1
Counts 39 – 52 dealt with in Incident 9
Counts 58 – 61 dealt with in Incident 14
Counts 70 – 79 dealt with in Incident 19
Counts 80 – 93 dealt with in Incidents 20 – 22
Counts 102 – 103 dealt with in Incident 3
Counts 113 – 116 dealt with in Incident 17

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7– 8.8 Yes same as 6.3 above.

COUNTS 15 – 18
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 15: ANTON LOCKEM

Although the accused separated Count 15, 16, and 17 from Count 18 in their request, the State deals with all the Counts 15 to 18 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 9mm Parabellum Calibre LEW Model Z88 pistol with serial number obliterated with one (1) magazine and six (6) rounds,

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- 9mm Parabellum Calibre CZ Model 75 with serial number G2921 with a magazine and 13 rounds

which were allegedly found at the scene of Mzameni Ntuli and Nkosinathi's shooting incident at 4 Oribi road, Mandini on 18 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court g for VIP Protection.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

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found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 September 2008

1.2.2 The time of the act is around 16h30

1.2.3 The place of the act is on the 4 Oribi road Mandini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned are:-

- a 9mm Parabellum Cailbre LEW Model Z88 pistol with serial number obliterated with a magazine and six(6) cartridges and

- a 9mm Parbellum Calibre CZ Model 75 pistol with serial number G2921 with a magazyn and thirteen (13) cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they

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prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger

to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these two (2) 9mm Parrabellum pistols and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at number 4 Oribi road Mandini, the Cato Manor members who were present are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 18 September 2008. In Counts 14 and 18, the date is the 18 September 2008 at around 16h30.

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3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group

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Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes, Accused 15 did manage the activities of the enterprise, together with Accused 9, 6, and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 15 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without

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engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.4.4 It is not clear when the common purpose was formed.

5.4.5 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.4.6 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

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5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

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6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and ankosinathi Mthembu.He also briefed the other members on the information at his disposal at Mandini before the team set off to number 4 Oribi road Mandini in search of their suspects.

6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 5 Eric Nel
Accused 8 Phumelela Makhanya
Accused 15 Anton Lockem
Accused 16 Eugene van Tonder
Accused 1 Johan Booysen
Accused 9 Cornelius Olivier

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Maimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the

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Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was tracked at number 4 Oribi road Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, at 4 Oribi road Mandini.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- murder of Nkosinathi Mthembu that was committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 15 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 8 – 12 the killing of Magojela Ndimande and Sibusiso Tembe
Counts 39 – 52 the killings of Bonagi Biyela and Khanyisani Biyela
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 80 – 93 the killings of Jabulani Bhengu, Dumisani Mghobozi and Boysie Mbonambi

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Counts 98 – 101 the killing of Fukwane Zwane
Counts 102 – 103 the killing of Sanele Majola
Counts 109 – 112 the killing of Dan Phiri and
Counts 113 – 116 the killing of Nhlanhla Mhlongo

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6
Counts 8 – 12 dealt with in Incident 5
Counts 39 – 52 dealt with in Incident 9
Counts 58 – 61 dealt with in Incident 14
Counts 70 – 79 dealt with in Incident 19
Counts 80 – 93 dealt with in Incidents 20 – 22
Counts 98 – 101 dealt with in Incident 2
Counts 102 – 103 dealt with in Incident 3
Count 109 – 112 dealt with in Incident 11
Counts 113 – 116 dealt with in Incident 17

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.8 Yes same as 6.3 above

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 3: ADRIAAN STOLTZ

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence

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to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntull and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntull and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

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- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.1.1 The date of the act is 18 September 2008.

1.1.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 3.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed

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on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many

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police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they

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were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to

TGSM

commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 3 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

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5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

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5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoitz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 3 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 3 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 3 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 -7.9 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 3 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 3 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 20 – 24 the killing of Bongani Mkhize
Counts 25 – 30 the killing of Sibongiseni Ndimande and
Counts 62 – 65 the killing of Prince Thabethe

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8.2- 8.4 The extent of participation of Accused 3 in these activities have been outlined in the Incidents:

Counts 13 – 18 dealt with in Incident 6
Counts 20 – 24 dealt with in Incident 10
Counts 25 – 30 dealt with in Incident 13
Counts 62 – 65 dealt with in Incident 16.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 4: PAUL MOSTERT

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

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- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.1 The date of the act is 18 September 2008.

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1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 4.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

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2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz

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Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

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4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

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4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

G S M

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a

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child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person

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employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose

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Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 3 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

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7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killings of Magojela Ndimande and Sibusiso Temebe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killing of Bongane Biyela and Khanyiseni Biyela
Counts 53 – 57 the killing of Thokozane Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killing of Jabulane Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killings of Mfanafuthi Zwane

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Counts 102 – 103 the killing of Muzi Majola

8.2- 8.4 The extent of participation of Accused 3 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Count 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Counts 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16.
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 -22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2
Counts 102 – 103 dealt with in Incident 3

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 8: PHUMELELA MAKHANYA

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence

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to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

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- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.1 The date of the act is 18 September 2008.

1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 4.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed

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on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many

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police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they

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were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to

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commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

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5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

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5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 8 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killings of Magojela Ndimande and Sibusiso Ternebe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 35 – 38 the killing of Thabo Maimango

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Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killings of Mfanafuthi Zwane

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Count 13 – 18 dealt with in Incident 6
Counts 35 – 38 dealt with in Incident 1
Counts 66 – 69 dealt with in Incident 18
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

7.8 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 10: THEMBINKOSI MKHWANAZI

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst

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travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

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- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.2 The date of the act is 18 September 2008.

1.2.3 The time of the act is around 16h30.

1.2.4 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 10.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association

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and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

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2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

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3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable

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in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

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RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 35 – 38 dealt with in Incident 1
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4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the

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incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 10 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

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5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

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5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes It is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South

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African Police Service, a legal entity established by legislati
of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that memb
Crime section acted loosely as individuals outside the le
entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 10 committed the crime o
the course of Justice jointly with the other accused whilst em
the enterprise.

7.2 The enterprise remains the same in respect of all the
only difference is the members who participated in the
these are the members who were on duty and were availa
when the deceased was traced the accused and come
Mandini.

7.2.2 The association was by means of conduct that is d
results. These includes the tracing of Mzameni Ntuli
together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 10 associated himself with the ente
functions and executed tasks which advanced the objecti

7.2.4 Accused 10 kept a close and loyal and friendly
Captain Olivier and General Booysen to the exclusion
trust relationship originated from the time when they were
environment of the Serious Violent Crime section be
Organised Crime.

7.3 Yes, the same names listed in 6.3 above

7.4 Yes.

7.5 Same as in 6.5 above

African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 10 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 10 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 10 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 10 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 10 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 98 – 101 the killings of Mfanafuthi Zwane

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8.2- 8.4 The extent of participation of Accused 10 in these activities have been outlined in the Incidents:

Count 13 – 18 dealt with in Incident 6
Counts 98 – 101 dealt with in Incident 2

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 11: THEMBINKOSI MKHWANAZI

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

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- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.1 The date of the act is 18 September 2008.

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1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 11.

AD: PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

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2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz

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Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

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4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

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4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 11 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a

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child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person

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employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thatheyiphi Mdlalose

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Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 11 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 11 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

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7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 11 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killings of Magojela Ndimande and Sibusiso Temebe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killing of Bongane Biyela and Khanyiseni Biyela
Counts 53 – 57 the killing of Thokozane Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killing of Jabulane Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killings of Mfanafuthi Zwane

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Counts 102 – 103 the killing of Muzi Majola

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the incidents:

Count 13 – 18 dealt with in incident 6
Counts 35 – 38 dealt with in incident 1
Counts 66 – 69 dealt with in incident 18
Counts 94 – 97 dealt with in incident 23
Counts 98 – 101 dealt with in incident 2

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 12: BONGANI ZONDI

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt

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Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

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- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.1 The date of the act is 18 September 2008.

1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 12.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted

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them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

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PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and

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other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 12 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the

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members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert

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Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 12 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 12 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 12 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.9 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 12 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 12 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu

8.2- 8.4 The extent of participation of Accused 12 in these activities have been outlined in the Incidents:

Count 13 – 18 dealt with in Incident 6

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in

particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7– 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 13: THEMBINKOSI MKHWANAZI

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli

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with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayl' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.1 The date of the act is 18 September 2008.

1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 13.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

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2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

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- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

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2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects

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without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1

Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 89 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

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5.1 No, Accused 13 did not manage the activities of the enterprise, Accused 9, together with Accused 1, 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased,

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they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Magojela and Tembe. He started when he instructed the owner of the VIP protection that was providing security services to the KwaMaphumulo to remove their securities from their members. He must have placed the AK47 rifle next to the deceased and then called the owner of the VIP security whom he had earlier warned to remove the securities from members of the KwaMaphumulo Taxi Association, witness 29 and 30 to the scene to come and see what he did to their employee.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a

child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 13 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008 when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

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7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzameni Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 13 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 13 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 13 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

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- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 13 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killings of Magojela Ndimande and Sibusiso Temebe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killing of Bongane Biyela and Khanyiseni Biyela
Counts 53 – 57 the killing of Thokozane Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killing of Jabulane Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killings of Mfanafuthi Zwane
Counts 102 – 103 the killing of Muzi Majola

8.2- 8.4 The extent of participation of Accused 13 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Count 13 – 18 dealt with in Incident 6
Counts 35 – 38 dealt with in Incident 1
Counts 39 – 52 dealt with in Incident 9

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Counts 58 – 61 dealt with in Incident 14
Counts 80 – 93 dealt with in Incident 20 -22
Counts 70 – 79 dealt with in Incident 19
Counts 102 – 103 dealt with in Incident 3
Counts 113 – 116 dealt with in Incident 17

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.8 – 8.8 Yes same as 6.3 above.

AD COUNT 18: DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 15: ANTON LOCKEM

1.1 It is the State's case that the firearms and ammunition, which was allegedly found at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting incident at number 4 Oribi road, Mandini on 18 September 2008 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:-

- The deceased Mzameni Ntuli and Nkosinathi Mthembu were suspected of involvement in the killing of Supt Choncho on 27 August 2008 whilst travelling on the R74 road in a convoy, transporting acuused persons from Kranskop police station to KwaDukuza court.

- Both deceased were members of the KwaMaphumulo Taxi Association who were suspected to have hatched and funded the plan to kill Supt Choncho as he was allegedly victimising members of their taxi association.

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- Inspector Mazibuko (Witness 33) arrived at the scene of Mzameni Ntuli and Nkosinathi Mthembu's shooting at 16h50 and only got to the scene or got inside the house at 17h10.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi" or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- Evidence of photos taken by witness 17, Insp Zondi and the respective locations of the rifles and cartridges found on the scene.

- Evidence of witness 30, Mr Steyl relating to his observations and conclusions about where the firearms and cartridges were depicted on the scene.

1.2.2 The date of the act is 18 September 2008.

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1.2.2 The time of the act is around 16h30.

1.2.3 The place of the act is at number 4 Oribi road Mandini.

1.3 No, the State's case is not based on an omission in respect of Accused 11.

AD: PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

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2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would took part in this incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 September 2008 when these 9mm Parabellum pistols and their ammunition were possessed by the members who took part in the tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu at 4 Oribi road Mandini, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 3 Adriaan Stoltz

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Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhaya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 13 to 18 the date is the 18 September 2008 at around 16h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi used consitently at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

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4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the offences were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when Accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 15 did manage the activities of the enterprise, together with Accused 1, 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Mandini before they set on tracking Mzameni Ntuli and Nkosinathi Mthembu. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 3, 4, 6, 8, 10, 11, 12, 13 and 15. Accused 3, 4, 6, 8, 11, 12, 13 and 15 proceeded to 4 Oribi road, Mandini where they cornered Mzameni Ntuli and Nkosinathi Mthembu and shot and killed them, thereafter placed a 9mm Parabellum pistol next to the body of each deceased person to accord with their version of self defence.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a

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child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

5.6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Mzameni Ntuli and Nkosinathi Mthembu.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:-

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi

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road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 3 Adriaan Stoltz
Accused 4 Paul Mostert
Accused 6 Neville Eva
Accused 8 Phumelela Makhanya
Accused 10 Thembinkosi Mkhwanazi
Accused 11 Thathayiphi Mdlalose
Accused 12 Bongani Zondi
Accused 13 Rubendren Naidoo and
Accused 15 Anton Lockem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Mzameni Ntuli and Nkosinathi Mthembu.

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6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 September 2008

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when the deceased was traced the accused and cornered them at 4 Oribi road, Mandini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These includes the tracing of Mzamani Ntuli and Nkosinathi Mthembu together, and cornering them at 4 Oribi road, Mandini.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.10 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

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8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Mzameni Ntuli that was committed on 18 September 2008.
- Murder of Nkosinathi Mthembu committed on the same day.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

on the basis of being managers that associated themselves with the conduct of the members of the enterprise, that knew or ought to have known of the operations of the members of the enterprise.

The other activities that Accused 15 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killings of Magojela Ndimande and Sibusiso Temebe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killing of Bongane Biyela and Khanyiseni Biyela
Counts 53 – 57 the killing of Thokozane Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killing of Jabulane Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killings of Mfanafuthi Zwane
Counts 102 – 103 the killing of Muzi Majola

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5

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Count 13 – 18 dealt with in Incident 6
Counts 58 – 61 dealt with in Incident 14
Counts 80 – 93 dealt with in Incident 20 -22
Counts 98 – 101 dealt with in Incident 2

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

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COMMON PURPOSE

AD INCIDENT ON THE 18 SEPTEMBER 2008: THE SHOOTING OF MZAMENI NTULI AND NKOSINATHI MTHEMBU: COUNTS 13 – 18

ACCUSED 3:ADRIAAN STOLTZ

ACCUSED 4: PAUL MOSTERT

ACCUSED 8: PHUMELELA MAKHANYA

ACCUSED 10: THEMBINKOSI MKHWANAZI

ACCUSED 11: THATHAYIPHI MDLALOSE

ACCUSED 12: BONGANI ZONDI

ACCUSED 13: RUBENDREN NAIDOO AND

ACCUSED 15 ANTON LOCKEM

It appears from the predominant facts at the State's disposal that a common pupose to commit the offences outlined can be inferred from the conduct of the members of the enterprise in the commission of the offences which form part of the pattern of racketeering acivity. The incident on the 18 September 2008 cannot be taken in isolation of other incidents or operations of the enterprise, it must be considered in the light of all the incidents as outlines in the table on Page 6 of this submission, Incident 1 on 24 May 2008 (the killing of Thabo Msimango) until Incident 23 on 23 September 2008 (the killing of Philangenkosi Gwala). One must also not loose sight of the regular briefings which the members of the enterprise get involved in prior to each and every operation where suspects are traced.

1. The accused who form part of the particular incident as outlined on the table Pages 6 to 23 formed a prior agreement in respect of that particular incident in which they were involved for instance in Count 13 – 18, it is the State's case that the following accused persons did form a common purpose to kill Mzameni Ntuli and Nkosinathi Mthembu:-

   Accused 3: Adriaan Stoltz
   Accused 4: Paul Mostert
   Accused 8: Phumelela Makhanya
   Accused 10: Thembinkosi Mkhwanazi
   Accused 11: Thathayiphi Mdlalose
   Accused 12 Bongani Zondi
   Accused 13 Rubendren Naidoo and
   Accused 15 Anton Lockem

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1.1.1 The is not precisely certain about the time that the accused became party to the prior agreement to commit the offences on 18 September 2008, safe to state that when they left the Cato Manor offices and when they met again at a place in Mandini where Accused 4 gave them a briefing and when they set on to get to 4 Oribi road Mandini, a prior agreement to commit the offences that have been listed in Count 13-18 was formed by the accused persons.

1.1.2 Same as in paragraph 1.1 above

1.1.3 The terms of the agreement is a matter of evidence.

1.1.4 All the parties involved in the agreement and their roles can be repeated as follows:

- Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He entered the premises of 4 Oribi road, entered the house through the sliding door together with Accused 3 and 13, proceeded in the passage that leads to the bedrooms where Accused 4 spoke to a child in Zulu and told him to vacate the house for his safety, and went to the bedroom that the child pointed as the place where they were hiding.

- Accused 3 kicked the door to open it without success when Accused 4 stepped forward and kicked it open. Accused 3 and 13 entered the bedroom and saw that the doors of the cupboards were half closed. A male with an orange shirt came out and both Accused 3 and 13 fired shots at him. As they were focused on this deceased, they heard gunshots on their right as Accused 4 fired shots at the second suspect who also came out of the cupboards.

- Accused 6, 8, 10, 11, 12 and 15 took positions outside the house to prevent possible escapes from the house.

1.1.5 Same as 1.1.4 above

1.1.6 The date, time and place of the act are the same as in paragraph 1.1 above.

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2. Yes it is alleged that the accused formed an act of association with one another.

2.1.1 Same as in paragraph 1.1.4 above.

2.1.2 Same as in paragraph 1.1.1 above.

2.1.3 Same as in paragraph 1.1.1 above.

2.1.4 Same as in paragraph 1.1.4 above.

2.1.5 Same as in paragraph 1.1.4 above.

3. The State relies on prior agreement in the main argument, in the alternative the State will argue that it can be inferred from the proven facts.

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INCIDENT DATE: 4 SEPTEMBER 2011

DECEASED: QINISANI GWALA

ACCUSED 4: PAUL MOSTERT

ACCUSED 8: PHUMELELA MAKHANYA

ACCUSED 11: THATHAYIPHI MDLALOSE

ACCUSED 16: EUGENE VAN TONDER

ACCUSED 25: CHARLES JOHN SMITH

ACCUSED 26: JEREMY MARTEM

COUNTS 94 – 97

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COUNT 94: MURDER
AD ACCUSED 4: PAUL MOSTERT
DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the deceased, which could have been cleared even by production of his ID book which was in his sling bag.

- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.2.1 3 September 2011
1.2.2 Around 11h30
1.2.3 Mabuyeni Reserve, Esikhawini.

1.3 The State does not rely on an omission.

1.4 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.5 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

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1.6 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.8 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

1.9 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

2 **AD PATTERN OF RACKETEERING ACTIVITY**

MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

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2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his homestead before the police arrived but before he could open the door, they confronted him at his door. He saw that the deseased was still handcuffed.

Accused 8, 25 and 26 searched the first room and as they were conducting a search in the second room, Accused 25 and 26 fired shots at the deceased, alledging that he was lunging forward for a gun when they shot at him. It is the State case that it is highly unlikely that one person who is cuffed at the back would attempt to grab a firearm in the presence of three (3) armed police officers, one of whom is srmed with an R5 rifle. The State will argue that the cable ties were not removed there was no need to do so, only the police were searching, not the suspect.

2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

3.1 Yes, the accused's conduct is related to the offences depicted in the Indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the Indictment:-

- The modus operandi that is prevalent in most of the offences in the Indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the Indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi",

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"spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 **WHILST MANAGING THE ENTERPRISE**

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in

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the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

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5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 26 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the

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5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder

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Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

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7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Phillsani Ndlovu ("Bha") together at a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is nit clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

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7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.
- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande

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Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

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COUNT 94: MURDER
AD ACCUSED 8: PHUMELELA MAKHANYA
DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the deceased, which could have been cleared even by production of his ID book which was in his sling bag.

- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.2.1 September 2011
1.2.2 Around 11h30
1.2.3 Mabuyeni Reserve, Esikhawini.

1.3 The State does not rely on an omission.

1.4 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.5 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

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1.6 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.8 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

1.9 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

2 **AD PATTERN OF RACKETEERING ACTIVITY**

MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

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2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his homestead before the police arrived but before he could open the door, they confronted him at his door. He saw that the deseased was still handcuffed.

Accused 8, 25 and 26 searched the first room and as they were conducting a search in the second room, Accused 25 and 26 fired shots at the deceased, alledging that he was lunging forward for a gun when they shot at him. It is the State case that it is highly unlikely that one person who is cuffed at the back would attempt to grab a firearm in the presence of three (3) armed police officers, one of whom is armed with an R5 rifle. The State will argue that the cable ties were not removed there was no need to do so, only the police were searching, not the suspect.

2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

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3 **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES**

4.1 Yes, the accused's conduct is related to the offences depicted in the indictment.

4.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

5. **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE**

5.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

5.2 Yes,

5.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers in a manner that is acceptable in the eyes of the law and the community. It is for this

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reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

5.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

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6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations

GSM

(DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philisani Ndlovu ("Bha") together at a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were

G S M

working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.

GSM

- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 8 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16

GSM

Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 94: MURDER
AD ACCUSED 11: THATHAYIPHI MDLALOSE
DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the

G S M

deceased, which could have been cleared even by production of his ID book which was in his sling bag.

- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.2.1 September 2011

1.2.2 Around 11h30

1.2.3 Mabuyeni Reserve, Esikhawini.

1.3 The State does not rely on an omission.

1.4 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.5 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

1.6 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.8 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

GSM

1.9 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took

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himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his homestead before the police arrived but before he could open the door, they confronted him at his door. He saw that the deseased was still handcuffed.

Accused 8, 25 and 26 searched the first room and as they were conducting a search in the second room, Accused 25 and 26 fired shots at the deceased, alledging that he was lunging forward for a gun when they shot at him. It is the State case that it is highly unlikely that one person who is cuffed at the back would attempt to grab a firearm in the presence of three (3) armed police officers, one of whom is srmed with an R5 rifle. The State will argue that the cable ties were not removed there was no need to do so, only the police were searching, not the suspect.

2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

3 **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES**

3.1 Yes, the accused's conduct is related to the offences depicted in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act

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51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE**

4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2 Yes,

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained

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wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5

GSM

Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their

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version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 11 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabúyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

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5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 26 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community

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Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and

GSM

Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

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6.5.7 the same as in paragraph 6.1 above.

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6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philisani Ndlovu ("Bha") together at a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.
- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 11 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango

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Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

GSM

COUNT 94: MURDER

AD ACCUSED 18: EUGENE VAN TONDER

DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the deceased, which could have been cleared even by production of his ID book which was in his sling bag.

- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.1.1 3 September 2011

1.1.2 Around 11h30

1.1.3 Mabuyeni Reserve, Esikhawini.

1.2 The State does not rely on an omission.

1.3 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.4 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

GSM

1.5 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.6 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.7 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

1.8 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.1.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.2 The persons who participated in the killing of the deceased are the following:-

G SM

2.2.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his homestead before the police arrived but before he could open the door, they confronted him at his door. He saw that the deseased was still handcuffed.

Accused 8, 25 and 26 searched the first room and as they were conducting a search in the second room, Accused 25 and 26 fired shots at the deceased, alledging that he was lunging forward for a gun when they shot at him. It is the State case that it is highly unlikely that one person who is cuffed at the back would attempt to grab a firearm in the presence of three (3) armed police officers, one of whom is armed with an R5 rifle. The State will argue that the cable ties were not removed there was no need to do so, only the police were searching, not the suspect.

2.2.2 Same as 2.3.1 above

2.2.3 Same as 2.3.1 above

2.2.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

31. Yes, the accused's conduct is related to the offences depicted in the indictment.

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3.1 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE**

4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2 Yes,

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed

GSM

next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they

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are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the

GSM

scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 16 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

GSM

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 26 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

GSM

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayl's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their livee in danger by taking it out.

5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

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6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 16 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philisani Ndlovu ("Bha") together at a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

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7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.10 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.
- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

G SM

The other activities that Accused 16 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

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8.2- 8.4 The extent of participation of Accused 16 in these activities have been outlined in the Incidents:

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8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 94: MURDER
AD ACCUSED 25: CHARLES JOHN SMITH
DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the deceased, which could have been cleared even by production of his ID book which was in his sling bag.

- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.1.1 3 September 2011
1.1.2 Around 11h30
1.1.3 Mabuyeni Reserve, Esikhawini.

1.2 The State does not rely on an omission.

G SM

1.3 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.4 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

1.5 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.6 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.7 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

1.8 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.1.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

GSM

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.2 The persons who participated in the killing of the deceased are the following:-

2.2.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his homestead before the police arrived but before he could open the door, they confronted him at his door. He saw that the deseased was still handcuffed.

Accused 8, 25 and 26 searched the first room and as they were conducting a search in the second room, Accused 25 and 26 fired shots at the deceased, alledging that he was lunging forward for a gun when they shot at him. It is the State case that it is highly unlikely that one person who is cuffed at the back would attempt to grab a firearm in the presence of three (3) armed police officers, one of whom is armed with an R5 rifle. The State will argue that the cable ties were not removed there was no need to do so, only the police were searching, not the suspect.

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2.2.2 Same as 2.3.1 above

2.2.3 Same as 2.3.1 above

2.2.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

3.1 Yes, the accused's conduct is related to the offences depicted in the indictment.

3.2 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

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4.2 Yes,

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

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4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
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Counts 98 – 101 dealt with in Incident 2 and
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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing

G S M

requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 26 and 26.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

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5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

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6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23,

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which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Phillsani Ndlovu ("Bha") together at a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he

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performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

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8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.
- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 25 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5

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Counts 13 – 18 dealt with in Incident 6
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Counts 35 – 38 dealt with in Incident 1
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Counts 80 – 93 dealt with in Incident 20 - 22
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Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 94: MURDER
AD ACCUSED 25: JEREMY MARTEM
DECEASED: QINISANI GWALA

1.1 The State will rely on acts (and not ommisions) of the following witnesses to found a conviction on murder:

- viva voce evidence of witnesses who informed the police that the person that they tied withcable ties, was Qinisani Philangenkosi Gwala and not Philani Ndlovu who has an alias of "Bha" that they were looking for. The police were mistaken as to the identity of the deceased, which could have been cleared even by production of his ID book which was in his sling bag.

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- Photos of the scene and the observations of Constable Masango who visited the scene and took photos of the scene on 3 September 2011 at 12h50.
- The reconstruction of the scene which was done by Captain Mangena as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr S J Ntsele.

1.2.1 3 September 2011

1.2.2 Around 11h30

1.2.3 Mabuyeni Reserve, Esikhawini.

1.1 The State does not rely on an omission.

1.2 Yes, it is the State's case that Accused 25 and Accused 26 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 4, 8, 11 and 16 provided Accused 25 and 26 with the necessary back-up and support and created an environment where Accused 25 and 26 could focus on the deceased.

1.3 Accused 25 fired two (2) shots in the direction of the deceased with an R5 Rifle; Accused 26 fired one (1) shot in the direction of the deceased with his (9 mm pistol.

1.4 Yes, the shots that were fired by both Accused 25 and Accused 26 struck the deceased.

1.5 The deceased was struck with three (3) bullets in the chest, in the skull and in the hand.

1.6 The bullet fired by Accused 26 with a 9mm pistol struck the deceased in the head; the bullets fired by Accused 25 with an R5 rifle struck the deceased in the chest and hand.

1.7 Yes, the bullets fired by both Accused 25 and Accused 26 caused the death of the deceased, Accused 26's bullets in the head could kill instantly; Accused 25's shots with the R5 in the chest was fatal as it shattered the right atrium and ventricle of the heart.

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2 **AD PATTERN OF RACKETEERING ACTIVITY**

MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.1.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Qinisani Gwala was taken from the Community Hall at Esikhaweni to his homestead on 3 September 2011, the Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police took the deceased and placed him in the back of the van, they had already decided to take him to his residence to trump up a search and shoot him in that process.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.2 The persons who participated in the killing of the deceased are the following:-

2.2.1 Accused 4 came with information to his colleagues that a suspect in a murder and robbery of a police officer Nyoni CAS 158/08/2010, Philani Ndlovu (also known as "Bha") was hiding in the Esikhawini area, near Richardsbay.

Accused 4, 8, 11, 16, 25, and 26, accompanied by an informer, proceeded to a community hall at Mabuyeni reserve where the informer pointed a suspect. Accused 25 and Accused 26 placed the deceased under arrest and took himto the police vehicle after his hands were tied from the back with cable ties.

The police drove away with Qinisani Gwala only to return a few minutes thereafter, looking for his sling bag and a cell phone belonging to Qinisani, which Sandile Gwala handed over to them. They drove with Qinisani Gwala to his homestead, where they started searching the rooms. Sandile got to his

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2.2.2 Same as 2.3.1 above

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G SM

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5 WHILST MANAGING THE ENTERPRISE

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5.1 No, Accused 26 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the

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Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 26 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in

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the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called the Cato Manor members to assemble and get them ready to travel to Esikhaweni to conduct a search for the suspect.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

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6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 26 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 4 September 2008 when the deceased was traced and found at Mabuyeni Community hall at Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philisani Ndlovu ("Bha") together at

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a hall at Mabuyeni Reserves at Esikhawini and ensuring that they are shot and killed. They were so determined to take Qinisani Gwala to an extent that even when he tells them that they have a wrong person and other community members confirm, even despite seeing his ID book, they still deatain him, take him to his homestead where they execute their initial plan to kill him.

7.2.3 The association of the Cato Manor group dares back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 26 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 26 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Capture and arrest of Qinisani Gwala at the Community hall even when he convincingly told them that he was not the person they were looking for, Philani Ndlovu "Bha", the community members supporting his version and showing them his own ID Book to confirm so.
- murder of Qinisani Gwala that was committed on 3 September 2011.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 26 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndlmande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 26 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Qinisani Gwala. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 95 – 96
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 8: PHUMELELA MAKHANYA

Although the accused separated Count 95 and 96 in their request, the State deals with all the Counts 95 to 96 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms

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concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- .38 Special Calibre Rossi Revolver with serial number obliterated,

- Five (5) .38 Special Calibre unmarked cartridges

which were allegedly found at the scene of Qinisani Gwala's shooting incident at Mabuyeni Reserves, Esikhawini on 3 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

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- the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is on the the Mabuyeni Reserves, Esikhawini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a .38 Special Calibre Rossi Revolver with serial number obliterated and
- five (5) .38 Special Calibre unmarked cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY

UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

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- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this special revolver and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Qinisani Gwala at Mabuyeni Reserves,Esikhawini, the Cato Manor members who were present are the following:-

Accused 4 Paul Mostert
Accused 6 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid

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itself, being 3 September 2011. In Counts 95 and 96, the date is the 3 September 2011 at around 11h30.

3. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 it is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

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4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12

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Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

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5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Esikhawini before they set on tracking Philani Ndlovu at Mabuyeni Reserves. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

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5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

GSM

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

GSM

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was tracked and arrested Mabuyeni Reserves Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Qinisani Gwala at Mabuyeni Reserves Esikhawini.

G SM

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

G SM

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 8 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Blyela and Bongani Blyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18

EG SM

Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.8 – 8.8 Yes same as 6.3 above.

COUNTS 95 – 96
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 11: THATHAYIPHI MDLALOSE

Although the accused separated Count 95 and 96 in their request, the State deals with all the Counts 95 to 96 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- .38 Special Calibre Rossi Revolver with serial number obliterated,
- Five (5) .38 Special Calibre unmarked cartridges

which were allegedly found at the scene of Qinisani Gwala's shooting incident at Mabuyeni Reserves, Esikhawini on 3 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact

GSM

evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

GSM

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is on the the Mabuyeni Reserves, Esikhawini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a .38 Special Calibre Rossi Revolver with serial number obliterated and
- five (5) .38 Special Calibre unmarked cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, It is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the

GSM

murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

G SM

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this special revolver and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Qinisani Gwala at Mabuyeni Reserves,Esikhawini, the Cato Manor members who were present are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 3 September 2011. In Counts 95 and 96, the date is the 3 September 2011 at around 11h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the

G SM

deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

G SM

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011

G SM

with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 11 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Esikhawini before they set on tracking Philani Ndlovu at Mabuyeni Reserves. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources

G SM

without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Qinisani Gwala.

5.4.1 It is not clear when the common purpose was formed.

5.4.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.4.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

G SM

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

G SM

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor

G SM

functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 11 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was tracked and arrested Mabuyeni Reserves Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Qinisani Gwala at Mabuyeni Reserves Esikhawini.

7.2.3 Accused 11 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

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7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 Same as 7.6 above
7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 11 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande

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Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 11 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

5.5 – 8.8 Yes same as 6.3 above.

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COUNTS 95 – 96
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 16: ANTON LOCKEM

Although the accused separated Count 95 and 96 in their request, the State deals with all the Counts 95 to 96 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- .38 Special Calibre Rossi Revolver with serial number obliterated,
- Five (5) .38 Special Calibre unmarked cartridges

which were allegedly found at the scene of Qinisani Gwala's shooting incident at Mabuyeni Reserves, Esikhawini on 3 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.
- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.
- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

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- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is on the the Mabuyeni Reserves, Esikhawini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a .38 Special Calibre Rossi Revolver with serial number obliterated and

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- five (5) .38 Special Calibre unmarked cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they

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bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this special revolver and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Qinisani Gwala at Mabuyeni Reserves,Esikhawini, the Cato Manor members who were present are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder

G S M

Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 3 September 2011. In Counts 95 and 96, the date is the 3 September 2011 at around 11h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who

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are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 16 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Esikhawini before they set on tracking Philani Ndlovu at Mabuyeni Reserves. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the

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Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26

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fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

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6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 16 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

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7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was tracked and arrested Mabuyeni Reserves Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Qinisani Gwala at Mabuyeni Reserves Esikhawini.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

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8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 16 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 16 in these activities have been outlined in the incidents:

Counts 3 – 7 dealt with in Incident 4

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Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
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8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.9 – 8.8 Yes same as 6.3 above.

COUNTS 95 – 96
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 25: PAUL MOSTERT

Although the accused separated Count 95 and 96 in their request, the State deals with all the Counts 95 to 96 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

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- .38 Special Calibre Rossi Revolver with serial number obliterated,

- Five (5) .38 Special Calibre unmarked cartridges

which were allegedly found at the scene of Qinisani Gwala's shooting incident at Mabuyeni Reserves, Esikhawini on 3 September 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

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- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is on the the Mabuyeni Reserves, Esikhawini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a .38 Special Calibre Rossi Revolver with serial number obliterated and

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2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977,

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when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

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- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this special revolver and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Qinisani Gwala at Mabuyeni Reserves,Esikhawini, the Cato Manor members who were present are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 3 September 2011. In Counts 95 and 96, the date is the 3 September 2011 at around 11h30.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 98 – 101 dealt with in incident 2 and
Counts 102 – 103 dealt with in incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from

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his informer and then shared it in the briefing with other members at Esikhawini before they set on tracking Philani Ndlovu at Mabuyeni Reserves. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Qinisani Gwala.

5.5.10 It is not clear when the common purpose was formed.

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5.5.11 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.12 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations

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(DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in

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the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

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6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was tracked and arrested Mabuyeni Reserves Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Qinisani Gwala at Mabuyeni Reserves Esikhawini.

7.2.3 Accused 25 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.10 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

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The other activities that Accused 25 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndlmande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
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Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 95 – 96
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 26: JEREMY MARTEM

Although the accused separated Count 95 and 96 in their request, the State deals with all the Counts 95 to 96 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- .38 Special Calibre Rossi Revolver with serial number obliterated,
- Five (5) .38 Special Calibre unmarked cartridges

which were allegedly found at the scene of Qinisani Gwala's shooting incident at Mabuyeni Reserves, Esikhawini on 3 September 2011 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as

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Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdlull where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

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1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is on the the Mabuyeni Reserves, Esikhawini.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a .38 Special Calibre Rossi Revolver with serial number obliterated and
- five (5) .38 Special Calibre unmarked cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, It is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the

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State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

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2.3.1 on the 3 September 2011 when this special revolver and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Qinisani Gwala at Mabuyeni Reserves,Esikhawini, the Cato Manor members who were present are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
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2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself, being 3 September 2011. In Counts 95 and 96, the date is the 3 September 2011 at around 11h30.

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Counts 94 – 97 dealt with in Incident 23
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5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 13 to 18, Accused 4 had more information from his informer and then shared it in the briefing with other members at Esikhawini before they set on tracking Philani Ndlovu at Mabuyeni Reserves. Accused 4 and others made sure that the "mbombayi's" are taken with for the operation.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

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5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

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The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 Accused 4 managed the tracking, tracing and ultimate shooting of the deceased Qinisani Gwala. He started when he called in the members of Cato Manor to assist in the operation at Esikhawini.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

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6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

G SM

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was tracked and arrested Mabuyeni Reserves Esikhawini.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Qinisani Gwala at Mabuyeni Reserves Esikhawini.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

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7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

5.6 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 25 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo

G J M

Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.10 – 8.8 Yes same as 6.3 above.

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AD COUNT 97:
ACCUSED 4: PAUL MOSTERT
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number obliterated and the five (5) .38 SpecialCalibre unmarkedcartridges, which was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Esikhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police

G S M

members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.
- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Cinstable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 4.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

G S M

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

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- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles.

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The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating

G SM

suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, It is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15

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Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the

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scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 4 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9 as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community

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Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

Despite being convinced that they arrested a wrong person, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mbuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya

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Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 4 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew that they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 4 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 4 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal

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entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 4 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 4 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

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Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 4 in these activities have been outlined in the Incidents:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police.In particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 97:
ACCUSED 8: PHUMELELA MAKHANYA
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number oblitrrated and the five (5) .38 SpecialCalibre unmarkedcartridges, which

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was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Esikhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his (Gwala's) protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Cinstable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene of Qinisani Gwala's death at Mabuyeni Reserves.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 8.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting

G JM

of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayl" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- Immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is

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doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

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PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22

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Counts 94 – 97 dealt with in incident 23
Counts 98 – 101 dealt with in incident 2 and
Counts 102 – 103 dealt with in incident 3.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 8 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9

GSM

as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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Despite being convinced that they arrested a wrong person by the deceased himself, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from

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his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and

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Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, It is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 8 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew tjhat they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 8 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 8 kept a close and loyal and friendly relationship with Accused 9, Captain Ollvier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal

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entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 8 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 8 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndlmande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

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Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 8 in these activities have been outlined in the Incidents:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000,- 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 97:
ACCUSED 11: THATHAYIPHI MDLALOSE
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number obliterated and the five (5) .38 SpecialCalibre unmarkedcartridges, which

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was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Esikhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his (Gwala's) protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

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found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Cinstable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene of Qinisani Gwala's death at Mabuyeni Reserves.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 11.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting

of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is

doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 8 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

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PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22

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Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 11 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9

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as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

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Despite being convinced that they arrested a wrong person by the deceased hmself, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from

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his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and

G S M

Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 11 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew tjhat they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 11 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 11 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal

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entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 11 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 11 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

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Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 11 in these activities have been outlined in the Incidents:-.

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

8.7 – 8.8 Yes same as 6.3 above.

AD COUNT 97:
ACCUSED 16: EUGENE VAN TONDER
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number oblitrrated and the five (5) .38 SpecialCalibre unmarkedcartridges, which

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was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Esikhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his (Gwala's) protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

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found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Cinstable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene of Qinisani Gwala's death at Mabuyeni Reserves.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 16.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting

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of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is

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doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

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PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the Indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22

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Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5. WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 16 did manage the activities of the enterprise, together with Accused 9, 6, and 15, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role, in this instance Accused 16 being the most senior who was present, he took over the management of the activities of the enterprise. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16, as co-mangers of the activities of the enterprise, created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9 as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community

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Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

Despite being convinced that they arrested a wrong person by the deceased hmself, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya

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Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 16 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew that they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 16 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 16 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal

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entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 16 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 16 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and

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Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 16 in these activities have been outlined in the Incidents:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

8.7 – 8.8 Yes same as 6.3 above.

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AD COUNT 97:

ACCUSED 25: CHARLES JOHN SMITH

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number oblitrrated and the five (5) .38 SpecialCalibre unmarkedcartridges, which was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Eslkhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his (Gwala's) protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police

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members in the Quantum, only to return immediately, asking Mdlull where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.
- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Constable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene of Qinisani Gwala's death at Mabuyeni Reserves.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 25.

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AD: PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were

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conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and

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Accused 26 Jeremy Martem

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and

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suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16, as co-mangers of the activities of the enterprise, created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

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Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9 as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 it is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

Despite being convinced that they arrested a wrong person by the deceased hmself, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayl's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew tjhat they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 25 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

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7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 25 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu
Counts 31 – 34 the killing of Sifiso Ndimande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha

GSM

Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

8.7 – 8.8 Yes same as 6.3 above.

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AD COUNT 97:
ACCUSED 26: JEREMY MARTEM
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

1.1 It is the State's case that the .38 Special Calibre Rossi Revolver with serial number obliterated and the five (5) .38 SpecialCalibre unmarkedcartridges, which was allegedly found at the scene of Qinisani Gwala's shooting incident at house 50870 Mabuyeni Reserves, Esikhawini on 3 September 2011 was brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the offence of Defeating or Obstructing the course of Justice. The following objective facts will, be proved:

- The suspect Philani Ndlovu "Bha", was suspected of involvement in the killing of a police officer in Nyoni CAS 158/08/2010. The deceased Qinisani Gwala was mistakenly pointed by Accused 4's informer as Philani Ndlovu and despite his (Gwala's) protest and proof by means of showing his ID book, the police arrested him.

- Constable Masango of the local LCRC arrived at the scene at approximately 12h50 and took photos and made a sketch and plan of the scene.

- Dr S J Ntsele conducted a post mortem of the body of the deceased and noted the positions of the wounds.

- Captain Christian Mangena did a reconstruction of the scene, made observations of the wounds, blood spatters, and position of the revolver and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as :-

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police

G S M

members in the Quantum, only to return immediately, asking Mdlull where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.
- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

- The principle of joint possession by one person on behalf of others.
- Evidence of photos taken by Cinstable Joel Sabelo Masango and the position of the .38 Special Revolver and cartridges found on the scene.
- Evidence of witness 189, Captain Mangena relating to his observations and conclusions about where the .38 Special Revolver and cartridges were depicted on the scene of Qinisani Gwala's death at Mabuyeni Reserves.

1.2.1 The date of the act is 3 September 2011

1.2.2 The time of the act is around 11h30

1.2.3 The place of the act is at house 50870 Mabuyeni Reserves, Esikhawini.

1.3 No, the State's case is not based on an omission in respect of Accused 26.

AD: PATTERN OF RACKETEERING ACTIVITY

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

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2.1 Yes, it is the State case that the offence of Defeating or obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of Defeating or obstructing the course of justice and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. The Cato Manor police decided to take sides in taxi violence that was going on between the Stanger Taxi Association and KwaMaphumulo Taxi Association, which was being investigated by Choncho. Members of the Stanger Taxi Association filled them with information of the involvement of KwaMaphumulo members in the killing of Choncho and they hunted them down in disregard of the law. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 4 when they were going to plant it at the scene.

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2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of Defeating or obstructing the course of Justice:

- the firearms and ammunition would be brought with to all their suspect raids.
- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.
- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 3 September 2011 when this .38 Special Calbre Rossi Revolver and its ammunition were possessed by the members who took part in the tracking arresting and shooting of Qinisani Gwala, with the blessing of their managers, Accused 1 and 9 who are the following:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhaya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

G S M

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect raid itself. In Counts 95 - 97 the date is the 3 September 2011 at around 11h30.

PATTERN OF RACKETEERING ACTIVITY
RELATION QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of Defeating or obstructing the course of Justice is related to other charges in the Indictment.

3.2 the offence of Defeating or Obstructing the course of Justice was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms with an intention to plant them at the scenes where the shootings take place to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIP QUA THE ENTERPRISE

4.1 Yes, it is the State case that the offence of Defeating or Obstructing the course of Justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho or any police officer in a manner that is acceptable in the eyes of the law and the community without deeper scrutiny. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence

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have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4

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Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
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4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Qinisani Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue, get repeated and are planned over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences and their connection is a guiding factor. In this instance, various shootings take place over a period of time.

4.9 – 4.10 Accused 4 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents), the duty officer and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 26 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 94 to 97, Accused 4 had more information from his informer and then shared it in the briefing with other members at Nandi Drive petrol station in Newlands before they set on tracking Philani Ndlovu also known as "Bha" at Esikhawini. The Cato Manor members were accompanied by their informer to Mabuyeni Community hall, where the informer pointed Qinisani Gwala. Who was then placed under arreset by Accused 25 and 26.

5.2 Yes, Accused 9, 15 and 16, as co-managers of the activities of the enterprise, created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 4, 8, 11, 16, 25 and 26.

5.2.2 Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the whereabouts of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

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Accused 9, 15 and 16 as the Group Commanders created an environment in which the offences could be committed by providing the resources that enabled the members to commit the offences with the blessings from the Provincial Commander, General Booysen.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier, Accused 9 as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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5.3 Yes the enterprise was a group of persons who included Accused 4, 8, 11, 16, 25 and 26. Accused 4, 5, 8, 15 and 16 drove to Mabuyeni hall at Esikhawini where qinisani Gwala was pointed by their informer and Accused 25 and 26 placed hom ubder arrest in the presence and supported by the rest of the crew.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracing, arrest and ultimate shooting of Qinisani Gwala.

5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

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Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him. They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

Despite being convinced that they arrested a wrong person by the deceased hmself, the deceased was taken to his home at 50870 Mabuyeni Reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

5.6.2 Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He assembled the members and briefed them before they travelled to collect his informer and ultimately proceeded to Mabuyeni, Esikhawini.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

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6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of Defeating or Obstructing the course of Justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation. The police proceeded to Mabuyeni Community hall where the deceased was pointed out by the informer and Accused 26 placed him under arrest, Accused 8 was interpreting for him (Accused 26). They returned to the Community Hall to fetch the deceased'd bag which contained his ID book and Accused 25 noted his correct identity on the ID book.

The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.2 the identity of the members of the enterprise who were involved in this count have been outlined in paragraph 5.3 above. Accused 4 managed the tracing, arrest and ultimate shooting of the deceased Qinisani Gwala. He started when he assembled the team and briefed them before they set for Esikhawini to trace Philani Ndlovu.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Qinisani Gwala.

G S M

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 4 Paul Mostert
Accused 8 Phumelela Makhanya
Accused 11 Thathayiphi Mdlalose
Accused 16 Eugene van Tonder
Accused 25 Charles John Smith and
Accused 26 Jeremy Martem

6.5.3 The terms or nature of the conduct agreed upon was the tracing, arrest and shooting of Qinisani Gwala.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

GSM

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 26 committed the crime of Defeating or Obstructing the course of Justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 3 September 2011 when the deceased was traced at Mabuyeni hall and taken to his home for a search whilst they knew tjhat they had a wrong suspect, having verified through his identity book.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Philani Ndlovu together, when he is found, taking him to his home for a search and ultimately shooting him.

7.2.3 Accused 26 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 26 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

G S M

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.8 - 7.9 Same as 7.6 above

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 26 is alleged to have taken part in or participated in through a pattern of racketeering activities include the:-

- murder of Qinisani Gwala that was committed on 3 September 2011.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day

The other activities that Accused 26 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 3 – 7 the killing of Lindelani Buthelezi
Counts 8 – 12 the killing of Magojela and Tembe
Counts 13 – 18 the killings of Mzameni Ntuli and Nkosinathi Mthembu

GSM

Counts 31 – 34 the killing of Sifiso Ndlmande
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 62 – 65 the killing of Prince Thabethe
Counts 66 – 69 the killing of Kwazi Ndlovu
Counts 80 – 93 the killings of Jabulani Bhengu
Counts 94 – 97 the killing of Qinisani Gwala
Counts 98 – 101 the killing of Mfanafuthi Zwane and
Counts 102 – 103 the killing of Sanele Majola

8.2 - 8.4 The extent of participation of Accused 26 in these activities have been outlined in the Incidents:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. This killing was also used to get monetary rewards and certificates within the SAPS. It is accepted that there was also a payment after the killing of Qinisani Gwala.

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8.7 – 8.8 Yes same as 6.3 above.

COMMON PURPOSE

AD INCIDENT ON THE 3 SEPTEMBER 2011: THE SHOOTING OF QINISANI GWALA: COUNTS 13 – 18

ACCUSED 4: PAUL MOSTERT

ACCUSED 8: PHUMELELA MAKHANYA

ACCUSED 11: THATHAYIPHI MDLALOSE

ACCUSED 16: EUGENE VAN TONDER

ACCUSED 25: CHARLES JOHN SMITH AND

ACCUSED 26: JEREMY MARTEM

It appears from the predominant facts at the State's disposal that a common pupose to commit the offences outlined can be inferred from the conduct of the members of the enterprise in the commission of the offences which form part of the pattern of racketeering acivity. The incident on the 3 September 2011 cannot be taken in isolation of other incidents or operations of the enterprise, it must be considered in the light of all the incidents as outlines in the table on Page 6 of this submission, Incident 1 on 24 May 2008 (the killing of Thabo Msimango) until Incident 23 on 3 September 2011 (the killing of Philangenkosi Gwala). One must also not loose sight of the regular briefings which the members of the enterprise get involved in prior to each and every operation where suspects are traced.

6. The accused who form part of the particular incident as outlined on the table Pages 6 to 23 formed a prior agreement in respect of that particular incident in which they were involved for instance in Count 94 – 97, it is the State's case that the following accused persons did form a common purpose to kill Qinisani Gwala:-

   Accused 4: Paul Mostert
   Accused 8: Phumelela Makhanya
   Accused 11: Thathayiphi Mdlalose
   Accused 16: Eugene van Tonder
   Accused 25: Charles John Smith and

GSM

Accused 26: Jeremy Martem

6.1.1 The is not precisely certain about the time that the accused became party to the prior agreement to commit the offences on 3 September 2011, safe to state that when they left the Nandi Drive petrol station and when they met again at a place in Esikhawini where Accused 4 gave them a briefing and when they set on to get to Mabuyeni hall in Esikhawini, a prior agreement to commit the offences that have been listed in Count 94- 97 was formed by the accused persons.

6.1.2 Same as in paragraph 1.1 above

6.1.3 The terms of the agreement is a matter of evidence.

6.1.4 All the parties involved in the agreement and their roles can be repeated as follows:

- Accused 4 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation. He proceeded to the Mabuyeni Community hall, accompanied by Accused 8, 11, 16, 25 and 26, entered the premises of the Community hall where Qinisani Gwala was placed under arrest by Accused 25 and 26, proceeded to the residence of Qinisani Gwala at Mabuyeni Reserve and conducted a search for weapons at this residence.

- The deceased was taken to his home at 50870 Mabuyeni reserves, to conduct a search, Accused 25 and 26 went to the first room to search when Accused 4 and 8 rushed to Sandile Gwala's room to search it. As the second room was being searched, Accused 25 fired a shot with his 9mm pistol in the head and Accused 26 fired two (2) shots with his R5 rifle at the deceased striking him in the chest, alleging that he leaned forward and produced a gun. The accused then placed a revolver next to the deceased to create an impression that he placed their lives in danger by taking it out.

6.1.5 Same as 1.1.4 above

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6.1.6 The date, time and place of the act are the same as in paragraph 1.1 above.

7. Yes it is alleged that the accused formed an act of association with one another.

7.1.1 Same as in paragraph 1.1.4 above.

7.1.2 Same as in paragraph 1.1.1 above.

7.1.3 Same as in paragraph 1.1.1 above.

7.1.4 Same as in paragraph 1.1.4 above.

7.1.5 Same as in paragraph 1.1.4 above.

8. The State relies on prior agreement in the main argument, in the alternative the State will argue that it can be inferred from the proven facts.

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INCIDENT DATE: 18 MARCH 2009

ACCUSED 5: ERIC NEL

ACCUSED 15: ANTON LOCKEM

ACCUSED 25: CHARLES JOHN SMITH

DECEASED: DAN CHESTER PHIRI

COUNTS 109 – 112

GSM

COUNT 109: MURDER
DECEASED: DAN CHESTER PHIRI
AD ACCUSED 5: ERIC NEL

1.1 The State will rely on acts (and not ommisions) of the following evidence to found a conviction on murder:

- viva voce evidence of witnesses who were present at the scene of Dan Phiri's arrest who saw how Accused 5 opened the driver's door of the deceased's vehicle and shot him at close range despite the fact that the deceased posed no danger to him. Despite being crippled from a previous shooting, it is clear that the deceased was pleading with Accused 5 not to shoot and had his arms oround his head as a sign of surrender when Accused 5 fired shots at him.

- Photos of the scene and the observations of Warrant Officer Karrim who visited the scene and took photos of the scene and collected exhibits from the scene on 18 March 2009 at 12h05.

- The reconstruction of the scene which was done by witness 30, Jacobus Steyl as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr Reggie Perumal.

- The findings of Dr Reggie Perumal who considered the post mortem examination on the body of the deceased conducted by Dr Threnesan Naidoo on 24 March 2009 as well as the documents presented to him (Dr Perumal).

- Photos taken by Cst Mdlalose during the post mortem examination at Phoenix mortuary on 24 March 2009.

1.2.1 The date of the act is 18 March 2009
1.2.2 Around 09h50
1.2.3 At Noodsberg road (R614), near Spioenskop supermarket in Tongaat.

1.3 The State does not rely on an omission.

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1.4 Yes, it is the State's case that Accused 5 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 15 and 25 provided Accused 5 with the necessary back-up and support and created an environment where Accused 5 could focus on the deceased.

1.5 Accused 5 fired four (4) shots in the direction of the deceased with a 9mm Calibre LEW Z88 pistol at the deceased whils he was in a seated position and asking and pleading not to be shot.

1.6 Yes, the shots that were fired by Accused 5 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, twice in the face and in the chest.

1.8 The bullet fired by Accused 5 with a 9mm pistol struck the deceased in the head; in the chest and hand.

1.9 Yes, the bullets fired by both Accused 5 caused the death of the deceased.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Dan Phiri was spotted in his vehicle along the Noodsberg road (R614), chased the deceased's white Corolla and forced it to stop next to Spionskop supermarket on 18 March 2009, Accused 15 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day.

G S M

The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police shot at the deceased whilst he was in a seated position in his car and crying and pleading with the police not to kill him.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 5, 15 and 25 were survailing the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

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2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

3.2 Yes, the accused's conduct is related to the offences depicted in the indictment.

3.3 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer or for suspected involvement in ATM bombings. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

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4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers or ATM bombings in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops. In this instance Accused 15 was the most senior member present on this scene.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, It is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under

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Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the

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incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

6 WHILST MANAGING THE ENTERPRISE

5.1 No, Accused 5 did not manage the activities of the enterprise, Accused 9, together with Accused 6, 15 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

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5.2.2 Accused 5, 15 and 25 were survailing the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15, and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Dan Phiri.

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5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

4.2.1 Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he received from his informers. He also ensured that the "mbombayi's" are taken along for the operation. Accused 5, 15 and 25 were survailing the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 Accused 15 managed the tracing and ultimate shooting of the deceased Dan Phiri. He supervised the survailence of the movements of Dan Phiri.

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5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to

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walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5 Eric Nel
Accused 15Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

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6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 5 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was traced and found at the R614 Noordberg road at Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri together at Tongaat. They were so determined to take Dan Phiri to an extent that they used the driver of the silver Jetta to lue the deceased to their direction where they were waiting for him.

7.2.3 The association of the Cato Manor group dates back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 5 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is nit clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.9 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 5 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- Tracing, surveiling and arrest of Dan Phiri at Tongaat.

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- murder of Dan Phiri that was committed on 18 March 2009.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 5 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 102 – 103 the killing of Sanele Majola
Counts 104 – 108 the killing of Nhlanhla Masondo

8.2- 8.4 The extent of participation of Accused 5 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 102 – 103 dealt with in Incident 3 and
Counts 104 – 108 dealt with in Incident 8.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Dan Phiri. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

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COUNT 109: MURDER
DECEASED: DAN CHESTER PHIRI
AD ACCUSED 15: ANTON LOCKEM

1.1 The State will rely on acts (and not ommisions) of the following evidence to found a conviction on murder:

- viva voce evidence of witnesses who were present at the scene of Dan Phiri's arrest who saw how Accused 5 opened the driver's door of the deceased's vehicle and shot him at close range despite the fact that the deceased posed no danger to him. Despite being crippled from a previous shooting, it is clear that the deceased was pleading with Accused 5 not to shoot and had his arms oround his head as a sign of surrender when Accused 5 fired shots at him. Accused 15 and 25 opened the passanger doors and pulled the passasngers out of the car.

- Photos of the scene and the observations of Warrant Officer Karrim who visited the scene and took photos of the scene and collected exhibits from the scene on 18 March 2009 at 12h05.

- The reconstruction of the scene which was done by witness 30, Jacobus Steyl as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr Reggie Perumal.

- The findings of Dr Reggie Perumal who considered the post mortem examination on the body of the deceased conducted by Dr Threnesan Naidoo on 24 March 2009 as well as the documents presented to him (Dr Perumal).

- Photos taken by Constable Mdlalose during the post mortem examination at Phoenix mortuary on 24 March 2009.

1.2.1 The date of the act is 18 March 2009
1.2.2 Around 09h50
1.2.3 At Noodsberg road (R614), near Spioenskop supermarket in Tongaat.

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1.3 The State does not rely on an omission.

1.4 Yes, it is the State's case that Accused 5 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 15 and 25 provided Accused 5 with the necessary back-up and support and created an environment where Accused 5 could focus on the deceased.

1.5 Accused 5 fired four (4) shots in the direction of the deceased with a 9mm Calibre LEW Z88 pistol at the deceased whils he was in a seated position and asking and pleading not to be shot. Accused 15 and 25 did not fire any shots.

1.6 Yes, the shots that were fired by Accused 5 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, twice in the face and in the chest.

1.8 The bullet fired by Accused 5 with a 9mm pistol struck the deceased in the head; in the chest and hand.

1.9 Yes, the bullets fired by Accused 5 caused the death of the deceased.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Dan Phiri was spotted in his vehicle along the Noodsberg road (R614), chased the deceased's white Corolla and forced it to stop next to Spionskop supermarket on 18 March 2009, Accused 15 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan

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Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police shot at the deceased whilst he was in a seated position in his car and crying and pleading with the police not to kill him.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

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2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

3.2 Yes, the accused's conduct is related to the offences depicted in the indictment.

3.3 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer or for suspected involvement in ATM bombings. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

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4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers or ATM bombings in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops. In this instance Accused 15 was the most senior member present on this scene.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing

GSM

requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

7 WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 15 did manage the activities of the enterprise, together with Accused 6, 9 and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 6, 9 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

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5.2.3 Accused 5, 15 and 25 were survailing the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15, and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Dan Phiri.

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5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he received from his informers. He also ensured that the "mbombayi's" are taken along for the operation. Accused 5, 15 and 25 were survalling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

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5.6.2 Accused 15 managed the tracing and ultimate shooting of the deceased Dan Phiri. He supervised the survallence of the movements of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

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from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

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6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5 Eric Nel
Accused 15 Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

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6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23,

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7.2.3 The association of the Cato Manor group dates back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.6 Same as 6.5.7 above.

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7.7 Same as 7.6 above.

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- Tracing, surveiling and arrest of Dan Phiri at Tongaat.
- murder of Dan Phiri that was committed on 18 March 2009.
- the unlawful possession of firearms committed on the same day.
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Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 80 – 93 the killing of Jabulani Bhengu
Counts 98 – 101 the killing of Mfanafuthi Zwane
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
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Count 58 – 61 dealt with in Incident 14
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DECEASED: DAN CHESTER PHIRI
AD ACCUSED 25: CHARLES JOHN SMITH

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- viva voce evidence of witnesses who were present at the scene of Dan Phiri's arrest who saw how Accused 5 opened the driver's door of the deceased's vehicle and shot him at close range despite the fact that the deceased posed no danger to him. Despite being crippled from a previous shooting, it is clear that the deceased was pleading with Accused 5 not to shoot and had his arms oround his head as a sign of surrender when Accused 5 fired shots at him. Accused 15 and 25 opened the passanger doors and pulled the passasngers out of the car.

- Photos of the scene and the observations of Warrant Officer Karrim who visited the scene and took photos of the scene and collected exhibits from the scene on 18 March 2009 at 12h05.

- The reconstruction of the scene which was done by witness 30, Jacobus Steyl as well as his conclusions and findings having looked at the scene and the post mortem findings conducted by Dr Reggie Perumal.

- The findings of Dr Reggie Perumal who considered the post mortem examination on the body of the deceased conducted by Dr Threnesan Naidoo on 24 March 2009 as well as the documents presented to him (Dr Perumal).

- Photos taken by Constable Mdlalose during the post mortem examination at Phoenix mortuary on 24 March 2009.

1.2.1 The date of the act is 18 March 2009
1.2.2 Around 09h50
1.2.3 At Noodsberg road (R614), near Spioenskop supermarket in Tongaat.

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1.3 The State does not rely on an omission.

1.4 Yes, it is the State's case that Accused 5 fired shots at the deceased in circumstances when it was not justifiable in terms of section 49 (2) of Act 51 of 1977. Accused 15 and 25 provided Accused 5 with the necessary back-up and support and created an environment where Accused 5 could focus on the deceased. Accused 15 and 25 did not fire any shots.

1.5 Accused 5 fired four (4) shots in the direction of the deceased with a 9mm Calibre LEW Z88 pistol at the deceased whils he was in a seated position and asking and pleading not to be shot. Accused 15 and 25 did not fire any shots.

1.6 Yes, the shots that were fired by Accused 5 struck the deceased.

1.7 The deceased was struck with three (3) bullets in the chest, twice in the face and in the chest.

1.8 The bullet fired by Accused 5 with a 9mm pistol struck the deceased in the head; in the chest and hand.

1.9 Yes, the bullets fired by Accused 5 caused the death of the deceased.

2 **AD PATTERN OF RACKETEERING ACTIVITY**
MURDER

2.1 Yes, it is the State case that the accused's conduct forms part of a pattern of racketeering activity as defined by Section 121 of 1998.

2.2.1 the precise date and time the accused formed the plan to commit the offence is unknown to the State, safe to state that immediately after Dan Phiri was spotted in his vehicle along the Noodsberg road (R614), chased the deceased's white Corolla and forced it to stop next to Spionskop supermarket on 18 March 2009, Accused 15 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan

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Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whe the Cato Manor police shot at the deceased whilst he was in a seated position in his car and crying and pleading with the police not to kill him.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of murder.

2.3 The persons who participated in the killing of the deceased are the following:-

2.3.1 Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

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2.3.2 Same as 2.3.1 above

2.3.3 Same as 2.3.1 above

2.3.4 The date time and place is the same as 1.2 above.

3 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP WITH PRECDICATE OFFENCES

3.2 Yes, the accused's conduct is related to the offences depicted in the indictment.

3.3 The following are the common feature that provides the nexus between the conduct of the accused and other offences in the indictment:-

- The modus operandi that is prevalent in most of the offences in the indictment of placing a firearm next to the deceased body to create an impression that the deceased was posing some form of danger to the accused to make their shooting justifiable in terms of section 49 (2) of Act 51 of 1977, is a common threat that connects the offences listed in the indictment.

- All the suspects that are tracked, traced and later killed are suspected to have been suspects in the killing of a police officer or for suspected involvement in ATM bombings. A striking common factor is that in most of these instances, there is not a shread of evidence that connects the suspects to the offences in the dockets concerned, put differently, if anyone were to place the Choncho or Inkosi Zondi dockets before a prosecutor for the consideration of a J50 warrant of arrest, it would not be authorised as there would be nothing linking the suspect to the offences in question.

4 PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA THE ENTERPRISE

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4.1 The crime of Murder that the accused are alleged to have committed is related to the enterprise as defined in Section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of police officers or ATM bombings in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association and any other suspect that they trace, who are suspected of involvement in ATM bombings, serious robberies and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism and attention, this why they were able to kill so many people without the law detecting their trick.

The members of the enterprise remain predominantly the same in most of the operations of the enterprise so that the objectives of the enterprise are achieved. The nucleus of the operation is maintained wherever possible, with members of the SVC section who have been working together for a while as they have developed an understanding of each other and what they all need to do in advancing the objectives of the enterprise.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops. In this instance Accused 15 was the most senior member present on this scene.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing

GSM

requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

8 WHILST MANAGING THE ENTERPRISE

5.1 Yes, Accused 25 did not manage the activities of the enterprise, Accused 9 together with Accused 6, and 16, who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role.

5.2 Accused 6, 9 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

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5.2.4 Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15, and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, pursuit and shooting of Dan Phiri.

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5.5.1 It is not clear when the common purpose was formed.

5.5.2 the parties to the common purpose are all the accused persons who took part in the arrest and ultimate shooting of the deceased.

5.5.3 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he received from his informers. He also ensured that the "mbombayi's" are taken along for the operation. Accused 5, 15 and 25 were survailing the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for ghim for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

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5.6.2 Accused 15 managed the tracing and ultimate shooting of the deceased Dan Phiri. He supervised the survailence of the movements of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of murder whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away

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from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, tracking and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5 Eric Nel
Accused 15 Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23,

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which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of murder jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was traced and found at the R614 Noordberg road at Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri together at Tongaat. They were so determined to take Dan Phiri to an extent that they used the driver of the silver Jetta to lue the deceased to their direction where they were waiting for him.

7.2.3 The association of the Cato Manor group dates back to the time of the Serious Violent Crime Unit days when they worked closely to deal with serious crime. Accused 25 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.2.5 It is not clear when and where exactly the association started safe to say that in was in existence just prior and during the execution of the offences.

7.2.6 Same as 6.5.7 above.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes, each member of the group formed a common purpose to engage in the activities of the enterprise.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

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- Tracing, surveiling and arrest of Dan Phiri at Tongaat.
- murder of Dan Phiri that was committed on 18 March 2009.
- the unlawful possession of firearms committed on the same day.
- the unlawful possession of ammunition committed on the same day.
- the defeating the ends of justice committed on the same day.

The other activities that Accused 25 associated themselves with sufficiently to an extent of approving them without questioning them in include the predicate offences that are listed on Page 25 of this submission:

Counts 39 – 52 the killing of Khanyisani and Bongani Biyela
Counts 94 – 97 the killing of Qinisani Gwala
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:

Counts 39 – 52 dealt with in Incident 9
Counts 94 – 97 dealt with in Incident 23 and
Counts 109 – 112 dealt with in Incident 11.

8.5 – 8.6 Yes members of Cato Manor benefited from the killing of Dan Phiri. This killing was also used to get monetary rewards and certificates within the SAPS which enhanced their position as a hard working team in the KZN region.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 110 – 111
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 5: ERIC NEL

Although the accused separated Count 110 and 111 in their request, the State deals with all the Counts 110 to 111 at the same time all the offences were committed at

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the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

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- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 March 2009

1.2.2 The time of the act is around 10h30

1.2.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and

- a magazine with three (3) 7.65 Calibre cartridges

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- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they

GSM

bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- Immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri at Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

GSM

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveilance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

3. **PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA PREDICATE OFFENCES**

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the

Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

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Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
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Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 5 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 110 to 111, Accused 15 had more information from his informer who was using the silver Jetta to lure the deceased to their direction.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

5.2.2 Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

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5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15 and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

5.5.4 It is not clear when the common purpose was formed.

5.5.5 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.6 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away

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from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 The accused managed the tracking, locating and ultimate shooting of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

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6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and

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Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 5 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

7.2.3 Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 5 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

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7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 5 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 5 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 102 – 103 the killing of Sanele Majola
Counts 104 – 108 the killing of Nhlanhla Masondo
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 5 in these activities have been outlined in the incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 102 – 103 dealt with in Incident 3
Counts 104 – 108 dealt with in Incident 8
Counts 109 – 112 dealt with in Incident 11.

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8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 110 – 111
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 15: ANTON LOCKEM

Although the accused separated Count 110 and 111 in their request, the State deals with all the Counts 110 to 111 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact

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evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdlull where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the

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unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 March 2009

1.2.2 The time of the act is around 10h30

1.2.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and
- a magazine with three (3) 7.65 Calibre cartridges
- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they

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brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body

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of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri along Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveilance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

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3. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of

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the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

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4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

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Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

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he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 The accused managed the tracking, locating and ultimate shooting of Dan Phiri.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

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Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

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7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 15 committed the crime of possession of firearms and ammunition jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of

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the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.7 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8. CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 15 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 58 – 61 the killing of Lindokuhle Nzuzo
Counts 80 – 93 the killing of Jabulani Bhengu
Counts 98 – 101 the killing of Mfanafuthi Zwane
Counts 109 – 112 the killing of Dan Phiri and
Counts 113 – 116 the killing of Nhlanhla Mhlongo

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 58 – 61 dealt with in Incident 14

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Counts 80 – 93 dealt with in Incident 20
Counts 98 – 101 dealt with in Incident 2
Counts 109 – 112 dealt with in Incident 11 and
Counts 113 – 116 dealt with in Incident 17.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNTS 110 – 111
UNLAWFUL POSSESSION OF A FIREARM
UNLAWFUL POSSESSION OF AMMUNITION
ACCUSED 25: CHARLES JOHN SMITH

Although the accused separated Count 110 and 111 in their request, the State deals with all the Counts 110 to 111 at the same time all the offences were committed at the same time by the same accused persons, the ammunition being inside the firearms concerned, it does not make sense really to separate them as if they are in fact separate conduct of separate accused persons.

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

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which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212

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found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 March 2009

1.2.2 The time of the act is around 10h30

1.2.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and
- a magazine with three (3) 7.65 Calibre cartridges
- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
UNLAWFUL POSSESSION OF FIREARM AND AMMUNITION

2.1 Yes, it is the State case that the unlawful possession of the firearm and ammunition formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977,

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when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

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- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri at Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveilance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the unlawful possession of the firearms and ammunition is related to other charges in the indictment.

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3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the unlawful possession of firearms and ammunition is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban

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Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and Incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23
Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 110 to 111, Accused 15 had more information from his informer who was using the silver Jetta to lure the deceased to their direction.

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5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

5.2.2 Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15 and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

5.5.7 It is not clear when the common purpose was formed.

5.5.8 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

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5.5.9 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 The accused managed the tracking, locating and ultimate shooting of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

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5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of unlawful possession of firearms and ammunition whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he

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was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

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6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of possession of firearms and ammunition jointly with the other accused whilst employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

7.2.3 Accused 25 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

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7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.8 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

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The other activities that Accused 25 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 94 – 97 the killing of Qinisani Gwala
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:

Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 94 – 97 dealt with in Incident 23
Counts 109 – 112 dealt with in Incident 11.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7 – 8.8 Yes same as 6.3 above.

COUNT 112
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 5: ERIC NEL

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

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- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mdull with other police members in the Quantum, only to return immediately, asking Mdlull where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

- the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

- The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.1.1 The date of the act is 18 March 2009

1.1.2 The time of the act is around 10h30

1.1.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.2 No the State does not rely on an omission.

1.3 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and

- a magazine with three (3) 7.65 Calibre cartridges

- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the Defeating or Obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the

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shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayl" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to

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create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri at Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveilance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

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3.1 Yes, it is the State's case that the offence of defeating the course of justice is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the defeating or obstructing the course of justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.3 the operational structure is the same as has been outlined on page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
Counts 8 – 12 dealt with in Incident 5
Counts 13 – 18 dealt with in Incident 6
Counts 31 – 34 dealt with in Incident 15
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 58 – 61 dealt with in Incident 14
Counts 62 – 65 dealt with in Incident 16
Counts 66 – 69 dealt with in Incident 18
Counts 80 – 93 dealt with in Incident 20 - 22
Counts 94 – 97 dealt with in Incident 23

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Counts 98 – 101 dealt with in Incident 2 and
Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 5 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 110 to 111, Accused 15 had more information

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from his informer who was using the silver Jetta to lure the deceased to their direction.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

5.2.2 Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

5.2.3 the organisational structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.2.4 the operational structure of the enterprise remains the same as has been outlined on Page 4 of this submission. It operated the same as the Cato Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15 and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

5.5.10 It is not clear when the common purpose was formed.

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5.5.11 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.12 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 The accused managed the tracking, locating and ultimate shooting of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations

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(DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of defeating or obstructing the course of justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

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Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

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6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 5 committed the crime of defeating or obvstructing the course of justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

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7.2.3 Accused 5 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 5 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

7.9 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 5 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful posesession of firearms committed on the same day.

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- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 5 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 102 – 103 the killing of Sanele Majola
Counts 104 – 108 the killing of Nhlanhla Masondo
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 5 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 102 – 103 dealt with in Incident 3
Counts 104 – 108 dealt with in Incident 8
Counts 109 – 112 dealt with in Incident 11.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.8 – 8.8 Yes same as 6.3 above.

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COUNT 112

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

ACCUSED 15: ANTON LOCKEM

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

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- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

1.2.1 The date of the act is 18 March 2009

1.2.2 The time of the act is around 10h30

1.2.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and

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- a magazine with three (3) 7.65 Calibre cartridges
- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the Defeating or Obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

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2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayi" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri at Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

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Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayi's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveillance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of defeating the course of justice is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

4. PATTERN OF RACKETEERING ACTIVITY
RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the defeating or obstructing the course of justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the

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community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

4.2.2 the enterprise remains the same in all the charges, only the members may differ depending on who is on duty and available on the date of the operation. The organisational structure of the enterprise is the same as has been outlined on Page 4 of this submission.

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4.2.4 the hierarchal structure of the persons managing, employed by or associated with the enterprise has been outlined on Page 4 of this submission.

4.2.5 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

4.2.6 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact. It means disguising that they are police officials when their deeds are in fact those of criminals, which would never be authorised as police action.

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4.2.7 the affairs, operations and activities of the enterprise have been outlined as Counts and incidents above as follows:-

Counts 3 – 7 dealt with in Incident 4
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Counts 94 – 97 dealt with in Incident 23
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Counts 102 – 103 dealt with in Incident 3.

4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the

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IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 Yes, Accused 15 did manage the activities of the enterprise, together with Accused 9, 6, and 16, in their capacity as Commanders at SVC section, together they were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 110 to 112, Accused 15 had more information from his informer who was using the silver Jetta to lure the deceased to their direction.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

5.2.1 The enterprise remains the same and continues to be the same in all its activities. In this incident, the accused persons who participated in the enterprise are Accused 5, 15 and 25.

5.2.2 Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect. He also ensured that the "mbombayi's" are taken along for the operation.

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Manor section of Durban Organised Crime Unit with Sup Olivier as the Section Commander and the Captains as Group Commanders. The most senior on the day who is available, takes charge of the troops.

5.2.5 the hierarchical structure of the enterprise remains the same as has been outlined on Page 4 of this submission.

5.3 Yes the enterprise was a group of persons who included Accused 5, 15 and 25.

5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

5.5.13 It is not clear when the common purpose was formed.

5.5.14 the parties to the common purpose are all the accused persons who took part in the chasing and ultimate shooting of the deceased.

5.5.15 the terms or nature of the course of conduct agreed upon by the entity is a matter for evidence.

5.6.1 the work and functions of each persons employed by the enterprise or associated with the enterprise can be summarized as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for

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him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

5.6.2 The accused managed the tracking, locating and ultimate shooting of Dan Phiri.

5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of defeating or obstructing the course of justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise, which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

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Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

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Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

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7.1 Yes it is alleged that Accused 15 committed the crime of defeating or obvstructing. the course of justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

7.2.3 Accused 15 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 15 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

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7.10 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 15 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 15 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 102 – 103 the killing of Sanele Majola
Counts 104 – 108 the killing of Nhlanhla Masondo
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 15 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 102 – 103 dealt with in Incident 3
Counts 104 – 108 dealt with in Incident 8

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Counts 109 – 112 dealt with in Incident 11.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.7– 8.8 Yes same as 6.3 above.

COUNT 112
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
ACCUSED 25: CHARLES JOHN SMITH

1.1 It is the State's case that the:

- 7.65mm Calibre CZ semi-automatic pistol with serial number obliterated, which was marked by Warrant Tilakdharee of the Ballistic Unit 60233F and

- one (1) magazine, three (3) 7.65 Calibre cartridges and two (2) fired 7.65 Calibre cartridges which he marked 60233 E1 and E2

which were allegedly found at the scene of Dan Phiri's shooting incident at the Noordberg Road, Tongaat on 18 March 2008 were brought by the accused to the scene so that they could justify their unlawful shooting of the deceased. The State relies on circumstantial evidence and similar fact evidence to found a conviction on the unlawful possession of the firearm and ammunition. The following objective facts will, be proved:

- The deceased was a suspect in an ATM bombing case Nyoni CAS 41/04/2008 and 105/05/2008. The deceased Dan Phiri was waylaid to a

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place where the accused were waiting for him by a person dring a silver Jetta under the guise of a sale of a car.

- Inspector Karrim of the local LCRC arrived at the scene at approximately 12h05 on 18/03/2009 and took photos and made a sketch and plan of the scene.

- Dr T Naidoo conducted a post mortem of the body of the deceased and noted the positions of the wounds. Dr Perumal studied the post mortem, photos of the scene and other documents and made his observations.

- Mr Steyl did a reconstruction of the scene, made observations of the wounds, the position of the 7.65 Calibre CZ semi-automatic pistol and drew his conclusions.

- Similar fact evidence relating to other incidents in which Accused 4 and other Cato Manor police brought firearms to the scene will also be relied upon, such as

    - the scene of Prince Thabede's death at KwaMashu township on 26 November 2009 when Accused 4 went into the house carrying his official R5 rifle, leaving Nqaba Mduli with other police members in the Quantum, only to return immediately, asking Mdluli where his "mbombayi' or "spoek" is, and this was the firearm that was brought to be planted on the scene.

    - the scene of Khanyisani Biyela's shooting at Melmorth on 23 November 2008 where Captain Chris Mangena, witness 212 found that the firearm found next to the deceased arm as depicted on page 27 of his report (pattern 5) was clean, or clear of blood spatter on a bloodied scene, attracting the unavoidable conclusion that it was placed on the scene after the shooting.

    - The scene of Sibusiso Tembe's shooting on the N3 highway at Howick on 16 September 2008 where Jacob Steyl, witness 213 found that the AK47 cartridge cases found inside the vehicle were on top of the blood without any blood spatter on a bloodied scene.

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1.2.1 The date of the act is 18 March 2009

1.2.2 The time of the act is around 10h30

1.2.3 The place of the act is on the Noordberg road (R614), Tongaat.

1.3 No the State does not rely on an omission.

1.4 The firearm concerned is:-

- a 7.65 Calibre CZ semi-automatic pistol with serial number obliterated and
- a magazine with three (3) 7.65 Calibre cartridges
- and two (2) 7.65 fired cartridges.

2. AD PATTERN OF RACKETEERING ACTIVITY
DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

2.1 Yes, it is the State case that the Defeating or Obstructing the course of justice formed part of the racketeering activity as defined by section 1 of Act 121 of 1998.

2.2 the modus operandi which was consistently used by the accused involved the placing of a firearm next to the body of the deceased immediately after the shooting to create the impression that the deceased was having a firearm thereby posing some danger to the Cato Manor police so that their shooting of the deceased is made justifiable in terms of section 49(2) of Act 51 of 1977, when in fact they brought that unlicensed firearm with so that it is planted at the scene. At most of the scenes, they prevented other police units from getting closer to the scene until they had doctored the scene by planting a firearm next to the deceased.

2.2.1 the precise date and time the accused formed the plan to commit the offence of unlawful possession of firearms and ammunition and the rest of the murders is unknown to the State, safe to state that immediately after Superintendent Choncho was killed on 27 August 2008, the Cato Mano police

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made it their business to track and trace anyone that they suspected of having taken a part in the killing of Sup Choncho and any other police official or ATM bombings irrespective of the amount of evidence that they had against the person concerned, to the extent of revenging the death of Sup Choncho. It is the State case that the idea to procure these unlicensed firearms and use them at the scenes of shooting where KwaMaphumulo Taxi members are shot, was hatched.

2.2.2 the place where the plan was hatched is unknown to the State.

2.2.3 the full terms of the plan is a matter of evidence, safe to indicate that whenever the Cato Manor police travelled to the places where they were conducting raids, they would as part of their planning make sure that they bring the "mbombayl" or "spoek" which is a term that they used, in particular, Accused 15 when they were going to plant it at the scene.

2.2.4 Yes, it is the State case that more than one person was involved in the plan to commit the offence of unlawful possession of firearm and ammunition:

- the firearms and ammunition would be brought with to all their suspect raids.

- immediately after the shooting one member was tasked to prevent other units or individuals from getting closer to the scene until it is doctored by placing a firearm next to the body of the deceased to create the impression that the deceased posed some form of danger to the police that would make their shooting justifiable in terms of the law.

- It is not surprising that not a single one of them got injured nor any of their vehicles got damaged despite all these suspects who fire shots at them. It is equally surprising that a suspect who knew them would, while being alone think about producing a firearm against so many police officials who would be part of the pursuit team or the police raid.

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2.3 the members who would take part in any of the incident which formed part of a racketeering activity would depend on the availability of the member and on who is on duty on the date in question.

2.3.1 on the 18 March 2009 when this 7.65 Calibre CZ semi-automatic pistol, a magazine and ammunition mentiones in paragraph 1.4 above were possessed by the members who took part in the tracking and shooting of Dan Phiri at Noodsberg road (R614),Tongaat, the Cato Manor members who were present are the following:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

2.3.2 – 2.3.4 the bringing along of the unlawful firearms, "spoeks", or "mbombayl's to suspect raids was a joint responsibility of the members, including the preventing of other units of the SA Police Service from accessing the scene before it is doctored properly. In most instances accused 4 and accused 6 did most of these two roles. The date, time and place of the act of participation will be the date of the suspect surveilance itself, being 18 March 2009. In Counts 110 - 111, the date is the 18 March 2009 at around 12h05.

3. **PATTERN OF RACKETEERING ACTIVITY**
RELATIONSHIP QUA PREDICATE OFFENCES

3.1 Yes, it is the State's case that the offence of defeating the course of justice is related to other charges in the indictment.

3.2 the unlawful possession of firearms and ammunition was part of the accused's modus operandi at any of the suspect raids that they were executing. The accused required the unlawful firearms to make their shooting justifiable in terms of the law. The firearm had to be placed next to the deceased so that it is more acceptable that the deceased posed some danger to the deceased.

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4. PATTERN OF RACKETEERING ACTIVITY

RELATIONSHIPQUA THE ENTERPRISE

4.1 Yes, it is the State case that the defeating or obstructing the course of justice is related to the enterprise as defined in section 1 of Act 121 of 1998.

4.2.1 It is the objective of the enterprise to eliminate all the suspects who are linked with the killing of Sup Choncho and any other police official or the ATM bombings, in a manner that is acceptable in the eyes of the law and the community. It is for this reason that the shootings of the members of KwaMaphumulo Taxi Association who are suspected of involvement in the Choncho killing and suspects of ATM bombings and ordinary civilians suspected of gang violence have to be made justifiable by using a "mbombayi", "spoek" or unlicensed firearm which is placed next to the deceased to create the requisite threat that makes it a justifiable shooting. The enterprise required to continue eliminating suspects without drawing a lot of criticism, this why they were able to kill so many people without the law detecting their trick.

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4.3 4.3 – 4.8 Yes it is alleged that the killings were PLANNED, ONGOING, CONTINUOUS or REPEATED as is required in Section 1 of Act 121 of 1998. The killings commenced or continued from the 24 May 2008 with that of Thabo Msimango, continued on various dates as outlined in the table on page 6 of this submission until the 23 September 2011 with the killing of Philangenkosi Gwala. The continuous and ongoing requirement does not necessarily require the incident to commence and finish in a particular year or month, what is required is just that the incidents continue over a period of time to form a pattern of

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racketeering activity. The nature of the predicate offences and the relationship between the offences is a guiding factor. In this instance, various shootings take place over a period of time.

4.10 Accused 15 and other accused were involved in the procurement of the Mbombayi's and making sure that they are taken along when the suspect raids and other suspect tracing take place so that they can be placed on the scenes next to the deceased immediately after the shooting has taken place, before the relevant police units are invited to take photographs (LCRC), the IPID (for police incidents) and other experts to the scenes, to make the shootings appear justifiable in terms of the law.

Accused 6 was tasked in most instances with the control and protection of the scenes immediately after the shootings and would ensure that other police units are not allowed on the scene before the scene is doctored to accord with their version of a justifiable shooting. Other accused persons would take this responsibility when accused 6 was unavailable on that operation.

5. **WHILST MANAGING THE ACTIVITIES OF THE ENTERPRISE**

5.1 No, Accused 25 did not manage the activities of the enterprise, Accused 9, 6, 15 and 16, in their capacity as Commanders at SVC section, together with who were the co-managers of the enterprise. Whenever any of them would not be at that particular scene, the most senior member would fulfil that management role. In Counts 110 to 111, Accused 15 had more information from his informer who was using the silver Jetta to lure the deceased to their direction.

5.2 Yes, Accused 9, 15 and 16 created an environment in which the activities of the enterprise could take place by giving his members access to resources without engaging the Unit Commander, knowing that he has the blessings of the Provincial Commander.

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5.4 Yes, each person who was part of the enterprise formed a common purpose to take part actively in the tracking, arrest and shooting of Dan Phiri.

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for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

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5.7 – 5.8 Yes, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

5.9 – 5.10 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal framework of the SA Police Service and mandate of the legal entity and associated themselves in fact.

6. WHILST EMPLOYED BY THE ENTERPRISE

6.1 Yes, the accused committed the offence of defeating or obstructing the course of justice whilst employed by the enterprise. The work and functions of each person employed by the enterprise or associated with the enterprise,

 GSm

which is executed to advance the objective of the enterprise can be summarized as follows:

Accused 16 as Section Commander provided the team with resources, thereby creating an environment in which the members could work and advance the objective of the enterprise.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspects. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 15 ensured that all the participants are briefed and updated as to the latest information relating to the movements of the suspect that he recived from his informers. He also ensured that the "mbombayi's" are taken along for the operation.

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

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6.2 Accused 15 managed the tracking, tracing and ultimate shooting of the deceased Dan Phiri.

6.3 dealt with at 6.1 above.

6.4 Yes it is alleged that each member of the enterprise formed a common purpose and associated themselves with the tracing, arrest and shooting of Dan Phiri.

6.5.1 It is not clear when the common purpose was formed.

6.5.2 The parties who took part in the execution of the conduct are:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25 Charles John Smith

6.5.3 The terms or nature of the conduct agreed upon was the tracking, locating and shooting of Dan Phiri.

6.5.4 the organisational structure is the same as the one outlined on Page 4 of this submission.

6.5.5 the operational structure of the enterprise is a matter of evidence.

6.5.6 the hierarchical structure of the enterprise has been outlined on page 4 of this submission.

6.5.7 the same as in paragraph 6.1 above.

6.5.8 the affairs, operations and activities of the enterprise have been outlined in detail when the incidents were dealt with from Incident 1, which forms Counts 35 – 38, the killing of Thabo Msimango on 24 May 2008 until Incident 23, which forms Counts 94 – 98, the killing of Qinisani Philangenkosi Gwala on 4 September 2011.

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6.6 – 6.7 Yes and No, it is alleged in the main argument that the enterprise was a legal entity, the Serious Violent Crime section based at Cato Manor functioning under Durban Organised Crime Unit which is part of the provincial structure of the Directorate for Priority Crimes Investigations (DPCI) which is part of the South African Police Service, a legal entity established by legislation, the SA Police Act 68 of 1995.

6.8 – 6.9 Yes, the State argues in the alternative that members of the Serious Violent Crime section acted loosely as individuals outside the legal mandate of the legal entity and associated themselves in fact.

7. WHILST ASSOCIATED WITH THE ENTERPRISE

7.1 Yes it is alleged that Accused 25 committed the crime of defeating or obvstructing the course of justice jointly with the other accused whist employed or associated with the enterprise.

7.2 The enterprise remains the same in respect of all the offences committed, the only difference is the members who participated in the activities of the enterprise, these are the members who were on duty and were available on 18 March 2009 when the deceased was tracked and shot at along Noordberg road (R614) Tongaat.

7.2.2 The association was by means of conduct that is destined to achieve the same results. These include the tracing of Dan Phiri at Tongaat.

7.2.3 Accused 25 associated himself with the enterprise when he performed functions and executed tasks which advanced the objectives of the enterprise.

7.2.4 Accused 25 kept a close and loyal and friendly relationship with Accused 9, Captain Olivier and General Booysen to the exclusion of his Unit Commander. This trust relationship originated from the time when they were working together within the environment of the Serious Violent Crime section before it was incorporated into Organised Crime.

7.3 Yes, the same names as listed in 6.3 above.

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7.4 Yes.

7.5 Same as in 6.5 above.

7.6 Yes and No, the enterprise as it is argued is the Serious Violent Crime section of Cato Manor which operated as part of the Durban Organised Crime Unit of the SA Police Service. Whereas the SA Police Service is a legal entity, it cannot be said that SVC section of the Durban Organised Crime is a legal entity on its own. It exists under the auspices of the SA Police Service and the SVC section of Cato Manor was operating under the veil or cover of the SA Police Service.

1.5 Same as 7.6 above.

7.8 Same as 7.6 above

7.9 Same as 7.6 above.

8.CONDUCTING THE AFFAIRS OF THE ENTERPRISE

8.1 The affairs of the enterprise that Accused 25 is alleged to have taken part in or participated in through a pattern of racketeering activities include the

- murder of Dan Phiri that was committed on 18 Marchr 2009.
- The unlawful possession of firearms committed on the same day.
- The unlawful possession of ammunition committed on the same day.
- The defeating the ends of justice committed on the same day.

The other activities that Accused 25 participated in include the predicate offences that are listed on Page 25 of this submission:

Counts 8 – 12 the killing of Magojela and Tembe
Counts 35 – 38 the killing of Thabo Msimango
Counts 39 – 52 the killings of Khanyisani Biyela and Bongani Biyela
Counts 53 – 57 the killing of Thokozani Njapha
Counts 102 – 103 the killing of Sanele Majola

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Counts 104 – 108 the killing of Nhlanhla Masondo
Counts 109 – 112 the killing of Dan Phiri

8.2- 8.4 The extent of participation of Accused 25 in these activities have been outlined in the Incidents:

Counts 8 – 12 dealt with in Incident 5
Counts 35 – 38 dealt with in Incident 1
Count 39 – 52 dealt with in Incident 9
Counts 53 – 57 dealt with in Incident 12
Counts 102 – 103 dealt with in Incident 3
Counts 104 – 108 dealt with in Incident 8
Counts 109 – 112 dealt with in Incident 11.

8.5 – 8.6 Yes members of the Stanger Taxi Association paid Cato Manor members after the killing of Magojela and Tembe. Sanele Zondi and Bongizwe Mhlongo raised an amount of R750 000, 00 and went to pay Cato Manor police in particular Booysen for this killing. It is inferred that they were paid for this killing too. This killing was also used to get monetary rewards and certificates within the SAPS.

8.9 – 8.8 Yes same as 6.3 above.

COMMON PURPOSE
AD INCIDENT ON THE 18 MARCH 2009: THE SHOOTING OF DAN PHIRI: COUNTS 109 – 112
ACCUSED 5: ERIC NEL
ACCUSED 15: ANTON LOCKEM
ACCUSED 25: CHARLES JOHN SMITH AND

It appears from the predominant facts at the State's disposal that a common pupose to commit the offences outlined can be inferred from the conduct of the members of the enterprise in the commission of the offences which form part of the pattern of racketeering acivity. The incident on the 18 March 2009 cannot be taken in isolation of other incidents or operations of the enterprise, it must be considered in the light of all the incidents as outlines in the table on Page 6 of this submission, Incident 1 on

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24 May 2008 (the killing of Thabo Msimango) until Incident 23 on 3 September 2011 (the killing of Philangenkosi Gwala). One must also not loose sight of the regular briefings which the members of the enterprise get involved in prior to each and every operation where suspects are traced.

The accused who form part of the particular incident as outlined on the table Pages 6 to 23 formed a prior agreement in respect of that particular incident in which they were involved for instance in Count 109 – 112, it is the State's case that the following accused persons did form a common purpose to kill Dan Phiri:-

Accused 5: Eric Nel
Accused 15: Anton Lockem and
Accused 25: Charles John Smith

1.1.1 The is not precisely certain about the time that the accused became party to the prior agreement to commit the offences on 18 March 2009, safe to state that when they met the deceased alongthe Noordberg (R614) at Tongaat a prior agreement to commit the offences that have been listed in Count 109 - 112 was formed by the accused persons.

1.1.2 Same as in paragraph 1.1 above

1.1.3 The terms of the agreement is a matter of evidence.

1.1.4 All the parties involved in the agreement and their roles can be repeated as follows:

Accused 5, 15 and 25 were surveiling the movements of Dan Phiri with the assistance of the driver of the silver grey Jetta motor vehicle with a false deal to sell him a car, in stead lured him to the direction of the Accused 5, 15 and 25 so that they could get him with ease. The Cato Manor police were looking for the deceased for an alleged ATM bombing Nyoni CAS 41/05/2008, 105/5/2008. The deceased was in the company of two (2) passangers who were then arrested.

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Accused 15 and 25 opened the passanger doors and pulled the passangers out of the white Corolla and instructed them to lie down between Dan Phiri's white Corolla and the police vehicle. Accused 5 went to Dan Phiri's side as he was still in a seated position in the car, told him that he had been looking for him for a long time and that he is going to die on that day. The deceased was crying and begging them not to kill him. Accused 5 shot him several times as he was still in a seated position in the car, as he was almost a meter away from the deceased. The deceased was a paraplegic who uses crutches to walk. Cato Mano police had already made up their minds to eliminate him. Accused 15 and 25 placed the passangers under arrest.

1.1.5 Same as 1.1.4 above

1.1.6 The date, time and place of the act are the same as in paragraph 1.1 above.

2 Yes it is alleged that the accused formed an act of association with one another.

2.1.1 Same as in paragraph 1.1.4 above.

2.1.2 Same as in paragraph 1.1.1 above.

2.1.3 Same as in paragraph 1.1.1 above.

2.1.4 Same as in paragraph 1.1.4 above.

2.1.5 Same as in paragraph 1.1.4 above.

3 The State relies on prior agreement in the main argument, in the alternative the State will argue that it can be inferred from the proven facts.

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National Prosecuting Service
Director of Public Prosecutions

The National Prosecuting Authority of South Africa
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Die Nasionale Vervolgingsgesag van Suid-Afrika

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TO: Adv S. Abrahams
National Director of Public Prosecutions

FROM: Adv M.I. Thenga
Director of Public Prosecutions

DATE: 13 August 2015

RE: S v NOMGCOBO JIBA
SILVERTON CAS 622/10/2014

Dear Adv Abrahams

This case has to be dealt with in terms of Part 8 : Prosecution of Certain Categories of Persons – NPA Policy Directives, paragraph 6(c).

1. I decline to prosecute Adv Nomgcobo Jiba in all the 3 charges preferred against her.

2. Reasons for my decision are fully contained in my opinion.

THUS DONE AND SIGNED IN KIMBERLEY ON 13 AUGUST 2015

M I THENGA
DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN CAPE

EJM

National Prosecuting Service
Director of Public Prosecutions

The National Prosecuting Authority of South Africa
Igunya Jikelele Lobutshutshisi boMzantsi Afrika
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INTERNAL MEMORANDUM

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TO: Adv S. Abrahams
National Director of Public Prosecutions

FROM: Adv M.I. Thenga
Director of Public Prosecutions

DATE: 13 August 2015

RE: LEGAL OPINION – S v NOMGCOBO JIBA

Dear Adv Abrahams

A. Background leading up to the charges against Adv Jiba

1. A policeman known as Johan Booysen who was the Commander of the Cator Manor Unit in KZN, together with other SAPS members under his command, were charged for crimes committed in KZN. The Commander was one of the members charged with racketeering.

   For the racketeering charge to be sustained, section 2(4) of the Prevention of Organised Crime Act No 121 of 1998 stipulates that *"A person shall only be charged with committing an offence contemplated in subsection (1) if the prosecution is authorised in writing by the National Director."*

2. Part 46 of the NPA Policy Directives paragraph 3 also stipulates that a person may only be charged with committing an offence relating to racketeering if the prosecution is authorised by the National Director.

Presently, an amended Part 46 of the NPA Policy Directives which came into being from 15 June 2015, contains the same directive though in paragraph 2 and no longer paragraph 3.

For our purpose, paragraph 3 of Part 46 is applicable in this instance.

3. Section 2(2) of POCA stipulates that *"The court may hear evidence including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair."*

B. **Is there liability arising out of any action by any authorised person during the performance of his/her duties as stipulated in this law (POCA) Prevention of Organised Crime Act?**

4. **Section 78 of POCA – Liability**

The above-named section in the Act provides that *"Any person generally or specifically authorised to perform any function in terms of this Act, shall not in his or her personal capacity be liable for anything done in good faith under this Act."*

C. **Is the National Director one of the authorised persons as stipulated in this Act?**

5. In this instance, the National Director can authorise in writing a DPP, Investigating DPP and Special DPP, to deal with a specific case or in general.

6. In real terms a certificate to authorise racketeering charges must be authorised in writing by the National Director. This is also provided for in the NPA Policy Directive Part 46 paragraph 3 as stipulated above. Because of this, section 2(4) of POCA must therefore be read with section 78 of the same Act.

D. **Are there any steps to be taken by prosecutors prior to the signing of the Racketeering Certificate by the National Director?**

7. My experience is that the prosecution team together with the investigation team have series of meetings to fully discuss the

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case in order to give prosecutors the opportunity to guide the investigation along the way.

As soon as the prosecution team is able to draft the Indictment plus the Prosecution Memorandum, they have to make an appointment for a meeting with Adv Anthony Mosing tasked with the coordination of the cases that have racketeering charges among others.

8. The purpose for the meeting is basically to do a presentation to Adv Mosing with a view to get further advise if there is any need to make certain changes in the Prosecution Memorandum or the Indictment, and further to assess the existence of a *prima facie* case of racketeering plus the enterprise and managers or participants in the enterprise.

9. In some instances, Adv Mosing will allow the prosecution team to do the same presentation to the National Director, his/her Deputies plus the Asset Forfeiture DNDPP.

   In the event the presentation take the direction as stated at paragraph 9, any of the Senior Managers present with the National Director pose questions to the team to have any issue(s) clarified or corrected.

10. The prosecution team will be given an opportunity to do the corrections and a further date will normally be given to see if suggested corrections were implemented or a need to do further corrections exists.

    There is also a need to listen to the police, be it the Investigating Officer and his team, so that the same route to try and understand the case or suggest further investigation takes place.

11. When all is done and a corrected document exists, a certificate is normally drafted, requesting that the National Director authorise in writing the racketeering prosecution of such person(s) in accordance with section 2(4) of the POCA.

    Basically the Prosecutor's Memorandum plus the Indictment comply with the provisions of section 2(2) of POCA, evidence around hearsay, similar facts, as long as such evidence would not render the trial unfair.

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I refer to an affidavit of Adv Mosing paragraphs 11 and 12 where the same procedure as explained above, was followed before a certificate for racketeering could be signed by the National Director.

Annexure "A" being copy of the Judgment in *Brenton Frank and 3 others v National Director* paragraph 12 at 11.5 – 11.6, it was explained by Ms Blasessur on affidavit that *"Although the Prosecutor's Memorandum is prepared by the prosecutors who deal with the matter in Court (in casu by Gangai and I), it is the product of many minds."* 11.6 *"In this case it is the product of many telephonic discussions, consultations, emails, meetings and research by and between the aforementioned prosecutors and/or the investigators and/or advocate Johan Kruger (Kruger) and Elijah Mamabolo (both Senior State Advocates from the Office of the NDPP) and/or DDPP (Sankar) and Advocate Kalaivani Govender (Govender)."*

The above is confirmation on how the section 2(4) certificate by the NDPP ended up being signed.

An important aspect of the above referred case was *"the decision arrived at by the court that in considering the contents of the Prosecution Memorandum and its possible negative impact on proper prosecution of this case if disclosed. My view is that the State was entitled to refuse to furnish it in its entirety. It is therefore correct that the NDPP did not intend to detail all the information that was placed before her."* Per court.

E. Coming to the Statement provided by Adv Maema, who was leading the prosecution team, he confirmed various consultations and briefings made by the prosecution team and the investigation team to the NDPP. The above was already explained by the Head of the Special Projects, Adv Mosing.

All the necessary consultations with the NDPP, as already explained by Adv Mosing, led to the written authorisation of the Racketeering Certificate by the NDPP, Adv Jiba.

General Booysen, after he was arrested and later released on bail, launched the application challenging the racketeering decision on the basis of the principle of legality in accordance with section 172 (1)(a) and (b) of the Constitution Act, Act 108 of 1996, that the decision was irrational and not supported by evidence.

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A decision to oppose the application by the accused in the main case Adv Jiba led to the consultation between their lawyers and such prosecution team where they were advised that:

(i) The decision to prosecute was not reviewable in terms of the Promotion of Access to Information Act 3 of 2000.

(ii) The Prosecution Memorandum should not be made available to the applicants as it is privileged communication between the DPP and ANDPP.

(iii) The court lacked jurisdiction.

The prosecution team then prepared a proposed response to the application of the accused in the main case plus an arch lever file which contained:

(i) Unsigned Statement of Danikas.

(ii) Statement of Ndlondlo.

(iii) Statement of Aiyer.

(iv) Monetary awards.

(v) High Court interdict of a taxi driver who ended up killed by police.

(vi) Clarified role of General Booysen in the management of the enterprise.

Applicant, General Booysen, filed a replying affidavit and that led the team to meet and sent a proposal to Adv Hodes to respond, that never happened till court made a decision on the matter.

Apparently, the judgment indicated that counsel for the State made several concessions and the team then met with counsel who confirmed that he only conceded on the issue around jurisdiction and the court therefore got it all wrong. See paragraphs 14 and 15 of Adv Maema's affidavit.

It is important to note that Adv Chauke confirms Adv Hodes who had under oath in his affidavit said that he only made one concession around the jurisdiction. Adv Chauke was in court when the matter was argued. Adv Hodes is prepared to have a record of

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the proceedings obtained, which will substantiate his contentions in this matter. See paragraphs 7 and 8 of Adv Hodes' affidavit.

On the other hand, Adv Maema's contention is that *"It cannot be correct that the ANDPP could have lied under oath. She acted on the advice of the DPP and the prosecution team and that inaccuracies about the dates in the statements was caused by counsel's failure to show the team the statements before filing them."*

What he, Adv Maema is saying is that had counsel provided the draft statement before filing, proper corrections could have been made.

F. **Charges preferred against Adv Jiba justified or not**

(i) I have already referred to the procedure that had to be followed before a request for the Racketeering Certificate could be authorised in writing by the NDPP.

(ii) The requirements stipulated by section 2(2) of POCA around the type of evidence that a court hearing a case of racketeering may entertain.

(iii) In the case in issue, the affidavits of Adv Maema, Mosing, Chauke and the legal representative of the then Acting NDPP, Adv Hodes contain a lot of information and clarify what actually took place that led to the non-filing of the other information crucial in making the racketeering charge more clearer.

(iv) The advise which the legal representative provided the prosecution team plus Adv Jiba, more particularly the fact that the Prosecution Memorandum is a privileged communication between the DPP and ANDPP and therefore should not be made available to the applicants. See Adv Maema's affidavit paragraph 8 bullet 2.

(v) Both Adv Chauke and Hodes confirm in their separate affidavit that the only concession made in court by Adv Hodes before Gorven J was around the jurisdiction and nothing more. See Adv Hodes' affidavit paragraphs 7 and 8.

Apparently Adv Chauke was the only member of the team present in court when the case was argued and he

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personally heard Adv Hodes making one concession around the jurisdiction of court.

(vi) There is also an important affidavit around the availability or non-availability of a witness, Mr Aris Danikas. His lawyer in South Africa explained in detail the reason why his statement was never signed under oath. (See affidavit by Julian Bret Knight – lawyer.)

G. **The incomplete information before court**

In paragraph 34 line 6-8 the court as per Gorven said that *"If it is shown to be inaccurate and thus misleading to the court, she must also know that it is important to explain and, if appropriate correct any inaccuracies."*

The above is a confirmation that the court did not have full information on hand which information was unfortunately sitting with the legal representative and not properly filed as it was supposed to be. See the affidavit of Adv Maema, paragraphs already cited in this document.

The NPA had, out of the above, prevented Adv Jiba from appealing. She in fact had to remove papers already filed for purposes of an appeal because the then NDPP instructed that the matter must never be appealed.

In conclusion, Adv Jiba was merely performing her function as provided for in the POCA and as a result must never be demoralised in her functions.

She is moreover protected by the provision as already indicated in section 78 of POCA.

This is why it is my respectful opinion that Adv Jiba should not be prosecuted and that the charges against her be withdrawn.

Kind regards

M I THENGA
DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN CAPE

G JM

CmTT

TO: ADV. N JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTONS
NATIONAL PROSECUTING AUTHORITY

FROM: ADV. KMA CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS
JOHANNESBURG

DATE: 10 JULY 2012

SUBJECT: APPLICATION FOR AUTHORISATION IN TERMS OF SECTION 2 (4) OF POCA ACT 121 OF 1998
THE STATE VERSUS BOOYSEN, JOHAN WESSEL AND OTHERS

---

1. Herewith the following:

   1.1 Application for authority in terms of section 2(4) of the Prevention of Organised Crime Act, 121 of 1998 for your recommendation.

   1.2 The draft Indictment,

   1.3 The draft authorizations for section (2)(1)(e) and 2(1)(f) respectively

2. I have perused the documents and recommend the Application.

3. The Accused have appeared in the Regional Court, Durban and the matter has been postponed to 24 August 2012 for the Racketeering Authorisation. Eighteen (18) of the accused persons are on bail, other accused persons still need to be added to the charge sheet and/or indictment

ADV. K.M.A. CHAUKE
DPP: JOHANNESBURG

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AUTHORISATION IN TERMS OF SECTION 2(4) OF THE PREVENTION OF ORGANISED CRIME ACT, ACT NO 121 OF 1998

THE STATE VERSUS:

1. **BOOYSEN, JOHAN WESSEL**
2. **PADAYACHEE, GONASAGREN**
3. **STOLZ, ADRIAAN JAKOBUS FICK**
4. **MOSTERT, PAUL JONATHAN**
5. **NEL, ERIC ALFRED**
6. **EVA, NEVILLE**
7. **GHANESS, ADJITHSINGH**
8. **MAKHANYA, PHUMELELA**
9. **OLIVIER, WILLEM CORNELIUS**
10. **MKHWANAZI, THEMBIKNOSI MBHEKISENI**
11. **MDLALOSE, THATHAYIPHI ENOCK**
12. **NAIDOO, RUBENDREN**
13. **LEE, RAYMOND CHRISTOPHER**
14. **LOCKEM, ANTON**
15. **VAN TONDER, JAN JOHANNES EUGENE**
16. **SMITH, CHARLES JOHN**
17. **MARTEN, JEREMY**
18. **MC INNES, BRUCE DAVID**

I, **NOMGCOBO JIBA**, Acting National Director of Public Prosecutions of South Africa, do hereby, in terms of section 2(4), read with sections 1 and 2 of the Prevention of Organised Crime Act, No 121 of 1998, authorize the institution of prosecution in respect of the contravention of section 2(1)(e) of the Prevention of Organised Crime Act, No. 121 of 1998, committed during the period 2008 to 2011, against the above named accused.

GIVEN UNDER MY HAND AT PRETORIA on this day of JULY 2012

_____

NOMGCOBO JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
REPUBLIC OF SOUTH AFRICA

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AUTHORISATION IN TERMS OF SECTION 2(4) OF THE PREVENTION OF ORGANISED CRIME ACT, ACT NO 121 OF 1998

THE STATE VERSUS:

BOOYSEN, JOHAN WESSEL
OLIVIER, WILLEM CORNELIUS

I, **NOMGCOBO JIBA,** Acting National Director of Public Prosecutions of South Africa, do hereby, in terms of section 2(4), read with sections 1 and 2 of the Prevention of Organised Crime Act, No 121 of 1998, authorize the institution of prosecution in respect of the contravention of section 2(1)(f) of the Prevention of Organised Crime Act, No. 121 of 1998, committed during the period 2008 to 2011, against the above named accused.

GIVEN UNDER MY HAND AT PRETORIA on this day of JULY 2012

NOMGCOBO JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
REPUBLIC OF SOUTH AFRICA

G.sm

PROSECUTION MEMORANDUM

A. INTRODUCTION

1. The accused in these matters are the members of the South African Police Services assigned to the Durban Organised Crime Unit based in Cato Manor and National Intervention Unit. Accused 1 is the Provincial Commander of Organised Crime Unit for KwaZulu-Natal.

2. The Durban Organised Crime Unit based in Cato Minor worked under the direct control of accused 1 and 9.

3. Their Area of Jurisdiction is Durban and surrounding areas.

4. The Unit operates from their offices and attend some cases in their Jurisdiction that are assigned to their Unit.

B. BACKGROUND

5. Some of these cases were informal inquests that were held in the Magistrate's courts. These inquests came about as a result of the tampering with the crime scenes by the accused, by among other things, planting firearms next to the bodies of the deceased persons, thus creating an impression that their lives were in danger when effecting arrest.

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6. These acts of tampering with the crime scenes were cover-ups of their unlawful activities.

C. MODUS OPERANDI

7. The accused persons would approach their victims mostly at night with allegations that they have committed certain offences. Instead of arresting them and bring them properly before a court of law for their guilt to be established beyond reasonable doubt, the accused shot and killed all the suspects.

8. There are instances where the accused persons killed people who were not even their suspects.

9. The accused would kill their suspects, plant a firearm next to them and alleged that they were being attacked by the suspects.

D. IDENTIFICATION OF THE ACCUSED

10. Accused 1: **BOOYSEN, JOHAN WESSEL**

A 55 year old male person. His residence is yet to be confirmed. At the relevant period he was the Provincial Commander: Organised Crime for the Province of KwaZulu-Natal. He held the rank of a Director.

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11. Accused 2: **PADAYACHEE, GONASAGREN**

a 44 year old male person of 61 Statesman Drive, Havenside, Chatsworth. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Bellair Road Cato Manor

12. Accused 3: **STOLTZ, ADRIAAN JAKOBUS FICK**

a 45 year old male person of 10 Stonehill Complex, 28 Serissa Avenue, Roodekrans, Roodepoort. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

13. Accused 4: **MOSTERT, PAUL JONATHAN**

a 51 year old male person of 06 Keeling Place, Queensburgh He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

14. Accused 5: **NEL, ERIC ALFRED**

a 41 year old male person of 37 Illovo Glen, Berrio Avenue, Amanzimtoti. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

15. Accused 6: **EVA, NEVILLE**

a 45 year old male person of 25 High Street. New Germany, Pinetown. He is a Captain stationed at the Organised Crime Unit, 446 Belliar Road

16. Accused 7: **GHANESS, ADJITHSINGH**

a 41 year old male person of 44 Old Castle Place, Newlands West, Durban. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

Gsm

17. Accused 8: **MAKHANYA, PHUMELELA**

a 45 year old male person of 90 Morewood Road, Sydenham, Durban. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

18. Accused 9: **OLIVIER, WILLEM CORNELIUS**

a 59 year old male person of 16 Walnut Grove Complex, 03 Entombeni Road, Amanzimtoti. He is a Colonel stationed at the Organised Crime Unit, 446 Belliar Road

19. Accused 10: **MKHWANAZI, THEMBIKNOSI MBHEKISENI**

a 47 year old male person of Room D 008, Umlazi Police Barracks, Umlazi. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

20. Accused 11: **MDLALOSE, THATHAYIPHI ENOCK**

a 48 year old male person of 21 Bennie Geldenhuis, Austerville, Durban. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

21. Accused 13: **NAIDOO, RUBENDREN**

a 33 year old male person of 57 Evergreen Circle, Phoenix, Durban. He is a Constable Officer stationed at the Organised Crime Unit, 446 Belliar Road

22. Accused 14: **LEE, RAYMOND CHRISTOPHER**

a 31 year old male person of 4F Queens Terrace, 100 Dipdale Road, Queensburgh, Durban. He is a Warrant Officer stationed at the Organised Crime Unit, 446 Belliar Road

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23. Accused 15: **LOCKEM, ANTON**

a 44 year old male person of 201 Moss Road, Bluff, Durban. He is a Captain stationed at the Organised Crime Unit, 446 Belliar Road

24. Accused 16: **VAN TONDER, JAN JOHANNES EUGENE**

an adult male person. His residential address is yet to be confirmed. He is a retired member of the South African Police Services who was stationed at the Organised Crime Unit, 446 Bellair Road Cato Manor. He held the rank of a Captain.

25. Accused 25: **SMITH, CHARLES JOHN**

A 40 year old male person. His residential address is 34 Frederrick Avenue Bluff, Durban. He is a member of the South African Police Services who is stationed at the Organised Crime Unit, 446 Bellair Road Cato Manor. He held the rank of a Warrant Officer.

26. Accused 26: **MARTEM, JEREMY**

A 39 year old male person. His residential address is 12 Goodricke Road Morningside, Durban. He is a member of the South African Police Services who is stationed at the Organised Crime Unit, 446 Bellair Road Cato Manor. He held the rank of a Warrant Officer.

27. Accused 27: **MC INNES, BRUCE DAVID**

A 43 year old male person. His residential address is 87 St Winniefreds Whitefield Drive, Warner Beach, Durban. He is a member of the South African Police Services who is stationed at the Organised Crime Unit, 446 Bellair Road Cato Manor. He held the rank of a Warrant Officer.

28. Accused 12,17,18,19, 20, 21, 22, 23, 24, 28, 29, 30, 31 and 32 in the proposed indictment are not charged with racketeering. They did not commit more than one offence in the predicate offences.

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E. ANALYSIS OF EVIDENCE

THE ENTERPRISE – PROVINCIAL ORGANISED CRIME FOR KWAZULU-NATAL TO WHICH ACCUSED 1 WAS THE COMMANDER

29. The enterprise is defined to include "*any individual, partnership, corporation, association, or other juristic person or legal entity, and union or group of individuals associated in fact, although not a juristic person or legal entity*".

30. The Provincial Organised Crime Unit of the South African Police Services is an enterprise within the meaning of section (1) of the Prevention of Organised Crime Act, Act 121 of 1998 ("POCA), being a legal entity associated in fact.

31. This legal entity provided the accused with the continuity of structure under which to conduct their unlawful activities.

32. Accused 1 was the Commander of the Provincial Organised Crime. Accused 9 was the Commander of the Durban Organised Crime Unit based in Cato Manor. Accused 1 and 9 co-managed the enterprise. Accused 1,2,3,4,5,6,7,8,9,10,11,13,14,15,16, 25, 26 and 27 were participants in the racketeering activities..

33. Accused 12,17,18,19, 20, 21, 22, 23, 24, 28, 29, 30, 31 and 32 in the proposed indictment are not charged with racketeering activities. They did not commit more than one offence in the predicate offences.

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F. LIST OF PROPOSED CHARGES

COUNT 1

CONTRAVENING SECTION 2(1)(f) READ WITH SECTIONS 1 ,2(2), 2(3), 2(4) AND 3 OF THE PREVENTION OF ORGANISED CRIME ACT, ACT 121 OF 1998 – MANAGING AN ENTERPRISE;

(Accused 1 and 9)

COUNT 2

CONTRAVENING SECTION 2(1)(e) READ WITH SECTIONS 1, 2(2), 2(3), 2(4) AND 3 OF THE PREVENTION OF ORGANISED CRIME ACT, ACT 121 OF 1998 – PARTICIPATING IN THE CONDUCT OF AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY;

(Accused 1,2,3,4,5,6,7,8,9,10,11,13,14,15,16, 25, 26 and 27)

PART A PREDICATE OFFENCES

COUNT 3

HOUSEBREAKING WITH INTENT TO COMMIT MURDER;

(Accused 4,6,8, 13 and 22)

COUNT 4

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4,6,8, 13 and 22)

G sm

COUNT 5

ASSAULT

(Accused 4,6,8, 13 and 22)

COUNT 6

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 4,6,8, 13 and 22)

COUNT 7

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM

(Accused 4,6,8, 13 and 22)

COUNT8

CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION

(Accused 4,6,8, 13 and 22)

COUNT 9

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

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(Accused 1, 4,5,6,8,9,15 and 16)

COUNT 10

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

(Accused 1,4,5,6,8,9,15 and 16)

COUNT 11

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF FIREARM

(Accused 1,4,5,6,8,9,15 and 16)

COUNT 12

CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION

(Accused 1,4,5,6,8,9,15 and 16)

COUNT 13

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 1,4,5,6,8,9,15 and 16)

G Sm

COUNT 14

HOUSEBREAKING WITH INTENT TO COMMIT MURDER

(Accused 3,4,6,8,10,11,12,13 and15)

COUNT 15

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

(Accused 3,4,6,8,10,11,12,13 and 15)

COUNT 16

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

(Accused 3,4,6,8,10,11,12,13 and 15

COUNT 17

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF FIREARMS

(Accused 3,4,6,8,10,11,12,13 and 15)

COUNT 18

CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL

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PROCEDURE ACT. 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION

(Accused 3,4,6,8,10,11,12,13 and15)

COUNT 19

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 3,4,6,8,10,11,12,13 and 15)

COUNT 20

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

(Accused 17 and 18)

COUNT 21

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977

(Accused 2,3,14,19,20 and 21)

COUNT 22

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF FIREARM

(Accused 2,3,14,19,20 and 21)

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COUNT 23

CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION

(Accused 2,3,14,19,20 and 21)

COUNT 24

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 2,3,14,19,20 and 21)

COUNT 25

THEFT

(Accused 3 Only)

COUNT 26

HOUSEBREAKING WITH INTENT TO COMMIT MURDER

(Accused 2,3,9,13 and 16)

COUNT 27

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977;

(Accused 2,3,9,13 and 16)

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COUNT 28	CONTRAVENTION OF SECTION 120(6) OF ACT 60 OF 2000 - POINTING WITH A FIREARM; **(Accused 2,3,9,13 and 16)**
COUNT 29	CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF FIREARM **(Accused 2,3,9,13 and 16)**
COUNT 30	CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION **(Accused 2,3,9,13 and 16)**
COUNT 31	DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE **(Accused 2,3,9,13 and 16)**
COUNT 32	THEFT **(Accused 2,3,9,13 and 16)**
COUNT 33	HOUSEBREAKING WITH INTENT TO COMMIT MURDER **(Accused 2,4 and 6)**

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COUNT 34

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997 AND SECTION 155(1) OF ACT 51 OF 1977;

(Accused 2,4 and 6)

COUNT 35

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF FIREARM;

(Accused 2,4 and 6)

COUNT 36

CONTRAVENTION OF SECTION 90, READ WITH SECTION 1,103,117,120(1)(a) AND 121 READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION

(Accused 2,4 and 6)

COUNT 37

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 2,4 and 6)

G SM

PART B PREDICATE OFFENCES

COUNT 38

HOUSEBREAKING WITH INTENT TO COMMIT MURDER;

(Accused 4, 5, 6, 7, 8, 11 and 13)

COUNT 39

MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4, 5, 6, 7, 8, 11 and 13)

COUNT 40

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120, (1)(a), SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFUL POSSESSION OF FIREARM;

(Accused 4, 5, 6, 7, 8, 11 and 13)

COUNT 41

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 120(1)(a), SECTION 121 READ WITH SECTION 4 AND SECTION 151 OF FIREARMS CONTROL ACT 60 OF 2000 – UNLAWFUL POSSESION OF AMMUNITION;

(Accused 4, 5, 6, 7, 8, 11 and 13)

COUNT 42

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 4, 5, 6, 7, 8, 11 and 13)

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COUNT 43	MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977 **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**
COUNT 44	MURDER, READ WITH SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977 **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**
COUNT 45	ASSAULT WITH INTENT TO DO GRIEVOUS BODILY HARM; **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**
COUNT 46	CONTRAVENTION OF SECTION 120(6) OF ACT 60 OF 2000 - POINTING WITH A FIREARM **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**
COUNT 47	ASSAULT WITH INTENT TO DO GRIVOUS BODILY HARM; **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**
COUNT 48	CONTRAVENTION OF SECTION 120(6) OF ACT 60 OF 2000 - POINTING WITH A FIREARM; **(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)**

G SM

COUNT 49

MALICIOUS DAMAGE TO PROPERTY;
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 50

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120(1)(a), SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFUL POSSESSION OF FIREARM;
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 51

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 120(1)(a), SECTION 121 READ WITH SECTION 4 AND SECTION 151 OF FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 52

CONTRAVENTION OF SECTION 3, READ WITH SECTION 1, 103, 117,120(1)(A), SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFUL POSSESSION OF FIREARM;
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

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COUNT 53

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 120(1)(a), SECTION 121 READ WITH SECTION 4 AND SECTION 151 OF FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 54

THEFT
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 55

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 56

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 2, 4, 5, 7, 13, 14, 25, 27, 28, 29,30 and 31)

COUNT 57

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977
(Accused 2, 4, 5 and 6)

COUNT 58

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND

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SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;
(Accused 2, 4, 5 and 6)

COUNT 59

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION
(Accused 2, 4, 5 and 6)

COUNT 60

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 2, 4, 5 and 6)

COUNT 61

THEFT
(Accused 2, 4, 5 and 6)

COUNT 62

MURDER, READ WITH SECTION 51 OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977
(Accused 4, 13 and 15)

COUNT 63

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120(1)(a), SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000 – UNLAWFULLY POSSESSION OF A FIREARM;
(Accused 4, 13 and 15)

G SM

COUNT 64

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 120(1)(a), SECTION 121 READ WITH SECTION 4 AND SECTION 151 OF FIREARMS CONTROL ACT 60 OF 2000 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 4, 13 and 15)

COUNT 65

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 4, 13 and 15)

COUNT 66

HOUSEBREAKING WITH INTENTION TO COMMIT MURDER
(Accused 2,3 and 4)

COUNT 67

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;
(Accused 2,3 and 4)

COUNT 68

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;
(Accused 2,3 and 4)

COUNT 69

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE

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FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION; AND

(Accused 2,3 and 4)

COUNT 70

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 2,3 and 4)

COUNT 71

HOUSEBREAKING WITH INTENTION TO COMMIT MURDER

(Accused 2, 4, 7, 8, 9, 11, 16, 23 and 24)

COUNT 72

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 2, 4, 7, 8, 9, 11, 16, 23 and 24)

COUNT 73

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 2, 4, 7, 8, 9, 11, 16, 23 and 24)

COUNT 74

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117; 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE

E Sm

FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 2, 4, 7, 8, 9, 11, 16, 23 and 24)

COUNT 75

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 2, 4, 7, 8, 9, 11, 16, 23 and 24)

COUNT 76

HOUSEBREAKING WITH INTENTION TO COMMIT MURDER

(Accused 6, 7 and 13)

COUNT 77

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 6, 7 and 13)

COUNT 78

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 6, 7 and 13)

COUNT 79

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 6, 7 and 13)

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COUNT 80

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a), 121 AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 31 OF 1977 – UNLAWFUL POSSESSION OF FIREARM;

(Accused 6, 7 and 13)

COUNT 81

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 6, 7 and 13)

COUNT 82

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a), 121 AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 31 OF 1977 – UNLAWFUL POSSESSION OF FIREARM;

(Accused 6, 7 and 13)

COUNT 83

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 6, 7 and 13)

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COUNT 84

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a), 121 AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 31 OF 1977 – UNLAWFUL POSSESSION OF FIREARM;

(Accused 6, 7 and 13)

COUNT 85

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND SCHEDULE 4 OF ACT 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 6, 7 and 13)

COUNT 86

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE;

(Accused 6, 7 and 13)

COUNT 87

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE;

(Accused 6, 7 and 13)

COUNT 88

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE;

(Accused 6, 7 and 13)

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COUNT 89

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 90

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 91

MURDER; READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 92

ATTEMPTED MURDER READ WITH SECTION 51(2) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

COUNT 93

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 4, 7, 13, 14, 15 and 26)

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COUNT 94

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 95

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 96

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 4, 7, 13, 14, 15 and 26)

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COUNT 97

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 98

CONTRAVENTION OF SECTION 3, READ WITH SECTIONS 1, 103, 117, 120 (1)(A), SECTION AND SECTION 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARM CONTROL ACT, 60 OF 2000 AND FURTHER READ WITH SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 99

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 100

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE;

(Accused 4, 7, 13, 14, 15 and 26)

G SM

COUNT 101

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE;

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 102

THEFT

(Accused 4, 7, 13, 14, 15 and 26)

COUNT 103

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;

(Accused 4, 8, 11, 16, 25 and 26)

COUNT 104

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 4, 8, 11, 16, 25 and 26)

COUNT 105

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 4, 8, 11, 16, 25 and 26)

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COUNT 106

DEFEATING OR OBSTRUCTINGTHE COURSE OF JUSTICE

(Accused 4, 8, 11, 16, 25 and 26)

PART C PREDICATE OFFENCES

COUNT 107

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997 AND READ WITH SECTION 155(1) OF ACT 51 OF 1977

(Accused 4, 8, 10,11 and 15)

COUNT 108

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 4, 8, 10,11 and 15)

COUNT 109

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;

(Accused 4, 8, 10,11 and 15)

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COUNT 110

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE

(Accused 4, 8, 10,11 and 15)

COUNT 111

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997; AND READ WITH SECTION 155(1) OF ACT 51 OF 1977

(Accused 4, 5, 13 and 32)

COUNT 112

DEFEATING OR OBSTRUCTRING THE COURSE OF JUSTICE

(Accused 4, 5, 13 and 32)

COUNT 113

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997 AND READ WITH SECTION 155(1) OF 1977

(Accused 5, 6 and 27)

COUNT 114

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;

(Accused 5, 6 and 27)

COUNT 115

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE

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FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 5, 6 and 27)

COUNT 116

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 5, 6 and 27)

COUNT 117

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997 AND READ WITH SECTION 155(1) OF ACT 51 OF 1977;
(Accused 5, 15 and 25)

COUNT 118

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;
(Accused 5, 15 and 25)

COUNT 119

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 5, 15 and 25)

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COUNT 120	DEFEATING OR OBSTRUCTING THE OF JUSTICE **(Accused 5, 15 and 25)**
COUNT 121	MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997 AND READ WITH SECTION 155(1) OF ACT 51 OF 1977 **(Accused ???)**
COUNT 122	CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM; **(Accused ???)**
COUNT 123	CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION; **(Accused ???)**
COUNT 124	DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE **(Accused ???)**

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COUNT 125

MURDER READ WITH THE PROVISIONS OF SECTION 51(1) OF ACT 105 OF 1997 AND READ WITH SECTION 155(1) OF ACT 51 OF 1977
(Accused 13 and 15)

COUNT 126

CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF A FIREARM;
(Accused 13 and 15)

COUNT 127

CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 103, 117, 120(1)(a) AND 121 FURTHER READ WITH SCHEDULE 4 OF THE FIREARMS CONTROL ACT 60 OF 2000 AND SECTION 250 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 – UNLAWFUL POSSESSION OF AMMUNITION;
(Accused 13 and 15)

COUNT 128

DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE
(Accused 13 and 15)

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G. SUMMARY OF THE CASE

34. The criminal acts of the accused described in the summary of substantial facts were motivated by monetary reward and praises for exceptional performance from the State for solving violent crime, the accused, instead of achieving this purpose by arresting and bringing the alleged criminals before the courts for justice to take its course, they killed the alleged suspects and planted firearms next to the deceased persons to create an impression that their lives were in danger when they killed them. The circumstances under which the alleged suspects were killed, show that the accused acted on the cases described above, at times:

- without the knowledge of the investigating officers assigned to investigate the cases concerned,
- without warrants of arrests,
- without evidence to support the reason for arrest,
- without any need to pursue the deceased persons
- kill the deceased whereas there was ample opportunity to apprehend;
- tamper with the crimes scenes in order to hide the true nature of their criminal acts;
- arrest and release the deceased, after release, pursue the deceased again and kill them;
- kill the deceased despite the High Court Interdict preventing such killing;

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- informing the security company providing body guards for the deceased to remove the said body guards as those body guards will also be in line of fire;

- kill the deceased together with the body, and thereafter inform the security company the result of their failure to heed to the warning of withdrawing the body guard,

- would break into the properties, assault, point firearms and commit theft to whomever is present on scene where they kill the deceased.

- operate in any area which is not under their area of operation and would enter these areas without alerting local police command.

- arrogated powers of 'a tracing unit' without allocated investigating officers.

35. None of these incidents demonstrate that the accused were shot at by the deceased persons or police vehicles were damaged as a result of an attack from the deceased persons. In fact, the facts show that the deceased persons were not in possession of the firearms appearing next to their bodies.

36. No evidence that could prove beyond a reasonable doubt that the deceased persons would have been guilty of the killing of either Superintendent Chonco and/or iNkosi Zondi. The killing of the deceased persons can best be described as 'summary execution' as there was no due process. They were committing crimes instead of solving violent crime.

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H. STATEMENT OF THE LAW

37. Chapter 2 of POCA sets out offences regarding Racketeering. Sub-sections 2(1)(a) – 2(1)(f) require proof of the existence of an **"enterprise"**, **"a pattern of racketeering"**, and **"the accused"**.

38. Section 2(1)(e) of POCA provides that:

Any person who – *"whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity" shall be guilty of an offence.*

39. Section 2(1)(f) provides that:

Any person who – *"manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity" shall be guilty of an offence.*

40. Section 1 of POCA defines the enterprise as including:

"any individual, partnership, corporate, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity".

41. An enterprise is established by proving that it has:

(a) A common or shared purpose

(b) A formal or informal structure

(c) A system of authority

(d) Continuity

42. A pattern of racketeering activity is defined in Section 1 of POCA as:

"the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at

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least two offences referred to in Schedule 1, of which one of the offences occurred within 10 years after the commencement of this Act and the last offence occurred within 10 years [excluding any period of imprisonment] after the commission of such prior offences referred to in Schedule 1"

43. In this matter the relevant sections are Sections 2(1)(e) and 2(1)(f). Accused 1,2,3,4,5,6,7,8,9,10,11,13,14,15,16, 25, 26 and 27 are charged with a contravention of section 2(1)(e). Accused No 1 will be charged with contravening Section 2(1)(f).

44. Accused number 1 and 9 were co-managing the enterprise. As for accused 1 his management is abundantly clear in his Answering Affidavit to the Interdict Application obtained by the deceased **Bongani Mkhize** on 14 November 2008 as well as his visit to a crime scene where the participants in the enterprise had committed crime in his capacity as a Provincial Commander Organised Crime. He also wrote an information note to the Provincial Head: Detective Services for KwaZulu-Natal detailing the circumstances under which **Bongani Mkhize** was killed. He was controlling the affairs of the enterprise. The Provincial Organised Crime of the SAPS constitutes an enterprise within the meaning of Section 1 (1) of POCA. As for accused 9, he was present in the incident at esiKhawini and at Pinetown in his capacity as a commander of the Durban Organised Crime Unit based at Cato Manor.

45. Accused 1,2,3,4,5,6,7,8,9,10,11,13,14,15,16, 25, 26 and 27 were employed by the enterprise. They participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity. The enterprise has continued in **PART A, B** and **C** as described in the proposed indictment. The accused shared together the benefits of the enterprise in the form of monetary rewards and/or certificates of excellence.

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46. All the accused committed more than two offences as set out above. The pattern of racketeering activity contains offences of MURDER, DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE, POSSESSION OF UNLICENSED FIREAMS AND AMMUNITION. The offences are committed in a planned, ongoing, continuous and repeated occurrence. The offences occurred from 2008 to 2011 thus meeting the requirement that at least one offence must have occurred after 1998 and the other within 10 years of the last offence.

47. Therefore, the accused were acting contrary to the provisions of section 205 of the Constitution of South Africa, Act 108 of 1996.

48. They also acted contrary to the Police Standing Orders issued in terms of section 25 of the South African Police Service Act 68 of 1995.

49. The accused cannot justify their acts in terms of common law private defence nor section 49(2) of the Criminal Procedure Act 51 of 1977.

I. POCA RACKETEERING POLICY

50. It will be impossible to charge the accused individually with all the offences they have committed. Charging the accused together outside the ambit of POCA will result in misjoinders. A POCA prosecution will allow the joining of different participating accused which is otherwise not permissible.

51. A POCA prosecution will enable the State to charge the accused with all offences committed through a pattern of racketeering activity, distinctly and separately.

52. Section 2(2) of POCA allows the court to hear evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated against the accused.

53. The planting of the firearms on the crime scene is similar fact evidence.

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J. ANTICIPATED DEFENCES

54. The accused will say that they were defending themselves from attack by the deceased persons, essentially relying on section 49(2) of the Criminal Procedure Act and the Police Standing Order regarding the use of arms.

55. They were not participants in some of the crimes scenes, essentially relying on 'disassociation'.

56. Accused 1 will say he was not on the crime scenes described on the indictment and on the scene of **Magojela Ndimande** and **Sibusiso Tembe** he arrived after the murders were committed.

57. The State will counter these defences with:

- Eyewitnesses
- Ballistics evidence
- Post-Mortem Reports
- Crime Scene Photos
- *modus operandi* demonstrating similar fact
- some of the deceased were not even suspects and were asleep
- They clearly exceeded bounds of self defence
- They received monetary rewards and/or certificates for arrest of violent criminals, whereas in truth, none of the suspects were arrested

K. ASSET FORFEITURE UNIT

58. The matter has not yet been referred to the Asset Forfeiture Unit. There is anticipated financial investigations which will determine the extent of the benefit outside the known SAPS rewards.

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L. CONCLUSION

59. Based on the evidence outlined above, it is recommended that :

(a) Authority be granted for the prosecution of the accused as proposed in the draft indictment; and

(b) Certificates in terms of Section 2(4) of the PREVENTION OF ORGANISED CRIME ACT 121 OF 1998 be issued.

60. *** The proposed indictment is attached.

ADV GS MAEMA
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
NATIONAL PROSECUTION SERVICE

ANNEXURES TO

WITNESS STATEMENT OF GLADSTONE SELLO MAEMA

GSM1	Confirmatory affidavit of Gejengane
GSM2.1	Confirmatory affidavit of Voller
GSM2.2	Confirmatory affidavit of Kopman
GSM2.3	Confirmatory affidavit of Mathenjwa
GSM3	Charge sheet – Ndeleni matter
GSM4	Confirmatory affidavit – Mashuga
GSM5	Letter from State Attorney to Commission
GSM6.1	Van Jaarsveld Rule 3.3 Notice
GSM6.2	E-mail re Van Jaarsveld Rule 3.3 Notice
GSM7.1	McBride Rule 3.3 Notice
GSM7.2	E-mail re McBride Rule 3.3 Notice
GSM8.1	Van Rensburg Rule 3.3 Notice
GSM8.2	E-mail re Van Rensburg Rule 3.3 Notice
GSM9	Opinion of Maema dated 18 June 2014
GSM10	Opinion of Torie
GSM11.1	Opinion of McAdam
GSM11.2	Transcribed record between Miothswa and Chairperson
GSM12	Memorandum dated 8 April 2016
GSM13	Complaint of Van Loggerenberg
GSM14	Outcome of investigation
GSM15	Memorandum from Maema to Simelane dated 3 February 2010
GSM16	First report dated 22 January 2014
GSM17	Second report dated 18 March 2014
GSM18	Memorandum from Van Zyl dated 27 June 2014
GSM19	Charge Sheet of Khuba, Sesoko and McBride for defeating the ends of justice and fraud
GSM20	Decision not to prosecute McBride.
GSM21	Memorandum dated 2 February 2007 (Annexure B of A137 in the

	docket)
GSM22	Statement of Jonker
GSM23	Memorandum 5 March 2014
GSM24	Transcribed record of argument
GSM25	Application for leave to appeal
GSM26	Maema notes – 25 March 2014
GSM27	Acknowledgment of receipt of request for further particulars
GSM28	Extract from Nxasana's evidence
GSM29	Explanatory affidavit of Jiba
GSM30	Van Niekerk
GSM31	Photos of equipment

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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

IN RE: **APPLICATION OF GLADSTONE SELLO MAEMA ("THE APPLICANT"), FOR CONDONING THE LATE FILING OF THE AFFIDAVIT AND THE APPLICATION FOR LEAVE TO CROSS-EXAMINE GENERAL JOHAN BOOYSEN ("BOOYSEN"), ROBERT McBRIDE ("McBRIDE"), HELEN ELIZABETH VAN JAARSVELD ("VAN JAARSVELD"), KAREN HELEN VAN RENSBURG ("VAN RENSBURG"), CYRIL SIMPHIWE MLOTSHWA ("MLOTSHWA"), MATTHEWS SESOKO ("SESOKO"), MXOLISI SANDILE OLIVER NXASANA ("NXASANA") AND INNOCENT HUMBULANI KHUBA ("KHUBA") IN TERMS OF RULE 11.2 READ WITH RULE 3.3.6 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE RULES OF THE COMMISSION")**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

NOLUSINDISO GEJENGANE

do hereby declare under oath and state that: -

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1. I am an adult male duly admitted Attorney, employed as such at the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts herein contained in this affidavit are within my personal knowledge and unless stated to the contrary or is evident from the context, are to the best of my knowledge and belief both true and correct.

3. I have read the witness affidavit deposed to by **GLADSTONE SELLO MAEMA** together with annexures and confirm the correctness and veracity of the contents thereof insofar as same relates to me.

NOLUSINDISO GEJENGANE

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 17th day of **MAY 2021** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

THOMAS KHAZAMOLA BALOYI
PRACTISING ATTORNEY - RSA
COMMISSIONER OF OATHS
23 BUREAU LANE STREET
OFFICE 301, CENTENARY
BUILDING PRETORIA
DATE: 17TH, MAY, 2021

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GSM2.3

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

***IN RE*:** **APPLICATION OF GLADSTONE SELLO MAEMA ("THE APPLICANT"), FOR CONDONING THE LATE FILING OF THE AFFIDAVIT AND THE APPLICATION FOR LEAVE TO CROSS-EXAMINE GENERAL JOHAN BOOYSEN ("BOOYSEN"), ROBERT McBRIDE ("McBRIDE"), HELEN ELIZABETH VAN JAARSVELD ("VAN JAARSVELD"), KAREN HELEN VAN RENSBURG ("VAN RENSBURG"), CYRIL SIMPHIWE MLOTSHWA ("MLOTSHWA"), MATTHEWS SESOKO ("SESOKO"), MXOLISI SANDILE OLIVER NXASANA (*"NXASANA"*) AND INNOCENT HUMBULANI KHUBA ("KHUBA") IN TERMS OF RULE 11.2 READ WITH RULE 3.3.6 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE RULES OF THE COMMISSION")**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

KHULEKANI RAYMOND MATHENJWA

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do hereby declare under oath and state that: -

1. I am an adult male Advocate employed at the National Prosecuting Authority (*"NPA"*) as a Senior Deputy Director of Public Prosecutions *("SDDPP")* and attached to the office of the Director of Public Prosecutions, Gauteng Local Division, Johannesburg, situated at Innes Chambers Building, Cnr Pritchard & Kruis Streets, Johannesburg.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.

3. I have read the witness statement in terms of Rule 3.4 of **GLADSTONE SELLO MAEMA** and confirm the contents thereof insofar as same relates to me.

K R MATHENJWA

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 17th day of MAY 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

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COMMISSIONER OF OATHS

THOMAS KHAZAMOLA BALOYI
PRACTISING ATTORNEY - RSA
COMMISSIONER OF OATHS
23 BUREAU LANE STREET
OFFICE 301, CENTENARY
BUILDING PRETORIA

DATE: 17th, MAY, 2021

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IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST HIGH COURT, MAFIKENG)

The Director of Public Prosecutions for the North West High Court , Mmabatho, of the High Court of South Africa, who prosecutes for and on behalf of the State, hereby informs the Honourable Court that:

1. **NDLELENI, NGONGOMA**
   A fifty-one (51) year old male, residing at house no. 1283 Bokamoso RDP Houses, Tlhabane;

2. **MGAMPE, SIMAMA**
   A fifty-four (54) year old male, residing at Room 204, Ntabeni Hostel, Zakhele, Tlhabane;

3. **CHAUKE, FRANCISCO LUCAS**
   A thirty-eight (38) year old male, residing at house no B3, Zakhele Squatter Camp, Tlhabane;

4. **MACHOKO, NOMVULA**
   A forty-eight (48) year old female, residing at house no D23, Sifikile Squatter Camp, Swartklip, Northam;

5. **BLAYI, NOWATILESI**
   A fifty (50) year old female, residing at house no D81, Quoecheza Squatter Camp, Swartklip, Northam.

(Hereinafter referred to as the accused)

are guilty of the crimes of

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RACKETEERING OFFENCES:

COUNT 1: Accused 1 only

Contravening Section 2(1) (f) read with Sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Managing an Enterprise conducted through a pattern of racketeering activity for the period February 2008 to June 2008.

COUNT 2: All Accused

Contravening Section 2(1) (e) read with Sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Participating in the conduct of an Enterprise through a pattern of racketeering activity.

PREDICATE OFFENCES:

COUNTS 3 – 27: Accused as indicated in Column 3 of Annexure "A"

Theft read with Schedule 1 of the Prevention of Organised Crime Act, Act 121 of 1998 and read with Section 51(2) (a) of The Criminal Law Amendment Act, Act 105 of 1997.

COUNTS 28 – 52: Accused as indicated in Column 3 of Annexure "A"

Contravening Section 4(1), read with Sections 1, 20(1)(a) and 21 of the Precious Metals Act, Act 37 of 2005, and read with Schedule 1 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Acquiring, possessing or disposing of an unwrought precious metal.

COUNT 53: Accused 1 only

Contravening Section 4, read with Sections 1, 8 and Schedule 1 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Money Laundering

ALTERNATIVE TO COUNT 53: Accused 1 only

Contravening Section 5, read with Sections 1, 8 and Schedule 1 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Assisting another to benefit from proceeds of unlawful activities.

COUNTS 54 – 78: Accused as indicated in Column 3 of Annexure "B"

Contravening Section 6, read with Sections 1, 8 and Schedule 1 of the Prevention of Organised Crime Act, Act 121 of 1998 –
Acquisition, possession or use of proceeds of unlawful activities.

PREAMBLE

WHEREAS
The Prevention of Organised Crime Act, Act 121 of 1998 (hereinafter referred to as The Act) defines in Section 2 thereof various criminal offences with regard to racketeering;

AND WHEREAS
Section 1(1) of the Act states an "Enterprise" includes

> *". . . ..any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity";*

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AND WHEREAS

Section 1(1) of the Act further states that a "Pattern of racketeering activity" means the

> *"...planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1";*

AND WHEREAS

The Act provides that any person who manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity is guilty of anoffence;

AND WHEREAS

The Act provides that any person who, whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such Enterprise's affairs through a pattern of racketeering activity, is guilty of an offence;

AND WHEREAS

The State alleges that:

1. Accused 1 is employed as a construction contractor at Impala Mine, Rustenburg and conducted an illegal business by facilitating the selling

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of a substance containing unwrought precious metals in the form of so called "matte", to an agent authorized in terms of Section 252A of Act 51 of 1977.

2. Accused 1 facilitated the sale of the matte between the mentioned agent and other individuals including, but not limited to, Accused 2 to 5, on different dates and at various places.

3. Accused 1 was involved in twenty five such transactions. All the transactions were initiated by accused 1.

4. Accused 2 to 5, on various occasions acted, either individually or together with another accused or unknown person, together with Accused 1 in fourteen of the said twenty five transactions.

5. Accused 1 acted individually or together with other unknown person/(s), in eleven of the twenty five transactions.

6. Accused 1 individually managed the business and at all relevant times individually formed an Enterprise as defined in Section 1 of the Act.

7. All the accused and other persons, known and unknown to the State as mentioned above, were directly or indirectly involved with the transactions and participated in the conduct of the affairs of the Enterprise and/or were employed by and/or associated with the Enterprise.

8. The accused committed the respective acts set out in counts 3 to 78 below which constitute the pattern of racketeering activities.

9. The accused committed the offences as set out in counts 3 to 78 below in order to benefit the Enterprise, its manager, members, employees and persons directly and indirectly involved therein.

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NOW THEREFORE THE ACCUSED ARE GUILTY OF THE FOLLOWING OFFENCES:

COUNT 1: (Accused 1 only)

Managing an Enterprise conducted through a pattern of racketeering activities

IN THAT prior to and during the period of February 2008 until June 2008, and at or near ZAKHELE and/or NKANINI and/or BLESKOP and/or BOKAMOSO in the district of TLHABANE and/or at or near SWARTKLIP in the district of NORTHAM, the accused unlawfully managed the operations or activities of the enterprise, and knew or reasonably ought to have known, that any person to wit, Accused 2 to 5, and other persons known and unknown to the State, whilst employed by or associated with that enterprise, conducted or participated in the conduct, directly or indirectly, in such enterprise's affairs through a pattern of racketeering activity as set out in counts 3 to 78 below.

COUNT 2: (All accused)

Participating in the conduct of an enterprise through a pattern of racketeering activities

IN THAT the accused prior to but including February 2008 to June 2008, and at or near ZAKHELE and/or NKANINI and/or BLESKOP and/or BOKAMOSO in the district of TLHABANE, and/or at or near SWARTKLIP in the district of NORTHAM, unlawfully, whilst managing or employed by or associated with the enterprise as defined above, conducted or participated in the conduct, directly or indirectly, of the enterprise's affairs through a pattern of racketeering activity as set out in counts 3 to 78 below.

COUNTS 3 – 27: (Accused as indicated in Column 3 of Annexure "A")

Theft

IN THAT upon or about the date as in Column 4 of Annexure "A", and at or near the place and district as in Column 5 of Annexure "A", the said accused did unlawfully and intentionally steal a substance containing unwrought precious metals, which substance was of the weight as mentioned in Column 6 of Annexure "A" and contained the mass of precious metals as mentioned in Column 7 of Annexure "A" and was to the value as mentioned in Column 8 of Annexure "A", the property or in the lawful possession of Anglo Platinum Mine and/or Impala Mine.

COUNTS 28 – 52: (Accused indicated as in Column 3 of Annexure "A")

Acquiring, possessing or disposing of an unwrought precious metal

IN THAT on or about the date as in Column 4 of Annexure "A" and at or near the place and district as in Column 5 of Annexure "A", the accused did unlawfully and intentionally acquire, possess or dispose of, either as principal or as agent, a substance containing unwrought precious metals, which substance was of the weight as mentioned in Columns 6 of Annexure "A" and contained the mass of precious metals as mentioned in Column 7 of Annexure "A" and was to the value as mentioned in Column 8 of Annexure "A", without

(a) being a holder of a refining license;
(b) being an authorized dealer;
(c) being a producer who has won or recovered such unwrought precious metal;

(d) having obtained a certificate from the Regulator authorising him or her to acquire or to dispose of such unwrought precious metal;

(e) such unwrought precious metal exceeding a prescribed mass and being acquired in accordance with a special permit issued by the Regulator for scientific or beneficiation purposes or to make jewellery; or

(f) being the holder of a precious metal beneficiation licence and acting in accordance with the terms and conditions of his or her licence.

COUNT 53: (Accused 1 only)

Money Laundering

IN THAT the Accused prior to but including 7 February 2008 to 11 June 2008 and at or near ZAKHELE and/or BLESKOP and/or BOKAMOSO and/or NKANINI in the district of TLHABANE and/or at or near SWARTKLIP in the district of NORTHAM, unlawfully, whilst he knew or ought reasonably to have known that property to wit the substances containing unwrought precious metals (as set out in Count 28 to 52 in Annexure "A") was the proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities, facilitated transactions between accused 2 to 5 and/or other person/(s) in arranging for a buyer for the abovementioned substances containing unwrought precious metals, for or on behalf of the enterprise; and that this conduct of the accused had the effect of concealing or disguising the nature, source, location, disposition or movement of the said property (substances) or the ownership thereof and therefore enabled or assisted any person who has committed an offence in respect of the said property (substances) to avoid prosecution or to remove or diminish such property, which was acquired, directly or indirectly, as a result of the commission of an offence.

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ALTERNATIVE TO COUNT 53: (Accused 1 only)

Assisting another to benefit from the proceeds of unlawful activities

IN THAT the Accused prior to but including 7 February 2008 to 11 June 2008 and at or near ZAKHELE and/or BLESKOP and/or BOKAMOSO and/or NKANINI in the district of TLHABANE and/or at or near SWARTKLIP in the district of NORTHAM, unlawfully received substances containing unwrought precious metals (as set out in Counts 28 to 52 in Annexure "A") from either accused 2 to 5 and/or known or unknown person/(s), whilst he knew or ought reasonably to have known that the said accused and/or person/(s) had obtained such property (substances) being the proceeds of unlawful activities and that accused 1 there after entered into an agreement/(s) with the said accused and/or person/(s) and the agent (as the buyer of the said substances), whereby accused 1 utilised the above mentioned proceeds of unlawful activities namely the substances containing unwrought precious metals which was sold, and thereby he made funds available to the said accused and/or person/(s) which resulted in a benefit to the said accused and/or person/(s).

COUNTS 54 – 78: (Accused as indicated in Column 3 of Annexure "B")

Possession or use of the proceeds of unlawful activities

IN THAT on the date as in Column 3 in Annexure "B" and at or near the place and district as in Column 4 in Annexure "B", the accused unlawfully acquired and/or used and/or possessed property to wit money with values as in Column 5 of Annexure "B", which he/they received as payment for selling substances containing unwrought precious metals, whilst knowing or reasonably ought to have known that such property (namely the money

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he/they received) formed part of the proceeds of unlawful activities (namely the selling of substances containing unwrought precious metals) of accused 2 to 5 and/or other person/(s).

Wherefore upon due conviction the said Director of Prosecutions will ask that the accused persons be dealt with in accordance with the law.

J.J. SMIT SC
DIRECTOR OF PUBLIC PROSECUTIONS
NORTH WEST

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ANNEXURE "A"

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Count no.	Count no.	Accused no.	Date	Place & District	Total weight (kg)	PGM mass (grams)	Value (Rand)
3	28	1, 2 & 3	07/02/2008	Zakhele, Tlhabane	81.8	120.08	56 908.00
4	29	1 & 2	07/02/2008	Bleskop, Tlhabane	32.7	68.5	27 971.00
5	30	1 & 2	07/02/2008	Bleskop, Tlhabane	22.519	32.060	21 411.00
6	31	1 & 3	12/02/2008	Zakhele, Tlhabane	121.9	11.56	3460.00
7	32	1 & 3	17/02/2008	Zakhele, Thlabane	174.9	151.56	73 305.00
8	33	1 & 3	05/03/2008	Zakhele, Tlhabane	108.6	88.64	41 887.00
9	34	1 & 3	13/03/2008	Zakhele, Tlhabane	157.3	62.98	33 063.00
10	35	1	13/03/2008	Zakhele, Tlhabane	79.8	19.059	8383.00
11	36	1 & 3	14/03/2008	Zakhele, Tlhabane	61.00	30.37	14 412.00
12	37	1 & 3	24/03/2008	Zakhele, Tlhabane	172.00	159.07	78 346.00
13	38	1	24/03/2008	Zakhele, Tlhabane	32.300	60.250	33 614.00
14	39	1	27/03/2008	Zakhele, Tlhabane	145.00	198.675	97 867.00
15	40	1	08/04/2008	Zakhele, Tlhabane	78.20	101.010	48 003.00
16	41	1	08/04/2008	Zakhele, Tlhabane	53.600	52.680	25 640.00
17	42	1 & 4	10/04/2008	Swartklip, Northam	278.60	96.42	46 445.00
18	43	1 & 5	10/04/2008	Swartklip, Northam	63.80	90.61	48 052.00
19	44	1 & 3	15/04/2008	Zakhele, Tlhabane	116.80	31.60	14 157.00
20	45	1	29/04/2008	Swartklip, Northam	200.1	104.610	47 852.00
21	46	1 & 5	29/04/2008	Swartklip, Northam	97.60	18.580	9088.00
22	47	1	29/04/2008	Swartklip, Northam	79.90	45.51	19 974.00
23	48	1	07/05/2008	Zakhele, Tlhabane	50.60	42.20	18 884.00
24	49	1	07/05/2008	Bokamoso, Tlhabane	15.00	12.055	5842.00
25	50	1, 4 & 5	23/05/2008	Swartklip, Northam	700.50	274.60	149 681.00
26	51	1	11/06/2008	Zakhele,Tlhabane	72.400	65.850	31 330.00

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27	52	1	11/06/2008	Nkanini, Tihabane	74.00	16.49	7741.00
						TOTAL:	963 316.00

ANNEXURE "B"

Column 1	Column 2	Column 3	Column 4	Column 5
Count no.	Accused no.	Date	Place & District	Amount paid over
54	1, 2 & 3	07/02/2008	Zakhele, Tlhabane	1700.00
55	1 & 2	07/02/2008	Bleskop, Tlhabane	660.00
56	1 & 2	07/02/2008	Bleskop, Tlhabane	500.00
57	1 & 3	12/02/2008	Zakhele, Tlhabane	500.00
58	1 & 3	17/02/2008	Zakhele, Thlabane	5220.00
59	1 & 3	05/03/2008	Zakhele, Tlhabane	3351.00
60	1 & 3	13/03/2008	Zakhele, Tlhabane	3180.00
61	1	13/03/2008	Zakhele, Tlhabane	1160.00
62	1 & 3	14/03/2008	Zakhele, Tlhabane	1525.00
63	1 & 3	24/03/2008	Zakhele, Tlhabane	4325.00
64	1	24/03/2008	Zakhele, Tlhabane	800.00
65	1	27/03/2008	Zakhele, Tlhabane	2935.00
66	1	08/04/2008	Zakhele, Tlhabane	1950.00
67	1	08/04/2008	Zakhele, Tlhabane	1320.00
68	1 & 4	10/04/2008	Swartklip, Northam	5560.00
69	1 & 5	10/04/2008	Swartklip, Northam	1260.00

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70	1 & 3	15/04/2008	Zakhele, Tlhabane	2340.00
71	1	29/04/2008	Swartklip, Northam	5025.00
72	1 & 5	29/04/2008	Swartklip, Northam	1940.00
73	1	29/04/2008	Swartklip, Northam	1600.00
74	1	07/05/2008	Zakhele, Tlhabane	1500.00
75	1	07/05/2008	Bokamoso, Tlhabane	350.00
76	1, 4 & 5	23/05/2008	Swartklip, Northam	14 020.00
77	1	11/06/2008	Zakhele, Tlhabane	1800.00
78	1	11/06/2008	Nkanini, Tlhabane	1825.00
			TOTAL	**66 346.00**

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SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF ACT 51 OF 1977

A COUNT 1 AND 2: RACKETEERING OFFENCES

1. Accused 1 was employed as a construction contractor at Impala Mine, and resided in the Mfidikwe-area where it was a well-known fact that he conducted an illegal business by dealing in substances containing unwrought precious metals in the form of so called "matte".

2. Accused 1 was the manager of the business. He worked together with various other persons, including *Inter alia* Accused 2 to 5, who at times supplied Accused 1 with substances containing unwrought precious metals, the so called "matte".

3. From February 2008 until June 2008, Accused 1 conducted his business by acquiring as much as possible of the said substances containing unwrought precious metals, with the objective of selling same for economical gain. During this period, accused 1 was personally involved in all twenty five transactions. During this period accused 1 as an individual therefor formed the enterprise of the business.

4. On each occasion when Accused 1 had some of the said substance available, he would set up a meeting with the police agent with the aim to sell same to him.

5. On each occasion, the agent and Accused 1 travelled together to the location where the substance would be collected. At this

location, one and/or more of the other accused or person/(s) unknown to the State, supplied the substance to Accused 1.

6. After the completion of the transaction, Accused 1 divided the money received from the agent between himself and the other accused and/or helper.

7. Accused 2 participated in the conduct of the Enterprise and was either directly or indirectly involved therein and/or was employed by the Enterprise. He was involved in three transactions together with Accused nos. 1, 3 and the police agent, after which his involvement with the Enterprise terminated.

8. Accused 3 participated in the conduct of the Enterprise and was either directly or indirectly involved therein and/or was employed by the Enterprise. He was involved in eight transactions together with Accused nos. 1 and 2 and the police agent.

9. Accused 4 participated in the conduct of the Enterprise and was either directly or indirectly involved therein and/or was employed by the Enterprise. She was involved in two transactions together with Accused no. 1, 5 and the police agent.

10. Accused 5 is the other woman involved in the Enterprise. She participated in the conduct of the Enterprise and was either directly or indirectly involved therein and/or was employed by the Enterprise. She was involved in three transactions together with Accused no. 1, 4 and the police agent.

B <u>COUNTS 3 TO 27: THEFT CHARGES</u>

11. The theft charges refer to the substances containing unwrought precious metals ("matte), which was sold to the agent.

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12. The weight of the stolen substances is set out in Column 6 of Annexure "A" and the mass of precious metals is set out in Column 7 of Annexure "A".

C COUNTS 28 TO 52: ACQUIRING, POSSESSION OR DISPOSAL OF AN UNWROUGHT PRECIOUS METAL

13. These counts relate to the same substances containing unwrought precious metals ("matte"), which were sold to the agent.

14. The Enterprise, through its members, committed theft alternatively, received stolen substances containing unwrought precious metals as such unwrought precious metals may not be acquired, possessed or disposed of without the proper authorization as required by the Precious Metals Act, Act 37 of 2005.

D COUNT 53: MONEY LAUNDERING

15. This count relates to the substances containing unwrought precious metals which were supplied to Accused 1, where after he sold same to the agent.

16. This count refers to the total weight of the substances containing unwrought precious metals involved in all twenty five transactions, the total weight being 3069.799 kg (as set out individually in Column 6 of Annexure "A").

17. Due to the very nature of Accused 1's activities in the illegal business, he knew or ought reasonably to have known that the substances (the so called "matte") formed part of the proceeds of unlawful activities, namely theft.

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18. In spite of such knowledge, Accused 1 sold the substances to the agent in order to conceal or disguise the fact that the said substances were stolen and to ensure that detection of such theft is untraceable.

19. The money accused 1 received through the sale of the substances benefited himself and the other accused and ensured a financial benefit from their illegal activities.

E COUNTS 54 TO 78: ACQUISITION, POSSESSION OR USE OF THE PROCEEDS OF UNLAWFUL ACTIVITIES

20. These counts relate to the accused receiving money from the agent in return for the supply of the substances (so called "matte"), whilst such substances were stolen.

21. By participating in the sale of the substances and receiving money in return, the accused knew or ought reasonably to have known that such money forms part of the proceeds of unlawful activities of another person, namely the initial theft of the substances (so called "matte") by the accused themselves and/or by other persons.

F GENERAL

22. At all relevant times the accused and others (namely the persons described above), acted in furtherance of a prior criminal agreement and/or a common purpose to commit the offences as set out above, excluding count 53.

23. Precisely when, where, how and/or in what manner the agreement and/or the common purpose were formed, or who all the parties thereto were, is at present unknown to the State. The State, however, alleges that the agreement and/or the common purpose

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was in existence at the latest, shortly before, and continued for the duration of, the commission of the said offences.

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LIST OF WITNESSESS (read withSection 144(3)(iii) of Act 51 of 1977)

1. Warrant Officer Ismael Tony Molefe
   South African Police Service
   Crime Intelligence Gathering
   Port Elizabeth

2. Warrant Officer Faan van Dyk
   South African Police Service
   Organised Crime Unit
   Rustenburg

3. Warrant Officer Vanessa Meyer
   South African Police Service
   Organised Crime Unit
   Rustenburg

4. Johan Mocke
   Anglo Platinum Mine
   Rustenburg

5. Captain M.B. Ditshego
   South African Police Service
   Forensic Science Laboratory
   Pretoria

6. Warrant Officer A. Mphaphuli
   South African Police Service
   Forensic Science Laboratory
   Pretoria

7. Sergeant T. Masilela
   South African Police Service
   Forensic Science Laboratory
   Pretoria

8. Sergeant Z. Krein
   South African Police Service
   Forensic Science Laboratory
   Pretoria

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9. Sergeant B. Mangaye
South African Police Service
Forensic Science Laboratory
Pretoria

10. Sergeant T.C. Magadagela
South African Police Service
Forensic Science Laboratory
Pretoria

11. Sergeant M. J. van Raditsebe
South African Police Service
Forensic Science Laboratory
Pretoria

12. Sergeant D. Madiseng
South African Police Service
Forensic Science Laboratory
Pretoria

13. Sergeant D. T. Rathidili
South African Police Service
Forensic Science Laboratory
Pretoria

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GSM 5

Office of the State Attorney
Pretoria

Private Bag X 91
PRETORIA
0001

Salu Building
Ground Floor
Cnr Thabo Sehume & Francis Baard Str

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1564
(Secretary): (012) 309 1566
Fax: (General) (012) 309 1649/50

23rd JANUARY 2020

Enquires: MR L KOPMAN
Email: lkopman@justice.gov.za

My Ref: Kopman
Your Ref: NEW MATTER

ZONDO COMMISSION OF ENQUIRY
EVIDENCE LEADERS

Attention: Mr L Groenewald

CC: Ms Shannon Van Vuuren

We refer to the above matter and confirm that we are representing the following NPA officials.

THe follwoing NPA personnel are seeking opportunity to cross examine Mr Mcbride and Booysen.

1. George D. Baloyi
2. Ivy Thenga
3. Sibongile Mzinyathi
4. Anthony Mosing
5. Sello G.Maema
6. Torie Pretorius
7. Adelaide M.A. Modubu
8. Raymond R. Mathenjwa
9. Moipone Noko
10. Matric Lupondo
11. Bulelwa B. Vimbani
12. Marshall Mokgatlhe
13. Molatlhwa M. Mashuga

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Please be advised that there is a real likelihood that this list may be extended to include other NPA personnel as a result of the evidence that has been provided by Mr Johan van Loggerenberg and instructions to make application to cross examine Mr Loggerenberg may be forthcoming shortly.

Regards.

L KOPMAN
For: State Attorney (PRETORIA)

GSM6.1

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17 Empire Road,
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Web: www.sastatecapture.org.za

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

NOTICE IN TERMS OF RULE 3.3

TO : **Advocate Sello Maema**

EMAIL : gsmaema@npa.gov.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

1 The Commission's Legal Team intends to present the evidence of **Advocate Helen Elizabeth Van Jaarsveld ("Van Jaarsveld")** at its hearing held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of Van Jaarsveld's evidence will commence on a date to be confirmed at a later stage. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.

2 The allegations set out in the evidence of Van Jaarsveld, which when read with the affidavits of Mr Robert McBride, Advocate Karen Van Rensburg and Mr Gustav Nauhaus (which will be sent to you with separate notices in terms of Rule 3.3 of the Commission's rules), implicate or may implicate you in, *inter alia*, allegedly participating in various acts of corruption, bribery, fraud, money laundering and/or tax evasion. In amplification it is alleged that:

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2.1 You were involved in an alleged investigation into a security breach at Sable Hills Waterfront Estate, a residential estate in which former Acting National Police Commissioner, Lieutenant General Phahlane ("**Phahlane**") resided.

2.2 The investigation was being conducted by Major General Mabula ("**Mabula**"), Brigadier Ncube ("**Ncube**"), Brigadier Kgorane ("**Kgorane**"), Lieutenant Colonel Dawood ("**Dawood**") and Colonel Reddy ("**Reddy**") under Potchefstroom Enquiry 1/11/2016 ("the Investigation").

2.3 The Investigation had as its objectives *inter alia*:

2.3.1 the undermining of a criminal investigation being conducted by the Independent Police Investigative Directorate ("**IPID**") against Phahlane; and

2.3.2 the ascertainment of the details of an investigation conducted by Mr Paul O'Sullivan ("**O'Sullivan**") and Ms Sarah-Jane Trent ("**Trent**") into alleged criminal activity by Phahlane, including the identity of the sources of their information.

2.4 In furtherance of the aforesaid objectives and on or about 7 December 2016, Dawood requested that you assist and guide him in obtaining a subpoena in terms of Section 205 of the Criminal Procedure Act of 1977, for "all call related information, IMEI mapping and RICA details" in respect of the cell phones of O'Sullivan and Trent.

2.5 You assisted Dawood in obtaining the aforesaid subpoena.

3 The statement of **Van Jaarsveld** which implicates or may implicate you in the above allegations is annexed hereto marked "**A**". Your attention is drawn to the entire statement.

4 **Annexure HJ1 to HJ4** to the statement of Van Jaarsveld which implicate/s or may implicate you in the above allegations are annexed hereto marked "**B**".

5 Due to the fact that you are implicated or may be implicated by the evidence of Van Jaarsveld, you are entitled to attend the hearing at which that evidence is being presented.

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You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Van Jaarsveld will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.

8 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

9 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

10 Please take note that even if you do not make an application under Rule 3.4:

10.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

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10.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.

11 The witness statement and annexures provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.

12 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht and Ms Shannon van Vuuren at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 11th DAY OF JANUARY 2021

Prof Itumeleng Mosala
SECRETARY
Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State

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GSM6.2

Johanna Nel

From:	Sello G.Maema <gsmaema@npa.gov.za>
Sent:	Thursday, 25 March 2021 12:22 PM
To:	Johanna Nel
Subject:	FW: van Jaarsveld//Rule 3.3// Maema S
Attachments:	Van Jaarsveld Rule 3.3 (GH) - Maema S (1.1.21).pdf; Annexure 'B' (HJ3).pdf; Annexure 'B' (HJ4).pdf; Annexure 'A'.pdf; Annexure 'B' (HJ1).pdf; Annexure 'B' (HJ2).pdf

From: Secretary <Secretary@commissionsc.org.za>
Sent: Tuesday, January 12, 2021 4:32 PM
To: Sello G.Maema <gsmaema@npa.gov.za>
Cc: Secretary <Secretary@commissionsc.org.za>
Subject: van Jaarsveld//Rule 3.3// Maema S

Dear Sir /Madam,

Please find the attached Rule 3.3 Notice in respect of Ms van Jaarsveld 's evidence for your attention.

As referred to in the Rule 3.3 Notice, please also find Annexure A and B attached hereto.

Please note that the Commission is required to comply with all COVID-19 Regulations. Please advise the Secretariat 48 hours in advance at Secretary@commissionsc.org.za if you elect to attend. Protocols, procedures and arrangements in place at the hearing venue will then be communicated to you.

Kindly acknowledge receipt hereof and contact the Secretariat regarding any queries that you may have.

Yours faithfully,

Secretariat
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 2nd Floor, 17 Empire Road, Parktown,
Johannesburg, 2193, Gauteng South Africa,
Email: Secretary@commissionsc.org.za
Website: www.sastatecapture.org.za

Confidentiality and Disclaimer

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The National Prosecuting Authority of South Africa

ESM

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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

NOTICE IN TERMS OF RULE 3.3

TO : ADV SELLO MAEMA

EMAIL : gsmaema@npa.gov.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

1 The Commission's Legal Team presented the evidence of **MR ROBERT McBRIDE** ("**Mr McBride**") on 11, 12, 15 and 16 April 2019. The evidence of Mr McBride, when read together with the evidence of other witnesses, including Advocate Karen van Rensburg, Advocate Helen van Jaarsveld and Mr Gustav Nauhaus, implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.

2 The allegations set out in the affidavit of Mr McBride, read together with the affidavit of Mr Gustav Nauhaus and Ms van Jaarsveld (which have been sent to you as part of a separate Rule 3.3 notice) that implicate or may implicate you in, *inter alia*, allegedly participating in various acts of corruption, bribery, fraud, money laundering and/or tax evasion. In amplification, it is alleged that:

2.1 You improperly and/or unlawfully sought to-

2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority ("NPA"), the Independent Police Investigative

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Directorate ("**IPID**") and/or the Directorate for Priority Crime Investigation ("**DPCI**") commonly known as the Hawks;

2.1.2 unduly delay and/or decline recommended prosecutions;

2.1.3 participate in the undue persecution of officials of the NPA, IPID and/or the DPCI; and

2.1.4 destabilise the NPA, IPID and/or the DPCI.

2.2 In acting as set out above, you allegedly sought to enable the state capture of the criminal justice system.

3 The statement of Mr McBride which implicates or may implicate you in the above allegations is annexed hereto marked "A". Your attention is drawn to **paragraphs 14, 50, 78 and 87 to 118.**

4 **Annexures Q, R and S** to the statement of Mr McBride which implicate or may implicate you in the above allegations are annexed hereto marked "B".

5 Due to the fact that you are implicated or may be implicated by the evidence of Mr McBride, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr McBride will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

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7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.

8 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

9 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

10 Please take note that even if you do not make an application under Rule 3.4:

10.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

10.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.

11 The witness statement and annexures provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.

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12 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 5th DAY OF FEBRUARY 2021

PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

Gsm72

Johanna Nel

From: Sello G.Maema <gsmaema@npa.gov.za>
Sent: Thursday, 25 March 2021 12:19 PM
To: Johanna Nel
Subject: FW: McBride 2 //Rule 3.3//Maema S
Attachments: Annexure 'A'.pdf; Annexure 'B' (Annexure 'Q').pdf; Annexure 'B' (Annexure 'R').pdf; Annexure 'B' (Annexure 'S').pdf; McBride 2 Rule 3.3 Maema Adv Sello.pdf

From: Secretary <Secretary@commissionsc.org.za>
Sent: Friday, February 5, 2021 3:33 PM
To: Sello G.Maema <gsmaema@npa.gov.za>
Cc: Secretary <Secretary@commissionsc.org.za>
Subject: McBride 2 //Rule 3.3//Maema S

Dear Sir/Madam

Please find the attached Rule 3.3 Notice in respect of Mr McBride 's evidence for your attention.

As referred to in the Rule 3.3 Notice, please also find Annexures A and B attached hereto.

Please note that the Commission is required to comply with all COVID-19 Regulations. Please advise the Secretariat 48 hours in advance at Secretary@commissionsc.org.za if you elect to attend. Protocols, procedures and arrangements in place at the hearing venue will then be communicated to you.

Kindly acknowledge receipt hereof and contact the Secretariat regarding any queries that you may have.

Yours faithfully,

Secretariat
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 2nd Floor, 17 Empire Road, Parktown,
Johannesburg, 2193, Gauteng South Africa,
Email: Secretary@commissionsc.org.za
Website: www.sastatecapture.org.za

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The National Prosecuting Authority of South Africa

ESM

gsm 8.1

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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

NOTICE IN TERMS OF RULE 3.3

TO : ADV SELLO MAEMA

EMAIL : gsmaema@npa.gov.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

1 The Commission's Legal Team intends to present the evidence of **ADV KAREN HELEN VAN RENSBURG ("Adv van Rensburg")** at its hearing held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of Adv van Rensburg's evidence will commence on a date to be confirmed at a later stage. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.

2 The allegations set out in the evidence of Adv van Rensburg, which when read with the affidavit of Robert McBride, Helen van Jaarsveld and Gustav Nauhaus (which will be sent to you with a separate notice in terms of Rule 3.3 of the Commission's rules), implicate or may implicate you in, *inter alia*, allegedly participating in various acts of corruption, bribery, fraud, money laundering and/or tax evasion. In amplification, it is alleged that you were participated with an investigating unit, commonly referred to as the Mabulu Team, and that you together with the Mabula Team, either collectively or individually and as part of a common purpose:

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2.1 Assisted the Mabula Team in an investigation into a security breach at Sable Hills Waterfront Estate, a residential estate in which former Acting National Police Commissioner, Lieutenant General Phahlane ("**Phahlane**") resided.

2.2 The investigation was being conducted by Major General Mabula ("**Mabula**"), Brigadier Ncube ("**Ncube**"), Brigadier Kgorane ("**Kgorane**"), Lieutenant Colonel Dawood ("**Dawood**") and Colonel Reddy ("**Reddy**") under Potchefstroom Enquiry 1/11/2016 ("**the Investigation**").

2.3 The Investigation, to your knowledge and with your assistance, had as its objectives *inter alia*:

2.3.1 the undermining of a criminal investigation being conducted by the Independent Police Investigative Directorate ("**IPID**") against Phahlane; and

2.3.2 the ascertainment of the details of an investigation conducted by Mr Paul O'Sullivan ("**O'Sullivan**") and Ms Sarah-Jane Trent ("**Trent**") into alleged criminal activity by Phahlane, including the identity of the sources of their information.

2.4 In furtherance of the aforesaid objectives Dawood requested that you assist and guide him in obtaining a subpoena in terms of Section 205 of the Criminal Procedure Act of 1977, for "all call related information, IMEI mapping and RICA details" in respect of the cell phones of O'Sullivan and Trent.

2.5 In connection with the said Investigation, and acting on your advice and on or about 7 December 2016, Dawood approached Mr Gustav Nauhaus ("**Nauhaus**"), with a view to obtaining a subpoena in terms of Section 205 of the Criminal Procedure Act, 51 of 1977 to obtain the cell phone records of O'Sullivan and/or Trent. Nauhaus, in turn, telephoned Adv van Rensburg, to seek her advice. At the time, Dawood had affidavits from which it appeared that he was:

2.5.1 investigating O'Sullivan for an alleged contravention of Section 1 (b) of the Intimidation Act, 72 of 1982 ("**the Intimidation Act**");

2.5.2 not investigating Trent for any criminal wrongdoing.

2.6 At the time of approaching Nauhaus as aforesaid, there was insufficient evidence of a contravention of Section 1 (b) of the Intimidation Act.

2.7 Nauhaus, acting on the advice of Adv van Rensburg, declined to apply for a subpoena in terms of Section 205 and advised Dawood to approach Adv van Rensburg in the office of the DPP, North Gauteng High Court, Pretoria.

2.8 Dawood then contacted you and advised you of the difficulties he was experiencing in obtaining the aforesaid subpoena.

2.9 You then telephoned Adv van Rensburg and sought to persuade her to apply for the aforesaid subpoena. Adv van Rensburg declined to do so.

2.10 Dawood then approached Advocate Helen van Jaarsveld ("**van Jaarsveld**") in the office of the DPP, North Gauteng High Court, Pretoria and requested her to apply for a subpoena. Van Jaarsveld also declined to apply for the subpoena.

2.11 You then advised Dawood to approach Advocate Vernon Nemaorani ("**Nemaorani**") and request him to apply for the aforesaid subpoena.

2.12 Nemaorani then affixed his signature and date stamp to the subpoena, after which you approached Nauhaus again who completed the application process.

3 The statement of Adv van Rensburg which implicates or may implicate you in the above allegations is annexed hereto marked "A". Your attention is drawn to the entire statement.

4 **Annexures KV1 to KV4** to the statement of Adv van Rensburg which implicate or may implicate you in the above allegations are annexed hereto marked "**B**".

5 Due to the fact that you are implicated or may be implicated by the evidence of Adv van Rensburg, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Adv van Rensburg will be uploaded on the Commission's website as soon as she concludes her evidence. The transcript will be uploaded daily.

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.

8 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

9 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

10 Please take note that even if you do not make an application under Rule 3.4:

10.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

10.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.

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12 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 5th DAY OF FEBRUARY 2021

PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

GSM 8.

Johanna Nel

From: Sello G.Maema <gsmaema@npa.gov.za>
Sent: Thursday, 25 March 2021 12:20 PM
To: Johanna Nel
Subject: FW: van Rensburg K//Rule 3.3//Maema S
Attachments: Annexure 'A'.pdf; Annexure 'B' - KV1.pdf; Annexure 'B' - KV2.pdf; Annexure 'B' - KV3.pdf; Annexure 'B' - KV4.pdf; Van Rensburg K Rule 3.3 Maema Adv Sello.pdf

From: Secretary <Secretary@commissionsc.org.za>
Sent: Friday, February 5, 2021 3:37 PM
To: Sello G.Maema <gsmaema@npa.gov.za>
Cc: Secretary <Secretary@commissionsc.org.za>
Subject: van Rensburg K//Rule 3.3//Maema S

Dear Sir/Madam

Please find the attached Rule 3.3 Notice in respect of Adv van Rensburg 's evidence for your attention.

As referred to in the Rule 3.3 Notice, please also find Annexures A and B attached hereto.

Please note that the Commission is required to comply with all COVID-19 Regulations. Please advise the Secretariat 48 hours in advance at Secretary@commissionsc.org.za if you elect to attend. Protocols, procedures and arrangements in place at the hearing venue will then be communicated to you.

Kindly acknowledge receipt hereof and contact the Secretariat regarding any queries that you may have.

Yours faithfully,

Secretariat
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Hillside House, 2nd Floor, 17 Empire Road, Parktown,
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Website: www.sastatecapture.org.za

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The National Prosecuting Authority of South Africa

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Director of Public Prosecutions
South Gauteng

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INTERNAL MEMORANDUM

TO: **Adv Moipone Noko**
Director of Public Prosecutions
Kwazulu Natal Division

FROM: **G S Maema**
Cato Manor Prosecution Team
DPP South Gauteng

SUBJECT: **DELEGATION TO PROSECUTE ISSUED BY THE THEN ACTING NATIONAL DIRECTOR FOR DEPUTY DIRECTORS**

DATE: **18 JUNE 2014**

INTRODUCTION

During our two (2) meetings with the National Director on 7 April 2014 and 25 March 2014, the issue of delegations was raised and the NDPP requested us to look at the present delegations that we have to ensure that they are in order. The delegations that were issued to the Senior Advocates were done by the then Acting DPP, Adv Simphiwe Mlotshwa and are in order. The only question that warranted consideration was the delegations which were issued to the two (2) Deputies who are part of the team, Maema and Mathenjwa.

SECTION 20 OF THE NPA ACT 32 OF 1998

The section provides for the power to institute and conduct criminal proceedings. Section 20 (1) provides as follows:-

"The power, as contemplated in section 179(2) and all other relevant sections of the Constitution, to

(a) institute and conduct criminal proceedings on behalf of the State;

GSM

(b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
(c) discontinue criminal proceedings,

vests in the prosecution authority and shall, for all purposes, be exercised on behalf of the Republic."

Section 179 (2) of the Constitution provides that the prosecution authority has the power to institute criminal proceedings on behalf of the State and to carry out necessary functions incidental to the instituting criminal proceedings. The NPA Act only repeats what the enabling legislation provides for, except to add the power to discontinue criminal proceedings. It is interesting to note that the power to institute and conduct criminal trials vests in members of the prosecution authority in general and not the DPP or NDPP or prosecutors and it is exercised in the name of the State.

Section 20(4)of the NPA Act provides as follows:-

"Subject to the provisions of this Act, and Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of –

(a) the area of jurisdiction for which he or she has been appointed; and

(b) such offences and in such courts, as he or she has been authorized in writing by the National Director or such person designated by the National Director."

The authority of a Deputy Director to perform his functions emanates from either section 20(4) (a), for the area of jurisdiction for which he has been appointed or in section 20 (4) (b), for such offences and such courts as he has been authorized in writing by the National Director. It is important to note that such Deputy Director shall exercise such powers subject to the control and direction of the Director who has been appointed in that area.

In simple terms, Mr Mathenjwa has jurisdiction in the area for which he has been appointed namely, South Gauteng in terms of section 20(4) (a) as well as for any offences and any court where he has been authorized in writing by the National Director, which will be in KZN, for our purposes.

The delegations that were issued by the then Acting National Director, were issued to the Deputies in terms of section 20(4)(b) of the NPA Act. It regulates the powers of Deputy Directors to exercise prosecution powers referred to in subsection (1) of the Act. Section 20(4)(b) is read with section 21 dealing with prosecution policy, section 22 which deals with general powers of the NDPP and section 24 which deals with the powers and duties of the Directors, Special Directors and Deputy Directors.

The delegations issued by the then Acting National Director specifies the offence for which the Deputies are authorized, namely all offences committed by members of the South African Police Services in the province of KwaZulu-

Natal as well as the courts in respect of which they are delegated to appear, the lower and High Courts within the area of jurisdiction of the KwaZulu-Natal Division. I am of the view that the delegations are in order.

G S MAEMA 18/6/2014
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
NORTH WEST DIVISION

Annexure "G"
GSM10

Priority Crimes Litigation Unit

NATIONAL PROSECUTING AUTHORITY
South Africa

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TO: ADV SIBONGILE MZINYATHI
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS NATIONAL PROSECUTION SERVICES

TO: DR J P PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

FROM: ADV RC MACADAM (SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS)

RE: CATO MANOR DELEGATION ISSUED TO ADV MAEMA BY ADV JIBA

---

1. INTRODUCTION:

The NDPP has requested advice as to how this matter may be correctly dealt with given the sensitivity thereof.

2. RELEVANT LEGAL FRAMEWORK:

2.1 I have been provided with a letter written by Ms Jackie Lepinka to the DPP: North West referring to Deputy Director of Public Prosecutions (DDPP) Maema forming part of a "*National Project*" ("*Subject: CATO MANOR KZN*") and a delegation issued by Adv Jiba as the ANDPP to Maema authorising him to perform the powers set out in section 20(1) of the **National Prosecuting Authority Act 32 of 1998** (the Act) in respect of all offences committed by SAPS in KZN.

2.2 The reference to a "*National Project*" raises a number of issues. Section 20(3) of the Act makes the DPPs responsible for the prosecution of all cases committed in their areas of jurisdiction unless the NDPP expressly removes a specific case or category of cases from them. The issue arises as to what can legally be done with any cases so removed. When regard is had to the powers of the NDPP as a whole it is clear that the Act contemplated that the NDPP should exercise oversight over the NPA and intervene only in the decisions of the DPPs on a review basis and should not be the primary decision-maker in individual cases.

2.3 Section 22(9) of the Act authorises the NDPP or a DNDPP authorised by her to conduct a prosecution <u>in person</u>. [Own

emphasis] There is nothing in the Act which enables the NDPP to further delegate this responsibility to any other member of the NPA e.g. a DDPP or State Advocate. A removal of cases from the DPPs could therefore result in a prosecution personally by the NDPP or a DNDPP under this provision.

2.4 Section 5 of the Act however makes provision for the appointment of Investigating or Special Directors in the Office of the NDPP. For the purpose of this advice it is not necessary to deal with the issue of Investigating Directors. As far as Special Directors are concerned they perform their duties as assigned by the President subject to the directions of the NDPP (section 24(3)). They may perform the powers referred to in section 20(1) but when so doing must consult with the DPP where the crime was committed. The NDPP could therefore in terms of these provisions remove a case or category of cases from a DPP and refer them to a Special Director. If in fact the matter in hand was a "*National Project*" then it was strange not to have referred the matter to a Special Directorate which would have permitted direct oversight by the NDPP.

2.5 However from the documents provided it is clear that none of these provisions were applied when providing a DDPP from the North West with a delegation to exercise the powers in terms of section 20(1) in respect of all offences involving SAPS in KZN.

2.6 Having served in the DPP's Office: KZN from 1984 to 1996 I find it extraordinary that a DDPP from another province would be required to be the decision-maker of all cases involving the SAPS in KZN. From personal knowledge I am aware that the process was that all complaints against SAPS were referred to a SDDPP in Pietermaritzburg for decision. All decisions whether or not to prosecute would be taken by State Advocates working under the authority of the SDDPP. In sensitive matters the DPP would be personally appraised before any controversial decision was implemented.

2.7 Section 20(4) of the Act provides as follows in respect of DDPPs:

> "*Subject to the provisions of this Act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of -*
> *(a) the area of jurisdiction for which he or she has been appointed; and*
> *(b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director.*"

2.8 Section 24(9) of the Act provides further:

> "*(a) Subject to section 20(4) and the control and directions of a Director, a Deputy Director at the Office of a Director referred to in section 13(1), has all the powers, duties and functions of a Director.*

(b) *A power, duty or function which is exercised, carried out or performed by a Deputy Director is construed, for the purposes of this Act, to have been exercised, carried out or performed by the Director concerned."*

2.9 Since a DDPP is deemed to be exercising the powers of the DPP him-/herself section 15(1)(b) of the Act makes provision for the Minister and **not the NDPP** to appoint DDPPs to the Offices of DPPs. [Own emphasis]

2.10 Although it was legally permissible for Adv Jiba to give Adv Maema the delegation to prosecute **all** SAPS-offences in KZN, this would have had to be preceded by an appointment by the Minister in terms of section 15(1)(b) appointing him as a DDPP in the Office of the DPP: KZN. This is all the more the case where he was now being given responsibility of a whole category of offences committed in the province.

2.11 Due to the fact that he had now been assigned to a new DPP's Office section 32(2)(a) applied and required that he "***must***" then have taken an oath or affirmation "*before commencing to exercise, carry out or perform his or her powers, duties or functions in terms of this Act*". [Own emphasis] In terms of section 32(2)(b)(i) this oath had to have been taken before the Judge President of the KZN High Court or, in his absence, the next most senior Judge.

2.12 It is trite that a prosecutor must have a valid title to prosecute. In fact section 106(1)(h) of the **Criminal Procedure Act 51 of 1977** enables an accused to raise as a special plea that the prosecutor "*has no title to prosecute*". There are numerous decided cases dealing with situations where prosecutors prosecute matters without having a proper delegation. In such cases the convictions are set aside.

3. RECOMMENDATIONS:

3.1 It therefore has to be established whether the Minister appointed Adv Maema as a DDPP in the Office of the DPP: KZN and whether he took the prescribed oath of office. Non-compliance with either one or both of these provisions would mean that he was not legally entitled to deal with cases involving SAPS in KZN and any proceedings he conducted would have been unlawful.

3.2 Due to my involvement in the Mokgoro Inquiry I have had sight of an affidavit deposed to by the ADPP of KZN, Adv Mlotshwa. A copy of this affidavit is attached herewith. In essence he alleges that in respect of the Cato Manor case the prosecution would be conducted by prosecutors in Adv Chauke's Office i.e. DPP: Johannesburg. It would appear that Adv Chauke was playing a leading role in the matter although he is not the DPP where the crimes were committed. Finally he alleged that Adv Jiba told him that the indictment would be signed by himself i.e. Mlotshwa. He indicated that he would only sign the indictment if he was provided

with a report detailing the evidence implicating the accused. Although he was provided with the indictment he did not receive the prosecutor's report despite several attempts by him to obtain it. His acting appointment was cancelled without him ever having seen the requested report.

3.3 If Adv Mlotshwa's allegations are true this raises extremely serious questions regarding the integrity of the Cato Manor prosecution as it would appear that he was being used simply as a rubberstamp to issue the indictment and being deprived of his obligation to satisfy himself as to the cogency of the evidence justifying the arraignment of the accused. Such conduct flies in the face of section 20(4) which placed Adv Mlotshwa in charge of all offences committed in KZN. It would appear that the driving force of the prosecution was in fact Advocates Jiba and Chauke who had no authority under the NPA Act to manipulate the DPP: KZN. The reference in Lepinka's letter to a "*National Project*" also lends credibility to Adv Mlotshwa's allegations.

Kind regards

ADV R. C. MACADAM
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS: PRIORITY CRIMES LITIGATION UNIT (PCLU)

Date: **6 MARCH 2019**

APPROVED / NOT APPROVED
COMMENTS:

_____

_____

_____

DR J P PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

Date:

APPROVED / NOT APPROVED
COMMENTS:

ADV S MZINYATHI
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
HEAD: NPS

Date:

Annexure "E"
Gsmith

Priority Crimes Litigation Unit

NATIONAL PROSECUTING AUTHORITY
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TO: ADV SIBONGILE MZINYATHI
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS NATIONAL PROSECUTION SERVICES

TO: ADV RC MACADAM (SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS)

FROM: DR J P PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PCLU

RE: CATO MANOR DELEGATION ISSUED TO ADV MAEMA BY ADV JIBA

---

1. INTRODUCTION:

The NDPP has requested advice as to how the request of the Deputy Director Maema for written confirmation that he has been removed of the Cato Manor matter may be correctly dealt with given the sensitivity thereof. Adv. Macadam provided an opinion regarding this matter. I differ from the opinion provided and in my memorandum I follow mostly the seriatim paragraphs that were provided by Adv. Macadam.

2. RELEVANT LEGAL FRAMEWORK:

In regard to 2.1

2.1 Not only has there been a letter written by Ms Jackie Lepinka to the DPP: North West referring to Deputy Director of Public Prosecutions (DDPP) Maema forming part of a "*National Project*" ("*Subject: **CATO MANOR KZN***") and a delegation issued by Adv Jiba as the ANDPP to Maema authorising him to perform the powers set out in section 20(1) of the **National Prosecuting Authority Act 32 of 1998** (the Act) in respect of all offences committed by SAPS in KZN, but:

2.1.1 an opinion by Adv. Maema regarding the delegation; and (attached hereto as Annexure "A")

2.1.2. a number of delegations that have been provided to the prosecutors involved. (Attached hereto as Annexures "B 1- 4")

Ad 2.2

Over and above the review of a decision to prosecute or not to prosecute by the NDPP, In the preamble to the NPA Act it is stated clearly "*AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the*

prosecution process ... and may review a decision to prosecute or not to prosecute. [Own emphasis] This is more specifically and clearly set out in Section 22 (2) (b) of NPA Act in a separate provision to the provision regarding review *per se*. Thus the NDPP may intervene in the prosecution process if the Policy directives are not complied with and not just on a review basis. By and large I agree with the statement: "*When regard is had to the powers of the NDPP as a whole it is clear that the Act contemplated that the NDPP should exercise oversight over the NPA and intervene only in the decisions of the DPPs on a review basis and should not be the primary decision-maker in individual cases*" but qualify it in this respect that in extra-ordinary cases the NDPP can intervene in the prosecution process in certain cases (and not just in a case of review). The NPA Act makes specific provision that the NDPP can remove a specific case or category of cases from the DPP jurisdiction. I agree that the issue arises as to what can legally be done with any cases so removed.

DISCUSSION

- The Office of the National director shall consist of not only the NDPP, Deputy Nationals but also Special Directors (and Investigating Directors) and other members of the prosecuting authority appointed at or assigned to the Office of the National Director for instance and especially prosecutors who may be appointed to the Office of the National Director (See Section 16 (2) of NPA Act).

- The Cabinet member responsible for the administration of justice-
  (a) Must establish an Office for the prosecuting authority at the seat of each Division of the High Court provided for in terms of section 6 (1); ....

- It is however also stated in subsection (3) "*If a Deputy Director is appointed as the head of an Office established by subsection (1), he or she shall exercise his or her functions subject to the control and directions of a Director designated in writing by the National Director.*" From this it is clear that a "different" Director (from another area) can control and direct a Deputy Director if he is appointed as head of an Office at a seat of a specific High court.

- Section 17 stipulate that the :
  "*(4) The President may, whenever in his or her opinion it is necessary and after consultation with the Minister and the National Director, **transfer and appoint** any Director to any Office contemplated in section 6 (1) or Investigating Directorate, or as a Special Director.* Thus a Director may be transferred and appointed to an Investigating Directorate or as a Special Director.

- It is also clear that a Deputy Director may be specifically appointed in relation to such offences and in such courts as he or she has been authorised in writing by the NDPP. See section 20 (4) (1) (b):
  "*(4) Subject to the provisions of this Act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of-*
  .....

(b) *Such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director.*

- One might must ask why a Deputy Director (that has been appointed to a specific area of jurisdiction), would need a further authorisation from the NDPP for specific offences and appearing in such courts as stipulated by the NDPP. These provision and words are with respect not superfluous. Specific provision has thus been made that the NDPP can in certain circumstances refer such offences and appearing in specific courts, to a particular Deputy Director. In given circumstances where the NDPP deems fit, the NDPP may thus authorised the above in writing. That is with exactly what happened in this instance. Obviously the then NDPP must have felt that the situation was serious enough (especially after a women was killed by the Police, notwithstanding the fact that she obtained - not just an interim order - but a permanent order from the court that the police should not kill her and she was still killed), to justify attention from the National Office and for the NDPP to intervene in the prosecution process. Thus the then NDPP appointed a Deputy Director in writing for a specific area and for specific offences.

- The National Director, as the head of the prosecuting authority, have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the prosecuting authority by the Constitution, this Act or any other law.[See Section 22 (1) of the NPA Act]

<u>Centralisation:</u>

- Section 22 (3) of the NPA Act makes provision that the National Director if s/he deems it in the interest of the administration of justice, that an offence committed as a whole or partially within the area of jurisdiction of one Director be investigated and tried within the area of jurisdiction of another Director. The NDPP may in writing direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other Director.

- The National Director has the power to exclude any offence expressly from the jurisdiction, either generally or in a specific case from a Director who has been appointed to an area of jurisdiction [See Section 20 (3) (b) of the NPA Act]. The National Director may also authorise any competent person in the employ of the public service or local authority to conduct prosecutions in respect of statutory offences including municipal laws [Vide :Section 22 (8) (b) of the Act]

- The National Director (or Deputy National Director) have the power to institute and conduct a prosecution in any court in the Republic. [Compare Sect 22 (9)]. This would however be in extremely rare circumstances and an extra ordinary situation.(for instance High Treason trial).

- It is obvious that a Deputy Director can conduct a prosecution. This happens in our courts every day and is done in ordinary cause of events. It is also competent for the NDPP to assign a specific case and category of cases to a Deputy Director. A removal of these

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cases from DPP's jurisdiction, could therefore not only result in a prosecution "personally by DPP or a DNPP" but a prosecution by a specialist unit like the PCLU for instance could have taken place (obviously after section 24 (3) have been complied with) or the Deputy Director special appointed for this purpose.

- In regard to the statement by adv. Macadam: *"If in fact the matter in hand was a "National Project" then it was strange not to have referred the matter to a Special Directorate which would have permitted direct oversight by the NDPP."* This is exactly what happened later on when this matter was referred to the PCLU. The matter was referred to a special directorate which permitted direct oversight by the NDPP.

- I don't know why the following statement is made: *"However from the documents provided it is clear that none of these provisions were applied when providing a DDPP from the North West with a delegation to exercise the powers in terms of section 20(1) in respect of all offences involving SAPS in KZN."* The delegation by the NDPP (Annexure A from previous correspondence) set out that the following provisions were applied: "section 20 read with sections 21, 22 and 24 of the National Prosecuting Authority Act." (See delegation by the then NDPP)

Ad 2.10

- With respect I see no reason why adv. Maema should have been reappointed or be appointed afresh to the KZN office. He was already appointed by the Minister for the North West. He has taken the oath. The legislation makes specific provision that the NDPP can allocate certain offences in certain courts to him. (Section 20) This was done. Why he should be reappointed or appointed afresh is not clear.

Ad 2.11

- Nowhere in the act is there a stipulation that an official ex abundantly cautela have to take a further oath or affirmation if he is assigned to specific task the NDPP allocated to him or her. With respect that is reading something into the Act that is not required.

3. RECOMMENDATIONS:

3.1 I differ from the opinion that the initial appointment was illegal. My respectful submission is that the team had a valid title to prosecute. With respect the then NDPP must have regarded this matter as serious enough to intervene. Apparently this was also on advice of Adv. Mlotswa to General Mabula. It is the respectful submission that in given circumstance, the NDPP can appoint a Deputy Director in respect of certain offences and in certain courts to handle a matter and there is specific legislative provision for this. The delegation of the advocates was also a matter of concern at that time, and it was discussed and opinions provided. (See the opinion hereto attached hereto as well as all the delegations) The people at that time tried to accommodate the situation as best they could. It would seem that the opinion of Gerhard S Nel was also obtained.

- In regard to recommendations it is with respect not needed to establish whether the Minister appointed the officials involved to Kwa Zulu Natal. That interpretation is with respect not supported by me. Obvious that has not been done. I am of the opinion that the Deputy Directors were legally entitled to deal with cases involving the SAPS in KZN. Specifically the Cato Manor/Booysen matter. I am of the opinion that the proceedings were not unlawful.

- I do not think the integrity of the Cato Manor prosecution is the question here. The Deputy Director that was appointed in writing in this case, merely wants the fact that the appointment is rescinded in writing. The reference in Lepinka letter to "*National Project* "can also lend credibility that the management and team regarded the matter as serious and requiring the attention of the National Office and not one or other nefarious meaning.

- As this matter was investigated by the Mokgoro enquiry and all probability would serve before the Zondo Commission on state capture, it is with respect not needed to re enquire into whole matter and that all documentation is obtained. This with respect is a simple request from a prosecutor, a Deputy Director that in the light that he was appointed in writing and seized with the matter for more than 5 years, requesting his re allocation to be in writing. I can see no harm in providing same to the prosecutor, which must inform a number of interested parties, - like the Judge for more than 5 years - and the investigating officer in the Police and the witnesses under witness protection, that his situation has changed.

Regards

DR J P PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT

APPROVED / NOT APPROVED
COMMENTS:

ADV S MZINYATHI
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

HEAD: NPS

Date:

Annexure B1

National Prosecuting Authority

THE DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

9/2/1/2 (52) – 105/2012

AUTHORITY TO INSTITUTE AND CONDUCT CRIMINAL PROCEEDINGS

I, CYRIL SIMPHIWE MLOTSHWA

Acting Director of Public Prosecutions for the area of jurisdiction of the Natal Provincial Division of the High Court of South Africa, duly designated by the National Director of Public Prosecutions in terms of section 20(5) of Act 32 of 1998, do hereby authorize

MAHLUBI NTLAKAZA

to exercise, on behalf of the Republic, the powers mentioned in section 20(1)(a), (b) and (c) of Act 32 of 1998 in all courts within my area of jurisdiction, in respect of all offences

with effect from 1st JUNE 2012

ADV. C. S. MLOTSHWA
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

5 JUNE 2012

G.S.M

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THE DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

9/2/1/2 (52) – 104/2012

AUTHORITY TO INSTITUTE AND CONDUCT CRIMINAL PROCEEDINGS

I, CYRIL SIMPHIWE MLOTSHWA

Acting Director of Public Prosecutions for the area of jurisdiction of the Natal Provincial Division of the High Court of South Africa, duly designated by the National Director of Public Prosecutions in terms of section 20(5) of Act 32 of 1998, do hereby authorize

PATIENCE MOLEKO

to exercise, on behalf of the Republic, the powers mentioned in section 20(1)(a), (b) and (c) of Act 32 of 1998 in all courts within my area of jurisdiction, in respect of all offences

with effect from **1st JUNE 2012**

ADV. C. S. MLOTSHWA **5 JUNE 2012**
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

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THE DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

9/2/1/2 (52) – 103/2012

AUTHORITY TO INSTITUTE AND CONDUCT CRIMINAL PROCEEDINGS

I, CYRIL SIMPHIWE MLOTSHWA

Acting Director of Public Prosecutions for the area of jurisdiction of the Natal Provincial Division of the High Court of South Africa, duly designated by the National Director of Public Prosecutions in terms of section 20(5) of Act 32 of 1998, do hereby authorize

PHUMEZA FUTSHANE

to exercise, on behalf of the Republic, the powers mentioned in section 20(1)(a), (b) and (c) of Act 32 of 1998 in all courts within my area of jurisdiction, in respect of all offences

with effect from 1st JUNE 2012

ADV. C. S. MLOTSHWA **5 JUNE 2012**
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

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National Prosecuting Authority

THE DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

9/2/1/2 (52) – 102/2012

AUTHORITY TO INSTITUTE AND CONDUCT CRIMINAL PROCEEDINGS

I, CYRIL SIMPHIWE MLOTSHWA

Acting Director of Public Prosecutions for the area of jurisdiction of the Natal Provincial Division of the High Court of South Africa, duly designated by the National Director of Public Prosecutions in terms of section 20(5) of Act 32 of 1998, do hereby authorize

JABULANI MLOTSHWA

to exercise, on behalf of the Republic, the powers mentioned in section 20(1)(a), (b) and (c) of Act 32 of 1998 in all courts within my area of jurisdiction, in respect of all offences

with effect from 1st JUNE 2012

ADV. C. S. MLOTSHWA
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
KWAZULU-NATAL

5 JUNE 2012

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have to sign the provisional delegations for those prosecutors and then at that point she indicated to me it is a legal opinion she had procured from legal services.

She particularised the person from whom she got a legal opinion. Advocate Gerhard Nel. I understand he also testified in the Mokgoro Commission whether or not he ever administered that opinion. That being a legal conundrum in the sense that if a Deputy Director is appointed by the Minister is appointed for a specific division and if one looks meticulously at the members of the Team that were forming part
10 of this Team that was sent to KZN.

The Lead Prosecutor was Advocate Maema from North West DPP Office. He was a Deputy DPP and still is a Deputy DPP in North West and appointment specifying as such. So if he goes to lead prosecution in KZN it was going to create a problem. I think another advocate – Advocate Mathenjwa – Ray Mathenjwa – he was also a Deputy DPP in the office of the DPP Gauteng South. Appointed specifically for Gauteng South.

For him to go and prosecute in KZN that was going to be an issue and then with the other members. Advocate Yanni Mlotshwa.
20 Mlotshwa is a Senior Advocate. Though not appointed by the Minister for – specifically for Gauteng South, but his delegation to execute prosecutorial decisions. That delegation would have been assigned – would have been signed by the Head of the Division my colleague, Advocate Chauke.

So it is against that background that my Line Manager at the

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time of Jiba indicated that in terms of the legal opinion that she had procured. I could sign the indictment. I could sign the provisional delegation pending the research and investigation whether or not they can be assigned permanently in that project. So unfortunately I was recalled in 2012. I am not sure, because they are still involved – if the case is still in court as to what is the status of their delegation in the matter.

CHAIRPERSON: But that is what happened in the specific case.

ADV MLOTSHWA: Yes.

10 **CHAIRPERSON:** I am asking about the general practice or a policy whether when you were Acting DPP in KZN you were aware of what policies exit within the NPA or what prescripts – legal prescripts exited that dealt with or governed the situation where a prosecutor will be taken from one province to go and prosecute in another province.

ADV MLOTSHWA: None that I know of.

CHAIRPERSON: Yes.

ADV MLOTSHWA: Yes.

CHAIRPERSON: Do you have any recollection whether the National Prosecuting Authority Act says anything about such things?

20 **ADV MLOTSHWA:** As far as I remember there was nothing in the Act. Except that because of the nature of budget if a prosecutor from – if the DPP requests assistance. We request assistance from the NDPP and then the NDPP will get assistance from a specific DPP who has to dispatch the prosecutor to go and assist. It is then that the issue of budget will be discussed.

GSM

Travelling arrangements and so on and so forth as to which office will have to pick up the tab – to pay the bill. So in this one I was not involved even with the arrangements, accommodation, travelling. I do not know what was – what happened.

CHAIRPERSON: But is your answer that as far as you know or rather that you are not aware of any provision in the National Prosecuting Authority Act that specifically deals with getting a prosecutor from one province to go and prosecute in another province?

ADV MLOTSHWA: That is affirmative Chair.

10 **CHAIRPERSON:** And you are not aware that there were any written policies on this?

ADV MLOTSHWA: None that I recall.

CHAIRPERSON: Are you aware of – were you aware of any practice that may have been followed over the years?

ADV MLOTSHWA: As I have indicated Chair ...(intervenes).

CHAIRPERSON: H'mm.

ADV MLOTSHWA: That it will be the DPP because of some certain considerations feeling that look another division must send a prosecutor, but that require – request will have to go via – the NDPP

20 will make a determination from which division a request can be made to get a prosecutor to go and prosecute in that division.

CHAIRPERSON: So your understanding is that indeed there was a practice?

ADV MLOTSHWA: Yes. Yes.

CHAIRPERSON: And are you saying the practice was that the request

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NATIONAL PROSECUTING AUTHORITY
South Africa

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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INTERNAL MEMORANDUM

TO: ADV. N. JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV. A. CHAUKE
DPP: SOUTH GAUTENG

DR. J.P. PRETORIUS SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS: PCLU

ADV. M. NOKO
DPP: KWA ZULU-NATAL

PRIORITY CRIMES LITIGATION UNIT
2016 -04- 11
NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA

SUBJECT: CATO MANOR PROSECUTION TEAM

DATE: 8 APRIL 2016

Dear Colleagues

As you are aware, the Priority Crimes Litigation Unit (PCLU) reports directly to me. The three Deputy Directors of Public Prosecutions seconded to the PCLU will be the prosecutors in the *Cato Manor matter*, namely, Advocates Sello Maema, Raymond Matherijwa and Jabulani Mlotshwa.

I would like to take this opportunity to extend my deepest and sincerest gratitude to Adv Chauke for his leadership and assistance during his involvement in the matter as well as to Advocates P Futshane, M Ntlakaza and P Moleko for their very sterling work and commitment.

The Acting Special Director of Public Prosecutions and Head: PCLU and the DPP: KZN remain involved in the matter as a direct result of their respective jurisdictional mandates.

Noted
GSM

I have further directed that the security concerns relating to all the above officials be re-evaluated. Once I receive a final report, inclusive of recommendations, from Risk and Security, I will communicate further hereon.

Kindly convey the content hereof to the officials concerned.

Yours sincerely,

ADV S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 8 - 4 - 2016

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12 July 2018

Dear Advocate Abrahams

IN RE: FORMAL COMPLAINT AGAINST MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY: ADVOCATES S MZINYATHI, JP PRETORIUS SC AND S MAEMA (NOW ADDING JJ SMIT SC AND S RAMAITE SC)

1 As you know, we act for Mr Johannes Hendrikus van Loggerenberg (**"our client"**).

2 Your letter dated 6 July 2018 (**"the letter"**), its attachment in the form of a report (**"the report"**) and prior correspondence in the above matter refer.

3 Our client is naturally disappointed with the content of your letter and will be taking legal advice on the best recourse in law to address his legitimate complaint. Our client has nevertheless instructed us to formally record the following:

3.1 The formal complaint registered by our client was intended for your personal attention, in your capacity as National Director of Public Prosecutions (**"NDPP"**), and was submitted in

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Directors D Hertz (Chairman) OL Abraham C Andropoulos BA Aronoff DA Artairo T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Bladen HGB Bothell GT Bosar TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetzer C Cole-Morgan JN de Villiers R Driman D Gawer JA Gobetz R Goobin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Herskuth G Johannes S July J Kallmeyer A Kenny A Khumalo R Kilkoran N Kirby HA Kotze S Krige PJ Kruscha P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lutlibe BS Mabasa PK Mabaso MPC Manaka H Masondo JE Meiring SM Moerane C Moralitis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Nienpand BP Oupier WE Oosthuizen S Padayachi M Panagrouw S Pasmoor D Pisanti T Potter BO Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JG Smit BM Soao CI Stevens PO Steyn J Stockwell JG Theron PW Tindle JJ Tryter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wentzel G Wickins M Wiehahn DE Williams DG Williams E Wood BW Workman-Davies Consultant AL Armstrong

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terms of the Constitution of the Republic of South Africa (**"the Constitution"**), the National Prosecuting Authority Act (**"NPA Act"**) and the NPA Code of Conduct (**"the Code"**) and Prosecution Policy (**"the Policy"**).

3.2 The complaint set out facts, the sequence of events and substantiating evidence in support of the complaint, as directed against three senior NPA prosecutors, namely Advocates Sibongile Mzinyathi (**"Mzinyathi"**), Jacobus Petrus Pretorius SC (**"Pretorius"**) and Sipho Maema (**"Maema"**).

3.3 The complaint set out how Mzinyathi, Pretorius and Maema had failed to abide by the Constitution, the NPA Act and Prosecution Policy.

4 As the NDPP, to whom Mzinyathi, Pretorius and Maema ultimately account, it was incumbent upon you to have personally considered not only the report as attached to your letter, but also our client's complaint, the facts set out in the complaint, the sequence of events and the substantiating evidence as submitted by us to you on our client's behalf.

5 The report attached to your letter is eminently contestable on a number of grounds and for a number of reasons, bearing in mind that the report does not attach any additional correspondence or records on which it seeks to rely. We do not intend to deal with all of these herein. Suffice at this stage to record:

5.1 The report completely mischaracterises our client's complaint and fails to deal with virtually all of the complaints, facts and evidence, as sent to you in your official capacity as the NDPP, by us on behalf of our client.

5.2 Contrary to what was initially contended by Mzinyathi, Pretorius and Maema in writing and under oath, it is now common cause that no version and/or defence of our client <u>in respect of the charges he now faces</u> exist/s or have/has ever existed. This is only one aspect of the complaint by our client, which is still being ignored, remains unaddressed and was not considered or reflected upon in the report.

5.3 It was initially advanced by the NPA that the version and/or defence of our client in respect of <u>the charges he now faces</u> had been obtained and was considered <u>prior</u> to deciding to prosecute him on <u>the charges he now faces</u>. This has been consistently denied by our client. The report now introduces a new and mutually exclusive version that our client had somehow "*elected*" not to provide his version and/or defence <u>on the charges he now faces</u>. Our client emphatically denies this new and contradictory contention.

GSM

5.4 Crucially, what the report does not address in any manner or form, is the fact that at no stage during the investigative and prosecutorial processes was the version and/or defence of our client sought and considered by the NPA in relation to the charges he now faces on any occasion prior to deciding to prosecute him as is explicitly required by the Prosecution Policy, NPA Act and Constitution.

6 The facts of the matter are rather simple, and none have been addressed or responded to by you nor are they reflected upon in the report:

6.1 Contrary to the NPA's initial stance, the South African Police Services (**"SAPS"**), the Directorate of Priority Crimes Investigations (**"DPCI"**), and the National Prosecuting Authority (**"NPA"**) never sought of our client, nor obtained from our client, a warning statement with respect to the charges reflected in the April 2018 indictment to wit:

6.1.1 any events that allegedly occurred "*between August and September 2008*" at an unspecified date and time and venue; and/or

6.1.2 any allegations concerning "*Mr Helgard Lombard*"; and/or

6.1.3 any allegations relating to an "*unauthorised gratification*" in the amount of "*approximately R100 000-00*"; and/or

6.1.4 any specific allegations with respect to the contents of paragraphs 6.1.1 to 6.1.3 *supra* and Sections 10 (b) and 3 of PRECCA as reflected in the indictment;

6.1.5 The DPCI did in fact request a warning statement from our client with respect to totally different allegations, which were clearly set out in detail in their written request of August 2016 and are reflected in the incomplete warning statement, upon which the NPA now seeks to rely on.

6.1.6 None of the allegations put to our client in August 2016 by the DPCI relate to the charges reflected in the current indictment received in April 2018:

6.1.6.1 Our client was invited by the DPCI in August 2016 to consider providing a warning statement, by giving his version and/or defence in respect of:

GSM

6.1.6.1.1 An allegation relating to persons that had supposedly been under investigation of an investigative unit at the South African Revenue Service (**"SARS"**) and a fundraiser for charitable causes of which he had been involved in since October 2012 only when it came about; and

6.1.6.1.2 An allegation concerning an investigative unit he managed at SARS whilst an employee there, specifically from 2010 onward.

6.1.6.2 The facts show that the warning statement sought by the DPCI was never completed by our client because an undertaking was given by the DPCI to afford our client an opportunity to consider the allegations, obtain necessary records and return to them by 5 September 2016 to conclude the process because the docket had to "*urgently go to the NPA*". This is clearly annotated in the relevant section of the incomplete warning statement and was also recorded during the meeting with the DPCI and our client and his erstwhile attorneys.

6.1.6.3 The facts show that the DPCI did not wait for our client to return to them in order to complete the warning statement as agreed and for him to provide his version and/or defence or not. Instead, prior to the promised date of 5 September 2016,the DPCI unilateral handed the docket, CAS 427/05/2015 over to the NPA. The process of our client concluding his warning statement was therefore interrupted by the DPCI's unilaterally handing over of the docket to the NPA and the NPA accepting such without the benefit of our client's version and/or defence.

6.1.6.4 The facts show that upon becoming aware of this, our client through his erstwhile attorneys, then addressed both the DPCI and NPA, specifically Pretorius, on 2 September 2016, wherein it was i) confirmed that the docket had been handed to the NPA, ii) confirmed that the investigation was complete, and iii) confirmed that our client would consequently address the NPA from that point on.

6.1.6.5 The facts show that our client then sought of Pretorius, still in September 2016, permission to approach the complainant, or alternatively request of the NPA and Pretorius to obtain from the complainant, records and information that our client required in order to exercise his right to provide his version and/or

defence or not, to the NPA and specifically in relation to the allegations as they stood at that stage and were put to him.

6.1.6.6 Our client never received a reply from the NPA or Pretorius to his above request.

6.1.6.7 Consequently, our client never concluded a warning statement even in respect of completely different allegations.

6.1.6.8 Even if our client had completed that warning statement or had decided to decline to do so, it would not have served any purpose in respect of the charges he was ultimately charged with more than eighteen months later by Mzinyathi, Pretorius and Maema. The warning statement and letter from the DPCI clearly set out different allegations that he was requested to respond to and do not relate to the charges reflected in the current indictment.

6.1.7 By stating a wholly new version of events, the report not only contradicts the original stance advanced by the NPA, but in fact compounds the facts set out in the complaint by our client.

6.1.8 The facts which have not been considered and are not addressed in the report are listed in detail in our client's complaint.

6.1.8.1 The Constitution, NPA Act, read with the Code and the Policy obliged the NPA and specifically the relevant prosecutors to do a number of things;

6.1.8.2 Maema, Mzinyathi and Pretorius did not do any of these things;

6.1.8.3 Maema, Pretorius and Mzinyathi clearly i) disregarded the rights of our client when they decided to prosecute him contrary to their obligations in terms of the Constitution, and the NPA Act, the Policy and Code, ii) avoided explaining the reasons for the exercise of their prosecutorial discretion and iii) did not safeguard the rights of our client as an accused person.

6.1.8.4 The decision to prosecute our client was, accordingly, not taken with the care and diligence expected of prosecutors in terms of the Constitution, the NPA Act, the Policy and the Code.

GSM

6.1.8.5 These failures have had profoundly prejudicial consequences for our client and his family.

7 In the result, the formal complaint by our client, in its totality, as addressed to you in your official capacity as the NDPP, still stands.

8 In addition, our client herewith adds NPA advocates JJ Smit SC and Dr Sailas Ramaite SC to his complaint.

9 You are invited, as a last resort, in your capacity as NDPP at the top of its apex structure, to personally consider our client's complaint and to urgently confirm that you will be doing so. In the event that you decide not to do so, we require from you detailed reasons as to why you have elected not to do so.

10 This complaint is clearly a matter of public interest, in the interests of justice and concerns very senior prosecutors of the NPA. In light hereof, it is incumbent upon you as the NDPP to personally consider the complaint and act with the necessary urgency that this complaint clearly deserves.

11 Our client's rights remain strictly reserved.

12 Kindly acknowledge receipt hereof at your earliest convenience.

Yours faithfully

Werksmans Inc
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

GSM

The National Prosecuting Authority of South Africa
Igunya Jikelele Lebelahulahlal Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

AUTHORISATION IN TERMS OF SECTION 20(4) READ WITH SECTION 20(1) AND SECTION 15(1)(c) OF THE NATIONAL PROSECUTING AUTHORITY ACT, 1998 (ACT NO. 32 OF 1998)

Under the provisions of section 20(4), read with sections 20(1) and 15(1)(c) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), I, **MXOLISI SANDILE OLIVER NXASANA**, National Director of Public Prosecutions, hereby authorise **ANDREA JOHNSON**, a Senior Deputy Director of Public Prosecutions in the Office of the National Director of Public Prosecutions to –

(a) Institute and conduct criminal proceedings on behalf of the State in respect of all offences connected to the mandate of the PCLU;
(b) Carry out any necessary functions incidental to the instituting and conducting of such criminal proceedings; and
(c) Discontinue such criminal proceedings,

in the jurisdictional areas and courts within the Republic of South Africa.

MR. M.S.O NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

2015-02-06
DATE

Note: The powers and duties embodied in this authorisation are exercised subject to the general and specific instructions from the National Director of Public Prosecutions and/or any other person holding supervisory authority in the prosecution service.

The National Prosecuting Authority of South Africa
Igunya Jikalele Lebelahulahlal Bo Nzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

AUTHORISATION IN TERMS OF SECTION 105A(1)(a) OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 OF 1977) AS AMENDED

I, MXOLISI SANDILE OLIVER NXASANA, National Director of Public Prosecutions, hereby, in terms of Section 105A(1)(a) of Act No 51 of 1977, authorise to negotiate and enter into plea and sentencing agreements in respect of matters over which the Priority Crimes Litigation Unit has jurisdiction:

ANDREA JOHNSON

JACOBUS PETRUS PRETORIUS

RAYMOND CHRISTOPHER MACADAM

SUSAN CHARLOTTE BUKAU

SHAUN KEVIN ABRAHAMS

This authorisation is subject to the directives already issued by me in terms of the aforesaid section.

Given at PRETORIA on this 6th day of FEBRUARY 2015.

MR. M.S.O NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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AUTHORISATION IN TERMS OF SECTION 20, 21, 22 AND 24 OF THE NATIONAL PROSECUTING AUTHORITY ACT, NO 32 OF 1998

I, **NOMGCOBO JIBA,**

Acting National Director of Public Prosecutions of South Africa, do hereby in terms of section 20, read with sections 21, 22 and 24 of the National Prosecuting Authority Act, No 32 of 1998 (the Act), authorize

SELLO GLADSTON MAEMA

to exercise the powers set out in section 20(1) of the Act in the Lower and High Courts within the area of jurisdiction of the KwaZulu- Natal Division in all offences committed by the members of the South African Police Services in the province of KwaZulu- Natal,

And to act on behalf of the State in any appeal, review or other applications arising from such criminal proceedings within the Province of KwaZulu- Natal, subject to the Prosecution Policy of the National Prosecuting Authority and any directive issued by the National Director.

GIVEN UNDER MY HAND AT PRETORIA ON THIS THE 8TH DAY OF MARCH 2012.

ADV. NOMGCOBO JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
REPUBLIC OF SOUTH AFRICA

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National Prosecuting Service

Director of Public Prosecutions: North West

NATIONAL PROSECUTING AUTHORITY
South Africa

MEMORANDUM

NORTH WEST DIVISION

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OFFICE OF THE NATIONAL DIRECTOR
TIME:..... H:.....
2018 -06- 29
SIGN:.....
OF PUBLIC PROSECUTIONS

TO: ADV S ABRAHAMS

FROM: DR SILAS RAMAITE SC
ADV JJ SMIT SC

DATE: 11 JUNE 2018

SUBJECT: FORMAL COMPLAINT FROM WERKMANS ATTORNEYS AGAINST ADV S MZINYATHI AND TWO OTHERS

N.D.P.P,

1) On 25 April 2018 you instructed us to investigate the above matter and report to you by 4 June 2018. We drafted and submitted a memo to the three "respondents" and handed it to them on 3 May 2018.

2) They then requested extention of the due date we gave them, twice, and we agreed. We eventually received their response on 4 and 6 June respectively. Hence now this report to you.

3) Please note that we have decided to keep our report as brief as possible because we anticipate possible litigation following upon your decision in this matter and we don't want our report to become an additional issue in any such litigation.

4) Your instruction to us is very simple: to investigate and report to you on the complaint by Werksmans Attorneys against the three officials, with the goal of enabling you to decide whether any steps should be taken against the three officials.

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5) There are a number of very technical issues contained in the complaint of Werksmans Attorneys, as well as in the response by the three officials. Some of these are:

- Is a prosecutor obliged to have a statement obtained (commonly referred to as a warning statement) from an accused or suspect before a decision to prosecute is taken?
- What is the position should new charges be added after a warning statement has been obtained?
- What, exactly, constitutes a warning statement?
- At what stage of the investigation is a suspect or accused entitled to the contents of the docket.
- Is an accused or suspect entitled to the contents of the docket before he gives his (warning) statement and what is the effect if he is denied the contents of the docket.

6). We have decided to refrain from attempting to give a considered legal opinion on these issues because we feel that it is not our mandate to do so. Also, it should rather be left to counsel at the eventual trial (whatever it may be) to do so.

7) However, we will touch on some of the issues in as far as it is required to do so to enable us to make our recommendations to you.

THE COMPLAINT

8) Van Loggerenberg, who is the main figure in this complaint, is an accused, together with two others in a case handled and decided by Adv Maema, agreed to by Dr Torie Pretorius, after consultation with the acting DPP of Gauteng-North.

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9) Van Loggerenberg, who is accused number three in the case, stands indicted of contraventions of the POCA Act, details of which are not relevant at this moment.

10) After it was decided to prosecute him, he brought an application, together with his two co-accused, for a stay of prosecution, on the basis that he was not given an opportunity to present an explanation by way of a warning statement, on the charges against him.

11) Adv Mzinyathi deposed to the answering affidavit in the application in his capacity as acting Deputy National Director in charge of the NPS.

12) This affidavit was confirmed by Dr Torie Pretorius in the form of a confirmatory affidavit.

13) In his affidavit, Adv Mzinyathi, inter alia, states as follows:

Par.61 "The decision to prosecute was taken after due consideration of the evidence under oath contained in the docket, with consideration also of the warning statements that were provided to the investigators. Obtaining of the versions of the Applicants is an investigative task, which was dealt with by the police"

Par.70 He quotes from a letter dated 14 March 2018 by Dr Pretorius, thereby incorporating it into his affidavit, where Dr Pretorius states: "The versions of the three Applicants as contained in the warning statements were considered before the decision to prosecute was taken"

Par.76 He quotes from a letter written by himself, dated 28 March 2018, thereby incorporating it into his affidavit in which he said: "The decision to prosecute was taken after due consideration of evidence under oath

contained in the docket, plus the warning statements that were provided to the investigators"

Par.117 He also states that: "I dispute that a decision to prosecute was taken without consideration of warning statements" and

Par.119 "It is not clear what is meant by the allegation that the warning statements were not ever completed. In any event, the Applicants failed to respond to an invitation to supplement the warning statements in September 2016"

14) In his confirmatory affidavit, Dr Pretorius states that he confirms the contents of Adv Mzinyathi's affidavit.

15) These aversions are clearly in reply to the direct statement in the founding affidavit of the complainant, where he states in paragraph 46 that: "In my case, in particular, no warning statement was ever sought from me in respect of any of the charges that I now face."

16) In the document that is apparently regarded as complainants warning statement, the following appears:

16.1) He was warned of "Contravention of Section 4 of Prevention of Corrupt Activities, Act 12 of 2004 and section 3 of The National Strategic Intelligence Act 39 of 1994." No further particulars are given.

16.2) The person who completed the prescribed form of the warning statement, then noted that "The suspect was given a chance/opportunity to consult with his lawyers" and this resulted in "The suspect will consult with this legal team to answer questions which were asked/ see page 3 paragraph 5 (c)"

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16.3) On page 3, paragraph 5 (e), it is written that "The suspect has requested an opportunity to consider his position and take legal advice such that he may respond by 5 September 2016" (This document was completed on 25 August 2016)

16.4) In the part of the document that normally contains the actual statement or version of a suspect, it is written:
"Refer to page 3 paragraph 5 (c)"

16.5) Paragraph 5 (c) is a bit confusing because it states " The suspect indicated that he

a) _____

b) _____

c) Would personally see to the drawing up of the statement and would furnish me with the statement on 2016-09-05" However, it appears that par 5(c) was scratched out. It is more likely that it was not paragraph 5 (c) that is referred to, but rather paragraph 5 (e). This is the total content of the "warning statement" that is relevant to the issue at hand.

17) Succinctly put, the complaint against Adv Mzinyathi and Dr Pretorius is that they "misrepresented facts under oath in papers which were to be presented before a High Court and / or withheld material facts which were to be presented before a High Court" This, obviously relates to their version that they had considered the contents of the warning statement of Van Loggerenberg, when it seems from the document itself that there is no "content" to the warning statement that could have been considered.

18) The complaint against Adv Maema is that he took a decision to prosecute without a version having been given by the suspect/accused, Van Loggerenberg, (contrary to the NPA Policy)

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THE MERITS OF THE COMPLAINT

19) The warning statement of an accused or suspect is normally taken at an early stage of an investigation, in fact as soon as it can be established what the charge or charges against the person is.

20) Usually it happens before a person is formally charged but sometimes it happens after he is charged, depending on the circumstances.

21) When a case is presented to a prosecutor, he or she always checks whether the suspect/accused has given his/her version by way of a warning statement. This is always important because it discloses the defence of the person and it may also contain very useful admissions.

22) A prosecutor would consider a warning statement to have content, and qualify as a statement when

- It indeed contains a version by the suspect or
- It states that the suspect declines to make a statement.

23) It is a fact, that since the adoption of the Constitution, we find that more and more suspects/accused, follow the route of declining to make a statement. The prosecutor then has no choice but to take a decision without the version of the accused/suspect.

24) On 2 September 2016, Attorneys Allan Levin and Associates wrote to Dr Torie Pretorius on behalf of Van Loggerenberg and stated, inter alia, as follows:

Par.7 "We re-iterated our request that our client be afforded a copy of the docket. The Hawks investigators advised that, notwithstanding the recordial in their letter addressed to our offices that the investigation

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was complete, the docket would be provided only when our client had been charged."

and

Par.8 "..... In the absence of the content of the docket, our client is not in a position to meaningfully consider the request that he make a submission that might assist your office to arrive at a decision whether to prosecute him or not"

25) This, in our opinion is a clear indication that Van Loggerenberg had declined to make a statement before it was decided to proceed with the prosecution against him, which happened only in March 2018. It is also our opinion that nothing turns on the fact that the decision not to submit a statement appears on a separate document, other than the warning statement itself. Fact is, when the decision to prosecute was taken, it was known that Van Loggerenberg did not wish to submit a statement.

26) In his affidavit, Adv Mzinyathi each time refers in plural, to statements. Remember, he was referring to all three applicants, and the other two, had in fact made statements. In any event, as discussed in par 22 above, Van Loggerenberg's warning statement, together with the letter referred to in par 24 above can surely be considered as a version of what Van Loggerenberg wanted to do.

27) We accept the explanation from Adv Mzinyathi and Dr Pretorius when they state:

"It must be borne in mind that the affidavit in issue had nothing whatsoever to do with the warning statement in particular or the evidence against the accused in general. It was prepared in haste in opposition to an urgent application to strike the matter from the roll until the NDPP had considered the accused's representations"

28) This is in line with another fact that totally vitiates any notion of any intention to deceive or mislead on the part of Adv Mzinyathi and Dr

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Pretorius. The fact is that the "warning statement" that forms the basis of this complaint, in actual fact was included in the papers that supported the founding affidavit of Van Loggerenberg for the stay of prosecution. It was there for all to see, the court included, so how could anybody attempt to deceive the court with the relevant document right there in front of it?

CONCLUSION

29) We find that by the time a decision to prosecute was taken, there was in fact a "statement" by Van Loggerenberg to indicate that he declined to make a statement.

30) We find that the reference to the statement by Adv Mzinyathi and Dr Pretorius in their affidavits does not contain the element of deceit nor was it done in an attempt to misrepresent or withhold any facts.

RECOMMENDATION

31) We recommend that no action be taken against Adv Mzinyathi, Dr Pretorius and Adv Maema..

13/06/2018

DR S RAMAITE SC

ADV JJ SMIT SC

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NATIONAL PROSECUTION SERVICE
DIRECTOR OF PUBLIC PROSECUTIONS:
SOUTH GAUTENG HIGH COURT
JOHANNESBURG
"Prosecutors do it with conviction"

The National Prosecuting Authority of South Africa
Igunya Jikelele Lokhetshukisi Bukhosini Afrika
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MEMORANDUM

TO: **THE NATIONAL DIRECTOR**
ADV MENZI SIMELANE

FROM: **G S MAEMA**
ACTING DPP
SOUTHERN GAUTENG

SUBJECT: THE STATE VERSUS GLEN AGLIOTTI MURDER TRIAL ON THE SOUTHERN GAUTENG ROLL ON 3 FEBRUARY 2010

DATE: **3 FEBRUARY 2010**

OFFICE REFERENCE:

A: INTRODUCTION

Having been requested by the National Director to look in to the appropriateness of having the same prosecution team dealing with both the Selebi trial and the Agliotti murder trial, I requested the prosecution team to give me a briefing and I consulted Adv JJ Smit as well as Adv Mzinyathi and I applied my mind to the issues and came to the conclusion that it is in the interest of justice that the prosecution team and the investigation team should continue with the trial as they now stand.

The Selebi trial has been postponed until the 1st March 2010 pending the appeal by the Department of State Security to the Constitutional Court. The judge indicated that the parties must be ready for trial and the case will run to finality on 1 March 2010. The Agliotti murder trial is on the roll this morning and the State and the Defence have agreed to

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approach the court for a postponement so that the Selebi trial is finalized prior to the commencement of the Agliotti murder trial.

B: BACKGROUND

Both the cases are so intrinsically linked that the accused persons and witnesses are common or the same. The one case revealed facts which are common to both cases and the investigation team considered them the same. When the DSO got involved in the investigation on the request of the DPP, Southern Gauteng the matter was being investigated by the police who were following wrong clues at the time. They were consulting with Straton who on the State case as it now stand is a main accused person with Agliotti. The case docket which was received from the police is available still in the same condition when the investigation was taken over.

THE STATE CASE

The State case is basically that the Keeble murder was an assisted suicide plan that originated from the financial difficulties which Kebble had in his minning business. When the plan started, Nassif discussed it with Kebble's father who confirmed it in his affidavit. This plan is confirmed by four (4) independent sources:-

- Nassif's statement which also taken independent from anybody
- Shoultz' statement also taken independently
- Glen Agliotti 's version in his bail application and lastly
- The detailed cell phone billing which shows the number of calls the involved parties made amongst them at the time.

The prosecution team met and consulted the family of the deceased, Kebble and informed them of the facts (that this is an assisted suicide), and the prosecution plan in 2007. The family understandably has their own different view. As regard the shooting itself, there are no cartridges, no fingerprints, no blood or other objective exhibits to assist the investigation. The firearm allegedly used was cut up and thrown into the sea with no trace. The vehicle used by the shooters was brought for repairs at the garage of one of the shooters and returned the following day. The DSO started their investigation a year after shooting incident had occurred.

The Section 204 witness statements

Clinton Nassif's statement was taken down by his attorneys who approached the State. The affidavit linked Agliotti to the Kebbles,and to huge fraud within the JCI related to the Springlights account amounting to about R24 million. The affidavit gave us information on the Brett Kebble murder, the hit list compiled by Agliotti and Strutton. One of the potential victims was Muldenhole who was subsequently shot in Cape Town on instructions of Kebble. The docket was closed by the SAPS as a drive by shooting with unidentifiable assailants. Muldenhole was part of the finance company that worked with Investec Bank to remove Kebble (the deceased) from the Board of Directors.

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Clinton Nassif's section 204 statement had conditions that other shooters also be offered indemnity to become section 204 witnesses. His counsel who assited him with his statement was Barry Roux Sc. Other 204 statement of Shultz was prepared by his lawyer Ian Small Smith.

The Section 204 deals were discussed with the then NDPP, Adv Pikoli, the then Head of the DSO, Adv Leonard McCarthy in the presence of Kaleane Pillay, the Legal Advisor of the then NDPP. The Section 204 agreements are contracts which have legal consequences should there be any non compliance. I am convinced that without the 204 deals the killing of the deceased cannot be solved. The prosecution team is very confident of their case and of a conviction. They would have preferred Stratton's extradition application to have been finalized so that he could be tried with Agliotti. The Stratton extradition application has been submitted to the Australian authorities and is pending.

The accused, Glen Agliotti has also asked for 204 indemnity and was declined or never offered indemnity as he is on the State case one of the senior planners of the assisted suicide alongside with Stratton.

PROPOSAL AND RECOMMENDATION

It is recommended that the prosecution team as well as the investigation team be left to proceed with the state case as it is presently. I submit that it will be in the interest of justice and a successful prosecution that the team should be supported to carry on with the case. It was of course not anticipated that the Selebi case would have taken so long and it is the State Security Department that is approaching the Constitutional Court. The Section 204 statements are the only option that the State has to use to prove the case. There is no other independent objective corroboration of the 204 witnesses which compels the State to use more of the shooters to lend some degree of credence in the state version. I found nothing untoward with the procedure followed and I support it. I would have done the same if I were involved in the beginning. Taking Adv G Nel out of the picture will affect the strength of the prosecution team as he was involved in the negotiations with all the attorneys and advocates for the Section 204 witnesses. I therefore request that the prosecution team and investigation team be left intact. My suggestion will be that I add one (1) of my Junior advocates in the office so that he is afforded an opportunity to learn from the court process.

Kind Regards

GS Maema
Acting Director of Public Prosecutions
Southern Gauteng

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ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9925, Polokwane, 0700, 66 A Market Street, Fernric Building, 2nd Floor, Polokwane
Tel.: (015) 291 9400 Fax: (015) 295 3409

Enq: I H Khuba
Date: 2014/01/22

Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Prosecution
Report Date	22 January 2014
Date of Last Report	09 November 2012.
Complaint Category	Section 28(1)(f) and 28(1)(h)
Complainant	Shepard Chuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot Cas 390/07/2012
Suspect Identification	Lt Gen. Dramat and others
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an

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article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Now included Statement A no's

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short

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while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maghawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in.

connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy-blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects

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were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Provincial DPCI head , Gauteng Major General Sibiya too report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witness an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiya.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011.She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

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She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will sate that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/11/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal immigrant, Home Affair official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 08/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padlie Abrina Papo A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandle Qeba 29: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe A28: He will state that he is an Assistant Director with the Department of Home affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any-

signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Elberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

While he was on the front passenger seat heading to the border gate; he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.

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While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.
In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.
Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 **STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA**

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect

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was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot remember the exact time.. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation..He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling

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requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Glyani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that

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he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nhlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Mäqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers.

Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.
They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

Johannes Mpati Moatshi A61: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

Sello John Phaswana A64: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela A63: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

Matsobane Silas Mokoatlo A78: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

Andries Nxumalo A65: will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices were they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organizes with his contact to look for Gordon Dube it took two week to find a wanted suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa they managed to see the suspect and when he moved the pursued until they arrested his in Diepsloot. They found the suspect in possession unlicensed firearm. He saw the same firearm with captain Maluleke at the Hawks offices after it was returned from ballistic testing. The suspect was taken to Wierdabrug to detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was search but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

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In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe;

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done. He will further state that Lt General Dramat was wearing a white shirt and a red tie.

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Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenteni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenteni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville.
After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the

Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The Investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

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SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The Investigation at Alexandra Police Station uncovered the following;

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The Investigation at Silverton Police Station uncovered the following;

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The Investigation at Pretoria Moot Police station uncovered the following;

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

The Investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES:

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A89).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime

Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating that in August 2010 General Sibiya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiya was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Belt Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Belt Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Belt Bridge Duty Roster – This is a duty register used by Immigration Officers at Belt Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Belt Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

? **Expert report on the Home Affairs Documents A81/1 and A81/2**: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

Cellphone record of Major General Sibiya (0725953168): Upon perusal of the cellphone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent more than 20 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. The same automated SMS were sent to Lt General Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs.

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of

received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madlionga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madlionga.

Cellphone records of Lt Colonel Naethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation to Major General Sibiya.

Cell Phone records of Lt Col Madlionga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he well come the Zimbabwean police the first time. His cellphone records his interaction with Captain Maluleke in line with his statement.

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5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS

Lt General Mkhwanazi: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Hadebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

New - E/o Statements

Innocent Humbulani Khuba A100: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals; Mr Kenneth Ratshitali, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Emails! Madlonga Strat Cases!

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Chuma.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Port of Entries. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident. On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated

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25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for Nelson Ndlovu, Shepherd Chuma and Maghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car" and is filed as per A35.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Belt Bridge and obtained a statement of Peter Elberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton. During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephanus Vorster, Andree

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Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nhlamu. Attached to the copy of the statement of Warrant Officer Nhlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Chuma and Nelson Ndlovu. There were also three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma and Maqhawe Sibanda. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nhlamu statement appeared to be similar to the one received from Secretariat via the former Acting Executive Director Ms. K Mbeki on 28/01/2013. The Warrants of Detention and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Chuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.
On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filed in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved

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overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenteni requesting interview with his members who are mentioned is success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtain the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Diamini and Avhashoni Rambau were obtained in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 Arch file.

On 16/07/2013, he received a Laptop Dell Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 arch file.

In October 2011 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of Investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka

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representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects should have emanated from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials. The letter dated 2010/07/29 addressed to Commissioner Chibage of Zimbabwe by Lt General Dramat request a meeting on 05/08/2010 to discuss operational matter but limited to fugitive of serious crime like robberies, cash in transit and extradition.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
  - ***The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to***

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see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of Lt General Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- *Evaluation of the above findings*: In the entire cellphone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.

- ***He held a meeting on 05/11/2010 with Zimbabwean police planning the operation***. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
  - *Evaluation of the above findings*: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records; General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report.

- ***He committed the government resources into the operation***: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.
  - *Evaluation of the above findings*: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.

- ***He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret***: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
  - *Evaluation of the above findings*: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

- ***He received communication regarding successes and photos of the operation through his Personal Assistance Phumla***: According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- ***He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals***: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- ***Report to parliament in response to the allegation***: A copy of the letter sent by Zimbabwean authority to Col Ntenteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was

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joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;
  - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
  - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the call phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
  - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.

- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Toka, Lt General Lebeya and Major General Hlatshwayo was involved except that they received communication regarding this matter.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
  - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

There is a duty roster used by Immigration Officers at Beit Bridge, which confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on the 7th and 8th of November 2010.

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Beit Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.
- The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order

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to handover the suspect to the Zimbabwean police. The suspects was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.

- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Beit Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011 (Silverton Cas 566/01/2011), the same day in which Johnson Nyoni and Gordon Dube were transported to Beit Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is Shadrack Wisley Kebini, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for to go on wild chase, following the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.
- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.
- The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean Nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cell record towers recordings.

The following members' involvements were found limited to two incidents which took place on 05/11/2010 and 20-22/11/2010; Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.

RECOMMENDATION

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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;

- Kidnapping
- Defeating the ends of justice,
  - Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

GSM 17

RENDITIONS | DIEPSLOOT CAS 390/07/2012 |

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Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Recommendation to NDPP
Report Date	18 March 2014
Date of Last Report	18 March 2014
Complaint Category	Section 28(1) (f) and 28(1) (h)
Complainant	Shepard Tshuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
Suspect Identification	Lt Col M Maluleke
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

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2. SUMMARY OF ALLEGATIONS

The following allegations were made:

2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Meqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down.
He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

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and on 2010/11/08 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maqhawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also

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introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was

always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Gauteng Provincial DPCI Head, Major General Sibiya to report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witnessed an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiya.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will sate that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/01/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the

Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility, in his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Elberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madlionga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is

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Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.
Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

REMOVAL 1

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.
The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

REMOVAL 2

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.
In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.
Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Maditonga was one of his team members

posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot

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remember the exact time. He approached Lt Col Maluleke known as 'Cowboy' to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt.Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Givani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlemu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Naethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

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4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, refering to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.
They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

Johannes Mpati Moatshi A61: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence, Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

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Sello John Phaswana A64: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela A63: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.,

Matsobane Silas Mokoatlo A78: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

Andries Nxumalo A65: will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices were they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organized with his contacts to look for Gordon Dube. It took two weeks for the contact to trace the suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be

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coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa and they managed to spot the suspect. When he moved they pursued him until they arrested him in Diepsloot. They found the suspect in possession unlicensed firearm. He saw the same firearm with captain Maluleke at the Hawks offices after it was returned from the ballistics. The suspect was taken to Wierdabrug to for detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was search but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected an arrest on Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then

gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

Removal 3

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mnqwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

Removal 4

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenteni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenteni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

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5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276. to. 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0822729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Bell Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following:

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The investigation at Silverton Police Station uncovered the following:

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Bell Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following:

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Bell Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

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The Investigation at Wierdabrug Police Station uncovered the following:

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession off in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY; DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

REMOVAL 5

The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

MS HI GSM

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A87).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes.

Removal 6

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Removal 7

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They

then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

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5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene	*Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence.*

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)	
Reason for 205 application	**Findings**
To verify whether he had interaction with the Zimbabwean Authority regarding the arrests of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe	*The entire cellphone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence.*

ADDED new 1

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)	
Reason for 205 application	**Findings**
To test the version that Captain Maluleke was reporting direct to Major General Hlatshwayo regarding cross border issues. During the interview with the said General she denied having known about the Zimbabwean police and requested us to do apply for 205 in order to clear her name.	*Her interaction with Captain Maluleke confirms her version that she did not know anything about the arrest and deportations of Zimbabwean Nationals. She was never at the scene or at Fourways Shopping center where the alleged planning took place.*

ADDED new 2 Maluleke & Hlatshwayo

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)	
Reason for 205 application	**Findings**
To verify the automated SMS send by Major General Sibiya and whether when he signed on one of the success report he had more information about the operation.	*The evidence shows that he did not know anything about the operation that led to the arrest of the Zimbabwean Nationals.*

ADDED new 3

CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged that Captain Maluleke led the operations that led to the arrest of Zimbabwean Nationals.	*There is prima facie case against Captain Maluleke.*

DELETED

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CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313808)	
Reason for 205 application	Findings
To test the version of the witnesses who alleged that they were at the crime scenes and they took money and assaulted the Zimbabwean Nationals.	*The record confirms that they were at the scene even though the allegation of theft is not corroborated*

CELLPHONE RECORD OF LT COL MADILONGA (078 520 9741) AND (0713550548)	
Reason for 205 application	Findings
To test his version in which he alleged that he received a call from Captain Meluleke on 08/11/2010 regarding the deportation of Zimbabwean Nationals .	*Their interaction confirms the version of Madilonga.*

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi A99: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Radebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya A97: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

Ms: Jennifer Irish-Qhobosheane A100: She will state that she is the Head of the Civilian Secretariat and the Secretary of Police. She became aware of the allegations

of renditions on 22/10/2011 when she saw an article in a Sunday Times newspaper entitled, "Journey to death in an unmarked car". The Minister requested a detailed response from the DPCI to be submitted to him in writing. She received two official responses in a form of information notes to the Minister. Based on the different information supplied to the Minister of Police, the Minster felt that the matter needed further inquiry to establish whether there is any evidence that the SAPS might have violated international laws and procedures and/or South African laws.

ADDED NEW 6

Warning Statement of Lt General Dramat A94/1: He will state that he is the Deputy National Commissioner of the South African Police Services. He unequivocally point out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorize the unlawful and intentional depriving of a person liberty, or movement, and/or his custodians of control on any basis whatsoever.
He will further sate that never authorized anyone or sanctioned the kidnapping any of the Zimbabwean Nationals. He knows of no action that he took or authorize which was aimed at defeating the administration of Justice.

ADDED NEW 7

Warning Statement of Major General Sibiya A101: He will state that he was never appointed as the head of TCMS. However he received reports from his members regarding successes as routine. He was never part of the operation that arrested the Zimbabwean National who was wanted in connection with the murder of Zimbabwean Colonel in Zimbabwe.

Warning statement of Lt Col Mahlangu Mkuleke A88: He exercised his right to remain silent.

5.7 **STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED**

A100 in original

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

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question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndoba, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Bell Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Bell Bridge and obtained a statement of Peter Elberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an Immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.

During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices; he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/08/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

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On 08/04/2013 he interviewed Ndandulani Madilonga and obtained his statement. On 15/04/2012 he went to Bell Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.
On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Pritchard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filed in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNCUF242486436B13424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenteni requesting interview with his members who are mentioned is success report dated 04/02/2011 (A62/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.
He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Blamini and Avhashoni Rambau were obtained

In connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Malulaka to be transported to Belt Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file).

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF242864366L3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of Investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as

per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madlongo's statement analysis from Precision Forensics.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS:

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M.L Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he manns the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the Interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- ***The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma on 05/11/2010.***

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke new that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maqhawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

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while they were aware of the presence of Zimbabwean police at the scene, Major General Sibiya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 08/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndandulani Madilonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madilonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maqhawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Poliswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. According to Peter Elberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

The letter retrieved from Captain Maluleke's laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in

the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- ***The arrest of Prichard Chuma on 23/11/2010***

On 23/11/2010 and operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2)) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Bell Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and lineraries of Captain Maluleke.

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Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Potelo when he addressed them but Colonel Potelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Moot Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

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7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.

8. RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Malulekе, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Recommended/~~not recommended~~

Mr. M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 15/03/2014

Approved/~~Disapproved~~

MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

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Director of Public Prosecutions
South Gauteng

NATIONAL PROSECUTING AUTHORITY
South Africa
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INTERNAL MEMORANDUM

TO : ADV M A CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS

FROM: Z J VAN ZYL SC
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: DIEPSLOOT CAS 390/07/2012'

DATE: 27 JUNE 2014 how did Van Zyl get told it was best "dealt" with by DPP North Gauteng - if it only went there in January 2015!

Dear Sir

1 You handed me the above matter and an internal memorandum dated 14 February 2014 from Adv M Mosing (Special Projects Division) sometime late in February 2014. You will recall that I had a quick look at it and indicated a provisional view that the matter is best suited to be dealt with by our Head Office. That opinion was based on the clear international ramifications of the matter. I furthermore indicated that I required some time to study the content of the 6 lever arch files and another thinner file to confirm my provisional view.

2 Before I could do this, I was approached by Mr I H Khuba (who introduced him to me as the investigating officer from IPID with cell no 084 702 2741). Mr Khuba was accompanied by his colleague Mr Glen Angus (with cell no 0835655320).

3 These gentlemen approached me on 7 March 2014 in my office. Mr Khuba explained to me that he needed the whole docket for further investigation and that they would return the files on Friday 14 March 2014. I insisted that they both sign for the docket, which they did. They also supplied their contact details and I handed all the files to them. The files were not returned to me as agreed and I was not contacted by them. * *

4 I approached the representative of IPID who attended our "police meeting" on 8 May 2014 about the whereabouts of the docket. He said that he was unaware of the matter. I then gave him the names and

GSM

contact details of Messrs Khuba and Angus, as well as my contact details. Nothing happened.

5 I phoned both Messrs Khuba and Angus on 30 May 2014 and left messages enquiring about the whereabouts of the docket. I received a message from Mr Khuba that the matter had been returned to our Head Office. I managed to get hold of Mr Khuba on 18 June 2014 and he informed me that Mr McBride had taken a decision that the matter "... had to be returned to the NDPP". He said that there had been a meeting with the NDPP and the matter was then returned there. I wanted to know who the docket had been handed to. He said that he would find out. It bothered me that the investigating officer could not supply this information.

6 I then phoned adv Mosing and could not get hold of him. I also phoned Adv BT Moeletsi who had apparently drafted the internal memorandum dated 13 February 2014. Adv Moeletsi re-called the matter, but knew nothing about the whereabouts of the docket.

7 I phoned Mr Khuba on 23 June 2014 and asked him why he lied to me when he uplifted the docket. I told him that they never intended to return the docket. He said that he still had one thing to do. He denied lying to me, but did not deny that they never intended to return the docket to me, despite me making that statement several times. Mr Khuba stated that docket had been handed to "... the NDPP's secretary" but he could not provide any name.

8 I phoned and managed to get hold of Adv Mosing on 27 June 2014. Adv Mosing stated that the docket had not been returned to him. All he further knew was that the decision that the matter had to be dealt with in this division was taken by Adv Jiba DNDPP and that he had about 3 weeks ago received a telephonic enquiry about witnesses who were being protected in this matter. He was then told that the matter was now being dealt with in North Gauteng office of the DPP.

9 I am worried about the whereabouts of the docket as it had been uplifted from me under seemingly false pretenses, as I was also not later informed that it would not be returned to me or this office and as the people who drafted a report for the DPP of this office do not have any information about its whereabouts. I think that it would be prudent to establish from the NDPP Mr Nxasana that the docket did indeed reach his office.

10 I appreciate that this may be much to do about nothing, and that everything is fine, but prefer to be rather safe than sorry.

Kind Regards

Z J VAN ZYL SC
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG LOCAL DIVISION, JOHANNESBURG

gsm 19

ANNEXURE "A" **Case no: A16/212 /2016**

THE STATE VERSUS

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKO**
3. **ROBERT McBRIDE**

(Hereinafter referred to as accused 1 – 3 respectively)

Count No. 1

FRAUD

Whereas Accused 1 had received instructions from the former Acting Executive Director of the Independent Police Investigative Directorate (IPID) around October 2012 to conduct an investigation into the rendition of Zimbabwean nationals by members of the Directorate for Priority Crimes Investigations (DPCI) to Zimbabwe;

AND

Whereas Accused 1 had conducted an in-depth investigation into the said rendition of Zimbabwean nationals by members of the DPCI with the assistance and or co-operation of other institutions such as the National Prosecution Authority (NPA), who were providing guidance to the investigation;

AND

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Whereas Accused 1 having finalised the said investigation into the illegal rendition of the Zimbabwean nationals, compiled a report (herein referred to as the First Report) and submitted it to the National Prosecution Authority (NPA) on 22 January 2014. The First Report recommended to the National Prosecution Authority in accordance with Regulation 5(1) issued under the IPID Act 1of 2011 that:-

- Lt General Dramat
- Major General Sibiya
- Lt Colonel Maluleke
- Constable Radebe
- Captain Nkosi and
- Warrant Officer Makoe

be charged criminally for the following offences:-

- Kidnapping and
- Defeating the ends of Justice;

There was a further recommendation that Lt Colonel Maluleke, Warrant Officer Makoe, Captain Nkosi and Constable Radebe be charged for assault and theft;

AND

Whereas Accused 3 subsequent to his appointment as Executive Director of the IPID on 3 March 2014 requested an update on all high profile matters handled by the IPID including the rendition matter, Accused 1 and a witness were directed and or instructed by Accused 3 to retrieve the rendition docket from the South Gauteng NPA office on 7 March 2014,

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Therefore the accused are guilty of the crime of fraud

IN THAT on or about the **5th day of March 2014 to 8 April 2014** and at or near IPID National Head Office, in **Pretoria** in the Regional Division of Gauteng, the Accused, unlawfully altered the First Report by amongst others:-

- removing information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- adding certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;
- changing the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

  AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

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with the intention to falsely present to the National Prosecution Authority that the said Lt General Dramat and Major General Sibiya are not implicated in the rendition of the Zimbabwean nationals when in fact the accused knew when they made such false representations that there was evidence in the docket and the First Report, which implicated Lt General Dramat and Major General Sibiya in the said rendition of the Zimbabwean nationals,

thereby produced the Second Report which was completed on 8 April 2014 and submitted to a different NPA office and to the potential prejudice of the National Prosecution Authority in particular and or the administration of justice in general.

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ANNEXURE "B" **Case no: A16/212 /2016**

THE STATE VERSUS

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKO**
3. **ROBERT McBRIDE**

(Hereinafter referred to as accused 1 – 3 respectively)

COUNT 2

DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE

THAT the accused are guilty of the crime of Defeating or Obstructing the administration of justice

IN THAT upon or about the date and place mentioned in Count 1 within the Regional Division of Gauteng the accused did unlawfully and with intention to obstruct or defeat the administration of justice commit the following act to wit,

- removed information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- added certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;

GSM

- changed the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

  AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

which conduct defeated or obstructed the administration of justice.

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CASE NO: A16/212/16

ANNEXURE:

BAIL CONDITIONS

THE STATE

versus

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKU**
3. **ROBERT McBRIDE**

1. That bail be fixed in the amount of One Thousand Five Hundred Rand (R1 500) only.

2. That the accused hand in their respective passports to the Investigating Officer, Captain Hlatshwayo, who will release the passports on the request for same,for intended travel aboard.

3. That the accused not apply for new travel documents from Home Affairs until the finalization of this matter.

4. a. That accused 1 is not allowed to leave the Northern Province Division, except to attend these proceedings without the written permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

   b. That accused 2 and 3 are not allowed to leave the Northern Gauteng Division without the permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

MAGISTRATE M NAIDOO

DATE: 16 March 2016

G sm

CASE NO: A16/212/16

ANNEXURE:

BAIL CONDITIONS

THE STATE

versus

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKU**
3. **ROBERT McBRIDE**

1. That bail be fixed in the amount of One Thousand Five Hundred Rand (R1 500) only.

2. That the accused hand in their respective passports to the Investigating Officer, Captain Hlatshwayo, who will release the passports on the request for same,for intended travel aboard.

3. That the accused not apply for new travel documents from Home Affairs until the finalization of this matter.

4. a. That accused 1 is not allowed to leave the Northern Province Division, except to attend these proceedings without the written permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

   b. That accused 2 and 3 are not allowed to leave the Northern Gauteng Division without the permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

MAGISTRATE M NAIDOO

DATE: 16 March 2016

GSM

CASE NO: A16/212/16

ANNEXURE:

BAIL CONDITIONS

THE STATE

versus

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKU**
3. **ROBERT McBRIDE**

1. That bail be fixed in the amount of One Thousand Five Hundred Rand (R1 500) only.

2. That the accused hand in their respective passports before 18/3/2016 16h00 to the Investigating Officer, Captain Hlatshwayo, who will release the passports on the request for ~~same~~,for intended travel aboard.

3. That the accused not apply for new travel documents from Home Affairs until the finalization of this matter.

4. a. That accused 1 is not allowed to leave the ~~Northern Province Division~~ RSA, except to attend these proceedings without the written permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

   b. That accused 2 and 3 are not allowed to leave the Northern Gauteng Division without the permission of the Investigating Officer, Captain Hlatshwayo, the permission for which will not be withheld unreasonably.

MAGISTRATE M NAIDOO

DATE: 16 March 2016

GSM26

National Prosecution Service
Priority Crimes Litigation Unit

NATIONAL PROSECUTING AUTHORITY
SOUTH AFRICA

Reference: 10/1/3/5/3

Enquiries: G S Maema

11 March 2016

Head Office

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Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton, Pretoria

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Pretoria
0001
South Africa

www.npa.gov.za

The Commander
Crimes Against the State (CATS)
Directorate of Priority Crimes Investigation
Private Bag X1500
PRETORIA
0001

ALLEGED CONTRAVENTION OF THE INTERCEPTION OF COMMUNICATIONS ACT 1992: BROOKLYN CAS 427/5/2015: BRIGADIER XABA

1. The case docket has been perused.

2. It has been decided to decline prosecution. The following are some of the considerations:

It appears that Mr McBride was performing functions in terms of section 29(2) and 33 of the IPID legislation after a formal complaint was submitted to his office by General Sibiya who had suspicions that the two (2) officials from Crime Intelligence who visited the DPCI offices in Gauteng, where he was based prior to his suspension, were looking for a device which has recorded information that could implicate him in any wrong doing. When he could not ascertain what the purpose of the visit to his office was from his lawyers, he decided to ask IPID to conduct the investigation.

Although the IPID Act empowers the Directorate to enter the premises of any police offices and seize documents or objects which could be used in the investigation of possible offences, Crime Intelligence of the SAPS have certain procedures that must be complied with to seize related objects. The Data 6 device was taken by IT officials in the offices of Mr McBride and taken straight to the offices of State Security to determine the capabilities of the device. It was found that it does not store information, it only encrypts from the sender and decrypts at the receiver of information. The device was in any way discontinued within the SAPS and replaced with the Secure e-mail application.

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It is clear that the IPID Head had no intention to deprive the police of the equipment permanently; the idea was to pursue an investigation. There was no intention to defeat the ends of justice and to commit theft.

3. The case docket Brooklyn CAS 427/05/2015 is returned herewith.

Dr J P Pretorius

Acting Special Director of Public Prosecutions

11 March 2016

ANNEXURE B

A138

Office of the Commissioner

Office
Pretoria

Enquiries
Ms J Padiachy

Telephone
(012) 422 5050

Facsimile
(012) 5189

Room
Block A2

Reference

Date
02 February 2007

SOUTH AFRICAN REVENUE SERVICE
SARS
12 FEB 2007
RECEIVED
PARLIAMENTARY OFFICE

Mr T A Manuel, MP
Minister of Finance

MINISTER OF FINANCE
MG
12 FEB 2007
FILE No. M-3/5/2
MINISTER OF FINANCE
32/07

SARS

South African Revenue Service

Pretoria Head Office
299 Bronkhorst Street,
Nieuw Muckleneuk, 0181
Private Bag X923, Pretoria, 0001
SARS online: www.sars.gov.za
Telephone (012) 422 4000

MINISTER
DS
22 FEB 2007
FILE No. M-3/5/2
MINISTER OF FINANCE
561/07

Dear Minister

TO FUND AN INTELLIGENCE CAPABILITY WITHIN NIA IN SUPPORT OF SARS

1. **PURPOSE**

To seek approval to fund a special capability within NIA to supply SARS and law enforcement with the necessary information to address the illicit economy.

2. **DISCUSSION**

2.1 Collecting tactical intelligence invariably means penetrating and intercepting organised criminal syndicates. This is an activity for which SARS does not presently have the capability (including the legislative mandate to manage clandestine activity).

2.2 Discussions are taking place with National Intelligence to supplement SARS intelligence capability. NIA is willing to create a ring fenced capability, provided funds are made available to cover personnel costs. All other costs will be covered by NIA. NIA is willing to formalise the above-mentioned arrangement into a MOU.

2.3 We therefore request that NIA's budget be increased to fund the creating of this special capability.

2.4 The estimated personnel costs are as follows:

2007/2008	R13,1 Million
2008/2009	R17,2 Million
2009/2010	R18,6 Million

MAC
Private Bag X61, Pretoria 0001
2017 -08- 23
TWENTY ONE
MAC ... HOUSE

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ANNEXURE B

A138

3. RECOMMENDATION

The request to fund the creation of a special capability in NIA to support SARS is strongly recommend and approval from the Minister is required.

GENERAL MANAGER: (Enforcement and Risk)
DATE: 02/02/2007

P GORDHAN
COMMISSIONER: SARS
DATE: 2007-02-09

Deputy Minister approved/~~not approved~~

supported however this is a strange way of executing what I consider to be an economic mandate of NIA. It seems as though its an add on rather than part of NIA's mandate

DEPUTY MINISTER OF FINANCE
DATE: 23/02/2007

Minister approved/~~not approved~~

T MANUEL
MINISTER OF FINANCE
DATE:

Private Bag X167, Pretoria 0001
2017 -08- 23
THE HIGH COURT
M... PRETORIA

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BROOKLYN CAS 427/05/2015

PIETER LESLEY JONKER sates under oath in English

1.

I am an adult male, 47 years of age with ID number 681002 5261 088, residing at No 4 Brits Avenue, Wierda Park Centurion. I am employed as the head of operations for Manitou South Africa, No 122 Plane Road, Spartan, Kempton Park with contact number (011) 975 7770. I can also be contacted at 082 828 6711.

2.

During the period from 2000 to 2008 I was employed as a Senior Special Investigator, assigned to the Directorate Special Operations at the office of the National Director Public Prosecutions, VGM Building, Weavind Park, Pretoria with telephone (012) 845 6000. I was attached to the Special National Projects Unit and reported directly to Mr Andrew Leask.

3.

On 18 September 2015, I was interviewed by members of the Directorate for Priority Crime Investigation, better known as the Hawks. I was informed that they are busy conducting an investigation, Brooklynn CAS 427/05/15 whereby The South African Revenue Services better known as SARS is the complainant. I was further informed that the investigation was not directed at someone specific and that the investigation was dealing with the misappropriation of government funds. I was told that I am not a suspect and that the interview was aimed at trying to establish the way in which certain claims relating to the Scorpions C Funds were done and dealt with. I was told that they were in possession of documentation and information showing that I was directly involved with certain claims and wanted to know what role I played.

4.

I was shown a C Fund claim (Request for Advance) dated 22 June 2007 with reference number 19/07 and asked whether I could remember this claim. I recalled this claim as I was the person who had compiled the claim and signed it off before it was presented to Mr. Andrew Leask for recommendation. The claim was recommended and sent to Advocate Sipho Mlambo who in turn recommended the claim and forward it for processing. This all happened on the same date, 22 June 2015

5.

I was handed more documents relating to the mentioned claim which were marked annexure "A" and annexure "B". Annexure "A" related to a document from Protech Security Services and indicated the equipment that had to be procured. The document depicted a number of equipment, codes and amounts which I cannot remember. I was asked if I knew who this company was and responded by saying that I knew that the owner was an adult male known to me as Helgaard Lombard. He was the same person who supplied and installed the equipment.

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BROOKLYN CAS 427/05/2015

PIETER LESLEY JONKER sates further that:-

6.

Annexure "B" I recall as a document from advocate Welsh recommending certain covert equipment to be procured as part of this claim. I am satisfied that all the equipment procured was delivered to the DSO.

7.

I was shown an internal letter from the then Head of Operational Support Advocate John Welch to Mr. Andrew Leask dated 22 June 2007. I cannot recall the exact contents of the letter but do recall that the correspondence referred to Project Bad Guys and formed part of the claim. I was also shown a letter from the Operational Head of the Scorpions Advocate Thanda Mngwengwe to Mr. Andrew Leask dated 22 June 2007. I cannot recall the details of the communication as I have not been placed in possession of this or any of the other documents.

8.

I was also shown a document indicating that I had signed on three different occasions for cash mounting to the amount of R 1 426 382-26, relating to the claim mentioned above. The document that I was shown indicated that I received an amount of R 460 000-00 on 10 July 2007. Further to this, I also received R 960 000-00 on 17 July 2007 and a third amount of R 6 382-26 on 15 August 2007. Added up, this amounts to an amount of R 1 426 382.26. I confirm that the signatures on the document is mine and that the money that I have signed for was handed over to the person/s who made payment.

9.

Further to this, I was asked about tender procedures and how processes should work when equipment is acquired. This claim relates to the procurement of covert equipment and covert services and in my view could never form part of an open tender process.

10.

I have no reason to suspect that anything untoward regarding this claim was done. This claim was approved by the head of the Directorate of Special Operations and the chief financial officer.

11.

I know and understand the contents of the above written statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding to my conscience.

(P L JONKER)
(Deponent's signature)

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A

BROOKLYN CAS 427/05/2015

PIETER LESLEY JONKER sates further that:-

I certify that the above written statement was taken by me and that the deponent's signature was placed thereon in my presence at Spartan Kempton Park on 6 October 2015 at 11:20

Signature of Commissioner of Oath
MAGEZI FREDY SEWELE
218 Visagie Street
General Piet Joubert Building
Pretoria
CAPTAIN

E5m

A34

Affidavit

I, the undersigned, Helgard Lombard, do hereby state under oath that I am an adult male with Identity Number 570817 5018 087, and 57 years of age, employed by the South African Revenue Service (SARS) and am attached to the Physical Security and Protection (Support) unit, whose offices are situated at Riverwalk Office Park, Block A, Corners Garsfontein and Matroosberg Road, Ashlea Gardens, Pretoria, with telephone number (Office) 012- 340 3126.

Installation of Security Equipment at the Offices of the Directorate Special Operations (DSO) during 2007

BACKGROUND

I was appointed at SARS on 01 March 2007 by Andries Janse van Rensburg also known as Skollie and Charl Fourie, who represented SARS at that time. I formed part of the surveillance capability that SARS introduced to conduct surveillance and special operations on tax evaders.

During April or May 2007, Skollie asked me whether it will be possible to plant eavesdropping equipment in one of the DSO's offices. I told him that it would be difficult but possible providing that he obtains the necessary approval in accordance to RICA Act, Act 70 of 2002. The conversation ended on this note.

ENQUIRY

Skollie called me one day in June or July 2007 and told me that the DSO contacted him out of the blue for a quotation to install security systems in their offices. They needed to install ten or eleven of these systems because they were sure that the SA Police Service (SAPS) got into their offices to gain access to sensitive documents. Skollie made an appointment for us to meet with Adv. Gerrie Nel and Andrew Leask, Head of the Special Investigation unit at the DSO.

They told us that the following security equipment needed to be installed in order to detect intrusions in time, to remotely view it and to have record of it should it be necessary:

Initial request

a. CCTV cameras, overt and concealed cameras complete with digital video recorders and microphones.

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A34

b. Equipment to monitor these CCTV cameras remotely, i.e. GSM 3G-routers and remote viewing software to be used with cellular telephones. The cellular telephones were to be included.
c. Audio recorders, headphones and switches to remotely activate the microphone and recorder. This was to be used during interviews and or meetings as required.
d. Wireless alarm systems that would report to their cellular telephones to alert them of an intrusion. The alarm system consists of the alarm panel in a tamper box, Passive Infrared (PIR) detectors, door contacts, key pads, remote control keyrings and sirens. It also included the SIM-cards that were installed in the alarm panels to send out SMS-messages relating to responses from the alarm panel, i.e. intrusion signals, arm or disarm signals, time messages, low battery information, etc.

Follow-up requests

e. A "White Noise Generator", complete with audio spectrum analysis software, that will prevent eavesdropping equipment to work properly when they were in sensitive meetings (the "Generator" creates noise that eliminates the capability of a microphone to capture voice or sound).
f. At the end of the initial project (October 2007) I was also requested to provide the DSO with cellular telephones with high-end encryption functionality on it to enable them to communicate without being intercepted.
g. In November / December 2007 I also arranged that a biometric access system be installed on one of the floors (offices).

I prepared a quotation and I think I handed it to Skollie to present to the DSO. It might also be that I have sent them quotations in this process as I cannot remember.

ACCEPTANCE

The DSO accepted the quotation and informed Skollie about it. Skollie made it clear that the installation cannot be discussed in the group as it was a sensitive installation and that the information cannot be leaked at any stage.

I made contact with the DSO and they arranged that the money, approximately R900, 000.00 (nine hundred thousand) was paid to me. It was paid in cash to me. A second amount of R250,000.00 was paid to me to procure and deliver the follow-up equipment requirements.

INSTALLATION PROCESS

I started with the security systems installation process sometime in July 2007. Initially Skollie accompanied me to assist me with the installations, which mainly took place after hours. The

A34

reason for this was so as not to expose the installation to the rest of the DSO personnel who might have had links with the SAPS. After about two or three weeks Skollie one evening told Adv. Gerrie Nel and Andrew Leask that he has to leave for Germany for business and will most probably not see them for quite a while. This was a lie because Skollie never left the RSA but was just looking for an excuse not to assist any further with the installations.

I am not a hundred percent sure but I think that I have concluded about seven or eight of the installations by the end of August or beginning of September 2007 (the installation was concluded in December 2007). Due to poor signal in the area, as well as a bug in the 3G-routers, it often happened that the routers hung up and that one could not remotely monitor the CCTV systems. I have asked Andrew Leask if they would mind if I connect remotely with these systems to make sure that the routers did not hung up because it needs a "hard reset" when this happened. A "hard reset" is when you remove power from the router and then restart it.

Both Adv. Gerrie Nel and Andrew Leask ask me during this time whether Skollie was in Germany and I had to lie by admitting that he left for Germany whilst carrying on with the installations.

REQUEST FOR MONITORING OF MEETINGS

About a week or two in September 2007, Skollie ask me to monitor meetings of the DSO. I told Skollie that I cannot adhere to his request unless he (SARS) has an Act 70 approval to conduct eavesdropping and that is the only way that we could do that. It was during this time that it also became known that Commissioner Jackie Selebi could be arrested on corruption charges regarding his relationship with Glenn Agliotti. It was also during this time that Adv. Vusi Pikole, Head of the NPA, was suspended.

About a week to ten days after Skollie's initial request to monitor meetings of the DSO, he called me late one night (it was after 21:00) and said that he just had a meeting with Mr. Ivan Pillay who came from a meeting with President Mbeki. He said that he has the "go-ahead to monitor the DSO meetings". I have asked him how did they (him and Mr. Pillay) got the Act 70 approval and Skollie said that "how do you think the Judge will refuse a request from the President?" I have asked Skollie what the scope of the Act 70 approval was because it could not have been a blanket approval to do what we want. Skollie's answer was that the President wants to know exactly what the DSO had against Commissioner Selebi and secondly, whether there is anyone else of the President's high ranked officials, e.g. Ministers, Director Generals, etc, that would be arrested. He said that the President said could not afford another scandal like this and that the DSO did not inform him about their plans to arrest Commissioner Selebi. The President did not want to be caught off-guard again.

A34

'I have asked Skollie who knew about the Act 70 approval and he said that it was only six people; President Thabo Mbeki, Min. Trevor Manual, Comm. Pravin Gordhan, Mr. Ivan Pillay, him (Skollie van Rensburg) and I. I believed Skollie because of the following various reasons:

a. Need-to-know principle. When the unit started, Skollie made it clear to everyone that the unit runs on the need-to-know principle and nothing that he discussed with anyone needs to be discussed with any other member in the group. He told us that he will incorporate a member in a group if it was necessary and that if he found out that we discussed operations with each other, we would have been in trouble. The need-to-now principle is an excepted principle in enforcement and intelligence units; it was therefore acceptable for most of the units' members as most of us had intelligence and or law enforcement backgrounds.
b. We could only discussed operations with him or Mr. Ivan Pillay. We never had an opportunity to meet with Mr. Ivan Pillay and Skollie conveyed everything that Mr. Pillay said to the group. Skollie could call Mr. Pillay at any time but kept all team members away from him. The only other person that I knew that had direct access to Mr. Pillay was Charl Fourie, one of the founder members, or more senior members, in the group.
c. I was told by various people that Mr. Pillay was a very senior ANC member and that he could pick up the telephone and make an appointment with the President any time he wants to. Skollie also told me, or us, on more than one occasion, that Mr. Pillay and he meet the Minister of Finance every now and then but that he meets the Deputy Minister every two weeks to discuss progress and to receive instructions.
d. I was told by Charl Fourie that when he and his wife were invited to dinner one night at Mr. Pillay's house, Ms. Jesse Duarte and her husband also arrived at Mr. Pillay's house and he confirmed that Mr. Pillay is a very senior person in the ANC.
e. I was also told that the President Zuma was one of the people that joined Mr. Pillay's surprise 55th birthday day party that was held in Durban. I was not sure though that this party was in 2007.
f. Skollie did not tell me to start monitoring the meetings of the DSO immediately but only gave me the instruction between a week and or a week-and-a-half later, i.e. adequate time to obtain approval for an Act 70 approval. Moreover, he called me in the evening "after Mr. Pillay came back from a meeting with President Mbeki" and instructed me to go ahead with monitoring of the DSO offices.

I also did not asked him for the Act 70 approval as Skollie was a senior SARS official (Grade 9 – Executive Manager's level) and the reports would have been forwarded to Mr. Ivan Pillay (Deputy Commissioner of SARS) in any way. I also need to mention that I previously did an Act 70 , or Act 127, Installation for the DSO, which also did not show me the approved Act 70

document. I also accepted the instruction in this case because the DSO explained that the evidence would most probably have to be used in court.

MONITORING OF MEETINGS

I started to monitor the meetings as instructed and gave Skollie verbal feedback on what I found. Skollie called me, or told me in person, that Mr. Pillay said that he wanted the conversations and or evidence on CD. Skollie would then produce the report and CD to Mr. Pillay to confirm the reports' information on the CD if necessary.

As far as I can remember I only monitored and gave information regarding the case of Commissioner Jackie Selebi through to Skollie and ignored other non-related discussions.

One night, I would guess it was mid-November 2007, Andrew Leask said that he needed a flash drive for a document he needs to complete at home. He did not have his flash drive with him as he borrowed it to his child for some reason. I offered him a flash drive I had with me.

Andrew returned the flash drive to me a day or two later. I am not sure of the date but I think I opened the flash disk that night or a day or two later. I discovered that there was still a document on the flash disk and when I opened it, it contained information about Commissioner Jackie Selebi, amongst others, money he received in respect of the corruption charges against him. I took the flash drive to Skollie and told him I think that they now have everything that the President was looking for and that it was not necessary to continue with the monitoring.

I am not hundred percent sure but I think it was that same day that Skollie arranged with Mr. Pillay that I meet with him and Skollie to discuss the information that was on the flash disk. Skollie pre-warned me that when I greet Mr. Pillay I must not give him a firm handshake because he has an illness that affects his bones and that I could hurt him by a firm handshake. I must also call him "sir" or "mister Pillay" as he likes it.

I met Mr. Pillay and assured him that I did not download the information from Andrew Leask's laptop. As far as I can remember I asked him whether I must still carry on with the monitoring of the meetings regarding Commissioner Selebi's case. He confirmed that I must carry on with the monitoring unless it is unsafe to do so. At no time Mr. Ivan Pillay told me to stop the operation. Skollie said that I will continue with the monitoring and will cease monitoring when it is not safe to do so. I felt uncomfortable with the task and told Skollie so when we left. I also went back one night thereafter (after 21:00*) and asked Skollie to terminate the operation but he insisted that I do my work (*I was already in bed but got up and drove to his house in Irene for this appointment).

I guess I made one further recording relating to Commissioner Selebi's case end November beginning December 2007 (I am not sure) and hand it to Skollie. I then unexpected and without an appointment, went to Skollie's house (It might have been the day after I handed him the CD). I wanted to discuss the situation again with him.

When I got to Skollie's house he opened the gate for me and I let me in. I asked him what he was doing and he said he was writing the report on the CD information I gave him regarding Commissioner Selebi's case. I started reading what he was writing and became extremely upset because he was manipulating the information that was on the CD and added fictitious information that was never said or took place. I speak under correction if I say that he wrote something about more arrests that the DSO was going to make and that they are not doing what they are supposed to do (also see his "coup" theory below). I confronted him with the nonsense he wrote and he said that if I am so upset about the way he writes reports he will delete it. He then deleted the report and confessed that Johan de Waal wrote all the other reports in anyway. I confronted him with the fact that Johan de Waal also knew about the operation as he originally said only six people are aware of the operation. I think at this stage he confessed that Charl Fourie also knew about the operation right from the start.

What happened after this is not clear as I was extremely upset about the situation (It is now quite a while since it took place). I know however, that I managed to make an appointment with Mr. Ivan Pillay through Charl Fourie (not sure) and that he accompanied me to Mr. Pillay's house. I am also not sure whether Johann van Loggerenberg joined us that night or on a follow-up meeting but he was also informed by Mr. Pillay about the situation (Mr. Pillay said that he needed Johann to assist him with the situation). I told Mr. Pillay what happened and that he cannot trust any of the information he received from Skollie because Skollie distorted the truth. Mr. Pillay said that I must leave it in his hands and that he will deal with it.

Thereafter many meetings took place to discuss the operation and Skollie. On one of the meetings (I think it was the second meeting) Mr. Pillay said that if I ever was confronted with this operation he would say that he gave the instruction. I then asked him if the President did not task him and about the existence of the Act 70 approval. Mr. Pillay then denied that the President ever gave the instruction and or arranged the Act 70 approval but said that he will take responsibility for it. Mr. Pillay said that he and Johann van Loggerenberg will deal with the Skollie-matter (It is not clear but if I recall correctly either Charl Fourie or Johan de Waal attended these meetings with me).

Mr. Pillay told us to carry on with our work and still have interaction with Skollie whilst they will proceed with a plan to take action against Skollie.

CONTINUATION WITH WORK AFTER THE EXPOSURE OF SKOLLIE VAN REENSBURG

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After my fallout with Skollie, Charl Fourie or Johan de Waal called me to Skollie's house to assist with a virus that Skollie had on his laptop. He visited pornographic sites and picked up a virus that at any time connected to a pornographic site. Skollie said that his son borrowed his laptop to do research for a task and thereafter his laptop reacted funny and connected to these sites. I have formatted the laptop's hard drive with a program called DBAN and re-loaded a Window OS on the laptop.

This must have happened in mid-December 2007 and everyone in the unit (don't know what it was called then) went on leave.

In 2008 I started communicated with the rest of the team to find out whether they also found Skollie to be controversial at times. Quite a lot of controversial facts came to the fore amongst others:

a. That my first appointment letter in SARS was falsified on instruction from Skollie because I decided to join the SSA rather than SARS. SARS gave me a better salary offer than the SSA and this was contained in the letter. I later received an original and official SARS offer to sign again.
b. Skollie falsified Johann van Loggerenberg's signature on claim forms but with the "approval" of Johann van Loggerenberg.
c. Skollie told Charl Fourie that they must "knock" the Chinese and stole their money. He will get SAPS to arrest the Chinese for running illegal businesses.
d. There was an incident regarding a file that Skollie wanted to hand over to the Mail and Guardian. It allegedly contained an incident between HR and Johann van Loggerenberg. Skollie travelled to Cape Town to see Mr. Pillay and on return said that Mr. Pillay said that I stole the file out of his office during a TSCM investigation.
e. Skollie told Johan de Waal to phone the papers and say that that he is from the FAG (Frustreerde Afrikaanse Groep). They are going to commit sabotage to encourage violence in South Africa.
f. Skollie manipulated team members to steal items out of shops. These members stole amongst others a cricket bat as well as dog food out of the shops "as a test that they can successfully operate under pressure". Afterwards he just laughed at them and said that he needed these items. The members went back to these shops and paid for the goods out of their own pockets.
g. Skollie bribed someone at the Surveyor General's office to purchase a second or third farm in Standerton. This piece of farm could not be sub-divided but Skollie bribed the person to do it.
h. Skollie told us that "we" have the power to decide who will next govern South Africa. He said the "we" could execute a "coup" by deciding to whom the group ("we") are going to

GS

give the "evidence" we got from the DSO monitoring operation. This would have divided the country and he could decide who have to take over.

i. Skollie also tried to setup a confrontation between now President Zuma and a person called "Snyders" somewhere in KZN. This also did not work out for him.

Approximately in April \ May 2008, I was seconded to SARS (Anti Corruption and Security) to assist with the planning and installation of security at SARS sites nationally. I distanced myself from Skollie and the team and concentrated on the work at ACAS. In April 2009 I was permanently transferred to ACAS.

We have had several meetings in 2008 where we also had the opportunity to take a severance package and leave SARS. This might have been an eye blind to get rid of Skollie but I decided to stay.

I was also present when Johan de Waal and Charl Fourie confronted Skollie over a cell phone telling him that they disclosed all his misrepresentations, lies and dealings to Mr. Pillay and that they are finished with him. I also told him during this conversation that I am now aware that he lied to me and mislead me whilst he was in a position of trust and authority. He just said "dankie vir dit" (thank you for that) and nothing else that I can remember. Johann van Loggerenberg was also present during this conversation.

I heard that Skollie chose to take a severance package and part with SARS. I later heard that his remaining contract salary was paid out to him.

We also had a meeting with Skollie after he left. I could initially not remember this meeting that took place in 2008 but Johan de Waal showed me minutes that were taken during this meeting and I could recall the conversation (See attached Annexure A). I still cannot remember where at Centurion Mall it took place but do remember the conversation.

After I have read the minutes on 19 March 2015, I told Johan de Waal that we have to discuss this immediately with Commissioner Tom Moyane as I am no longer going to keep it secret because it will damage the image of SARS should it leak out. We then drove to the Commissioner's Office and told the Commissioner that we need a critically urgent meeting with him. Commissioner Moyane immediately put time aside for us, invited the Acting COO, Mr. Jonas Makwakwa to the meeting and listened to what we had to tell.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

HELGARD LOMBARD

GSM

A

Human Resources

Offer letter

Office:
Enforcement
Enquiries:
Johannes Muller
Telephone:
082 371 8052
Facsimile:
086 617 1902
Room:
Block G, 1st Floor
Date:
9 February 2007

South African Revenue Service
Pretoria Head Office
299 Bronkhorst Street,
Nieuw Muckleneuk, 0181
Private Bag X923, Pretoria, 0001
Telephone (012) 422-4000

Mr Helgard Lombard

I am pleased to inform you that SARS wishes to employ you on a permanent basis as a Specialist Agent at Customs Border Control Unit commencing on 1 March 2007. This is a grade 7 position. Particulars regarding your all inclusive remuneration package are as follows:

Pensionable salary	R 352,209.92 pa
Additional Cash allowance	R 7,044.20 pa
Medical aid cash allowance	R 15,937.32 pa
Housing allowance	R 11,170.44 pa
Motor Finance	R 68,500.00 pa
Service Bonus (13th cheque)	R 29,350.83 pa
Employers contribution to Pension Fund	R 45,787.29 pa
TOTAL REMUNERATION PACKAGE:	**R 530,000.00 pa**

In general your appointment will be subject to the terms and conditions applicable to SARS. You will be required to sign an employment contract with your Line Manager immediately upon accepting this offer.

Membership of a SARS accredited Medical Aid Scheme is compulsory, unless proof can be provided that you are registered as a dependant on your spouse's / life partner's medical scheme. Kindly note that non-compliance with the medical aid conditions will render this offer null and void and that such a course of action will automatically lead to termination of the employment relationship.

Please indicate acceptance of this offer within 5 working days by signing below and agreeing to the date of commencement. **This offer is subject to the pre-employment screening results.**

It will be appreciated if you would report for duty to Eddie Kotze at 1st Floor Block A, Head Office, Brooklyn on the above mentioned date.

Congratulations on your appointment. We look forward to working with you.

Yours Faithfully,

LINE MANAGER _____ MANAGER: HR _____

I Helgard Lombard **accept** the offer as tabled above, and will assume duty on the above mentioned date.

SIGNED: _____ DATE: 15 Feb 07

I _____ **do not accept** the offer as tabled above,

SIGNED: _____ DATE: _____

REF: OFFP 001/05

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PERSONNEL: CONFIDENTIAL

AGREEMENT
ENTERED INTO AND BETWEEN

THE SOUTH AFRICAN REVENUE SERVICE (hereinafter called the Employer),

represented by Ivan Pillay in his capacity as General Manager: Enforcement and Risk of the one part

and

Helgard Lombard

NATIONAL ID
5708175018087
EMPLOYEE ID

LOCATION
Head Office
(hereinafter called the Employee) of the other part.

1. The Employer hereby undertakes to engage the Employee and the Employee hereby agrees to serve the Employer in a permanent capacity on the following terms and conditions with effect from 1 March 2007.

2. The Employee shall serve the Employer as Specialist Agent at such place as may from time to time be directed by the Employer, or any other employee duly authorised thereto, in this respect.

3. The Employer shall pay the Employee an all inclusive remuneration package, in the Republic of South Africa currency, at the rate of R 530,000.00 **per annum**. It will be payable on the fifteenth day of each month and should the fifteenth fall on a Saturday, Sunday or public holiday, on the last working day preceding such Saturday, Sunday or public holiday. A breakdown of the package is reflected in the offer letter. Pay increases will be in accordance with provisions of wage agreements.

4. As a permanent employee, the Employee is obliged to be a member of the Government Employees Pension Fund. Membership of a SARS accredited medical aid scheme is compulsory, unless proof as a dependant of a spouse's/life partner's medical aid scheme is furnished.

5. From time to time in order to attract and retain staff, the Employer negotiates and implements improvements in remuneration and the structuring of service benefits. It is, therefore, a pre-requisite that the employee is still in service on the date, on which such improvements are implemented, for them to benefit. Any employee who has left the services of SARS prior to the date on which the Employer implements such improvements, will not be eligible for such salary adjustments and/or service benefits, nor any pro-rata portion thereof.

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6. When required to perform duties away from his/her headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the relevant policy guidelines.

7. The Employee shall, subject to the exigencies of the Employer and during the currency of this Agreement, be entitled to the normal conditions of service that apply at any point in time.

8. The Employee shall faithfully and diligently devote the whole of his/her time to the service of the Employer and shall undertake such duties as the Employer, or any employee duly authorised thereto in this respect, shall require of him/her. He/she shall comply with the rules and orders governing the particular office, post or institution, at or in which such Employee may be stationed or employed.

9. The Employee shall not, without the express prior written consent of the permanent head of the organisation under which the Employee's office resorts, perform or undertake to perform remunerative work outside the Employer's service, whether within or outside official working hours.

10. The Employee shall at such intervals as the Employer may direct, report fully on the results obtained and knowledge acquired by him/her in any research work done by him/her, both during and outside official working hours.

11. The Employee further undertakes not to communicate to any person outside the Employer's service or to publish either during the currency of this Agreement or after the termination thereof, any results so obtained by him/her, in the course of his/her official duties, without the written consent of the Employer to such communication or publication.

12. Notwithstanding anything to the contrary contained in clause 1 hereof, the employee may terminate this Agreement at any time during the currency thereof on giving one month's notice in writing to the other party. The Employer may, however, accept a shorter period of notice in an exceptional case, using his/her own discretion.

13. The Employer may terminate this Agreement summarily or after notice of less than one month as he/she may deem expedient in the event of a breach of the terms of this Agreement by the Employee, or in the event of the Employee's misconduct, including misconduct as contemplated in the current provisions: Provided that it shall be competent for the Employer before exercising his/her rights under this clause to suspend the Employee from his/her office, making enquiry into any such breach of contract or misconduct and nothing herein contained shall debar the Employer, after such enquiry, from declaring this Agreement terminated as from the date of such suspension.

14. The Employee may terminate the Agreement on such shorter notice as circumstances may render necessary on satisfying the Employer that such termination is imperative on account of the Employee's ill-health occasioned without the Employee's default.

GSM

15. The Employer's representative shall not in any way be personally liable for any claims or other matters arising from this Agreement.

16. Any matters arising from this Agreement, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the *South African Revenue Service Act of 1997* and such terms and conditions as determined by SARS in terms of that Act.

17. The interpretation of this Agreement shall be governed by the laws of and the legal principles applied in the Republic of South Africa.

18. The Employee submits to the jurisdiction of the courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Agreement.

19. The Employee agrees not to divulge or discuss the offered remuneration with colleagues, as the Employer regards such matters as confidential.

THUS DONE AND PASSED by the parties hereto at the places and on the dates respectively set opposite their names.

SIGNED on behalf of the **EMPLOYER** at this 09. day of February 2007

ON BEHALF OF THE EMPLOYER

AS WITNESS:

Signature:

Address: Miss Stanford Anise

Lyttelton

Centurion.

Occupation: Police Officer

SIGNED by the **EMPLOYEE** at this 15 day of February 2007

EMPLOYEE

AS WITNESS:

Signature:

Address: 65 Dream Circle

The Reeds Centurion 0158

Occupation: Technician

GSM

CONFIDENTIAL

SARS Enforcement

NTEROFFICE MEMORANDUM

'ransfer to Anti-corruption and Security (ACAS)

O	J. van Loggenberg	CC	Mr. I. Pillay, Mr. C. Collings
ROM	Helgard Lombard	REFERENCE	SPU\
EL NUMBER	0832709922	DATE	10 December 2008
RIORITY			
J CT	Transfer to Anti-corruption and Security		
ECOMMENDATION			

orwarded to you for:

☐ Approval
☐ For Your Records
☐ Action as required
☐ Verification
☐ Information
☐ Proof Reading

)n completion please forward to:

☐ Sender
☐ Other

---

ng and careful consideration, I have finally concluded to apply for a transfer to Anti-corruption and ecurity. Although the prospects in my current post seems to be exciting with regard to future development, I am lso of the opinion that I can contribute meaningful in ACAS as a security technology specialist with a pertinent ole to play in securing SARS assets and assist in the collection of evidence to clamp down on corruption within ARS.

base my decision on my opinion that:

- If one can remove corrupt officials, it will not only be a deterrent for fraudsters in the SARS domain in general but will also reduce the illicit economy by most probably fifty percent. If the perpetrators know that the changes are very good that their illicit goods will be seized and destroyed by SARS officials, they will look for other more vulnerable markets and avoid South Africa.

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SARS Enforcement

NTEROFFICE MEMORANDUM

- If one installs the appropriate security technology on these customs sites, purposefully monitor it and act when necessary, it will already be a detergent for corrupt officials and will hamper the endeavors of criminals to import or export illicit goods.

- Proper planning and discreet placement of security technology will reduce guarding cost noticeably and will in many cases be more reliable that human resources (A human can only cover a limited area whereas security technology stays in place and relatively spoken, cover a much bigger area). The cost saving on these operational expenses can then be utilized to combat the illicit economy on border posts and harbours.

n this regard, I see my role in ACAS as follows:

- dvice management with regard to the installation of physical security technology, covering the areas of:

  i. CCTV systems.
  ii. Alarm systems.
  iii. Access systems.
  iv. Electric fences.
  v. Metal detection equipment.
  vi. X-ray equipment.
  vii. Perimeter protection equipment.

- Inspect the quality of workmanship of security technology installations nationally to ensure compliance with SARS installation standards.

- Inspect security equipment system-settings to ensure stable and reliable operations.

- Manage and monitor the competency of National Control Room surveillance operators.

- Conduct research to mitigate deficiencies within current employed security technology.

- Employ high technology equipment to assist anti-corruption investigations with the collection of evidence.

- Conduct Technical Surveillance Countermeasures (TSCM) in SARS sensitive areas and offices.

- Train anti-corruption investigators to conduct static, foot and mobile surveillance in order to empower them to do close watch on alleged corrupt SARS officials and collaborators.

- Employ high technology equipment to track and locate people and assets that are of interest in SARS mandated investigations.

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CONFIDENTIAL

SARS Enforcement

INTEROFFICE MEMORANDUM

Employ high technology surveillance equipment to monitor assets, sites and material that are of interest to SARS in the execution of its mandated and required duties and functions.

Your favorable consideration will be appreciated.

Helgard Lombard

RECOMMENDED / NOT RECOMMENDED

Group Executive Enforcement Investigations : J. van Loggerenberg

Date:

APPROVED / NOT APPROVED

Chief Officer Enforcement and Compliance Risk : I. Pillay

Date:

GSM

SEQ 29/2021-2247

B

Protech Security Consultants
P.O.Box 50072
Wierda Park, 0149
Cell : 084-581-4171

Quotation

Client
Name NPA
Address
City **Pretoria**
Cell

Date 14 June 2007
Order No.
Rep

Qty	Description	Unit Price	TOTAL
	Camera Installation		
12	Pinhole camera	R 1,048.80	R 12,585.60
12	Microphone complete with pre-amplifier	R 850.00	R 10,200.00
12	Switch Mode Power Supply 12VDC 4 Amp	R 165.00	R 1,980.00
12	TeleEye RX 504, 4-Video Input, Recording 100 fps	R 19,627.20	R 235,526.40
12	160 GB Notebook Hard drive - Seagate	R 1,765.44	R 21,185.28
12	GPRS/3G/HSDPA Ethernet Router, mag base antenna	R 6,048.00	R 72,576.00
12	Mobile Phone Video monitoring Software	R 1,087.11	R 13,045.32
24	Wi-Fi Tranceiver	R 899.00	R 21,576.00
12	Digital Voice Recorder	R 1,476.30	R 17,715.60
12	Cabling & connectors	R 182.40	R 2,188.80
12	Installation & commissioning	R 2,400.00	R 28,800.00
	Alarm System per Office - GSM Communicator		
12	E12 Cleo Wireless Panel with GSM Communicator	R 3,866.10	R 46,393.20
24	Wireless PIR	R 413.00	R 9,912.00
12	Wireless Transmitter with NO\NC connections	R 375.06	R 4,500.72
12	3 Amp 16VAC Transformer	R 135.66	R 1,627.92
12	Keyring	R 95.76	R 1,149.12
			R 500,961.96
		VAT 14%	N\a
		TOTAL c\o page 2	R 500,961.96

GSM

Protech Security Consultants
P.O.Box 50072
Wierda Park, 0149
Cell : 084-581-4171

Quotation

Client
Name NPA
Address
City **Pretoria**
Cell

Date 8/18/2007
Order No.
Rep

Qty	Description	Unit Price	TOTAL
1	**Balance Brought Forward**	R 500,961.96	R 500,961.96
12	Consumables	R 85.00	R 1,020.00
12	Installation & Commissioning	R 513.00	R 6,156.00
	Client to supply SIM cards (2 x APN Datacards & 1xSIM card with SMS bundle 300 per office)		
	Access System		
12	IDU-5 Biometric Reader	R 7,200.00	R 86,400.00
12	Electronic High Security Lock	R 2,400.00	R 28,800.00
12	Cabling	R 350.00	R 4,200.00
12	Power Supply	R 165.00	R 1,980.00
12	Installation & Commissioning	R 969.00	R 11,628.00
	PC \ Notebook Access Protection		
	Biometric Reader & Software **or**	R 3,295.74	
10	Single DK5 USB Token with encryption keys	R 1,021.42	R 10,214.20
10	Encryption key licence	R 816.93	R 8,169.30
	Boardroom Protection	R -	
2	White Noice Generator	R 18,600.00	R 37,200.00
0	Radio Frequency : Denial of Transmission	R 518,700.00	R -
			R 696,729.46
		VAT 14%	N\a
		TOTAL c/o page 3	R 696,729.46

G 5m

Protech Security Consultants
P.O.Box 50072
Wierda Park, 0149
Cell : 084-581-4171

Quotation

Client

Name: NPA
Address:
City: Pretoria
Cell:

Date: 14 June 2007
Order No.:
Rep:

Qty	Description	Unit Price	TOTAL
1	**Balance Brought Forward**	R 696,729.46	R 696,729.46
	Sound Insulated Door		
12	Sound Insulated Door c\w Frame	R 13,110.00	R 157,320.00
12	Installation Fee	R 850.00	R 10,200.00
	Window Tint		
120	Solar Window Film per square meter (Provision for 10 sq meter per Office)	R 303.80	R 36,456.00
			R 900,705.46
		VAT 14%	N\a
		Grant Total	R 900,705.46

Payment Details

- 50% Deposit on acceptance

Name : Protech
ABSA Bank, Wierda Park
Branch Code : 336-345
Acc no : 9062-196-036

GSM

SEQ 29/2021-2250

Nedbank Limited
Reg No. 1951/000009/06
CENTURION

21 AUG 2007

TS (621)

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9184 [illegible] 2007 15:32
CENTURION 00

0000000000

CURRENT ACCOUNT
DEPARTMENT OF COMMUNICATIONS
0000001462_003206/048456281 300,00
Cash/Kontant 300,00
Cheques/Tjeks 0
NNR.NW PROTECH SECURITY CONSULTANTS
R 100 3 300.00
Have a happy day Geniet die dag

0000000000

Branch
Tak
(Where account is kept/Waar rekening gehou word)
Credit
Krediet
(State name in BLOCK LETTERS/Vul naam in BLOKLETTERS)
Depositor signature
Deponent se handteekening
Depositor's cancel no/Deponeerder se kontskrap no

NEDBANK
DEPOSIT SLIP
DEPOSITO STROOK

Date/Datum

CHEQUES – Name of drawer/TJEKS – Naam van trekker	Total of CASH, POSTAL and MONEY ORDERS/Totaal van KONTANT, POSORDES en -WISSELS	RAND	Cents/Sente

No cheque exceeding R5 million will be accepted/Geen tjek wat R5 miljoen oorskry, word aanvaar nie

1		
2		
3		
4		

Nedbank Limited
Reg No. 1951/000009/06
CENTURION

TOTAL/TOTAAL R

Depositor's name and/or reference • Deponeerder se naam en/of verwysing

Account number to credit • Rekeningnommer om te krediteer

#48456281 ⑆468205⑆ 73

G5 27

P.O. Box 50072, Wierda Park, 0149
Tel \ Fax : (012) 653-1426
Cell : 0784639922

Protech Security Consultants

Fax

To:	DoC – Sithembile Nkosi	**From:**	Helgard Lombard
Fax:	0865149434	**Pages:**	2
Phone:	(012) 427-8130	**Date:**	21 August 2007
Re:	Deposit Slip : Protech Security Consultants	**CC:**	

☑ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

GSM

Department:
Telecommunications and Postal Services
REPUBLIC OF SOUTH AFRICA

Private Bag X860, Pretoria, 0001. iParioli Office Park, 399 Duncan Street, Hatfield, 0028, Pretoria.
Tel: [+27 12] 427-8167, Fax: [+27 12] 427-8584, email:paleasa@dtpc.gov.za, Website: http://www.gov.za

INVOICE

HELGARD LOMBARD T/A PROTECH SECURITY CONSULTANTS
327 Theuns Van Niekerk Str
Wierda Park
0149
South Africa

DATE	DETAILS	COSTS
22 January 2015	Renewal as a Cryptography Service Provider	R200.00
Total		R200.00

PAYMENT TO BE MADE TO:
Department of Communications
Manager: Finance
Nkululeko House, Iparioli Office Park,
399 Duncan Street, Hatfield
Private Bag X860,Pretoria,0001
Tel.+(27-(0)12 427-8000
Fax+(27-(0)12 427-8584
Bank Details
Nedbank: 1462003208
Branch Code: 146245

QUERIES TO BE DIRECTED TO:
Department of Communications
Manager: Ms Paleasa Banda
Tel +(27-(0)12 427 8036
Fax+(27-(0)12 421 7057

G.S.M

SEQ 29/2021-2253

Dept of Communicatio

Dept Communications

Begunstigde

Dept of Communicatio

Begunstigde betalingbevestiging per

Dept of Communicatio

2015-01-22 | 14:41:00	4	SUASEBVOL		
2014-05-12 | 14:19:00	5	SUASEBVOL		
2013-07-25 | 09:23:01	4	SUASEBVOL		
2012-04-25 | 13:10:12	3	SUASEBVOL		
2012-04-24 | 05:12:09	2	SUASEBVOL		
2011-05-10 | 07:31:12	1	SUASEBVOL		

Gsm

SEQ 29/2021-2254

MSV BLOEMBAND
POSBUS 58072
WIERINGERWERF
0139

Rekening Houder 906219276
Huidige Saldo : 891 372.74
Beschikbare Saldo : 891 322.74
Staat uit periode 01/07/2007 tot 18/07/2007

Datum	Transaktie Beskrywing (Bedrag tussen haakjes vertegenwoordig kostes)	Tran Bedrag	Saldo
03/07/2007	SALDO OVERDRAG	0.00	44.73
03/07/2007	ZIEKTE FOOI	0.00	44.73
05/07/2007	ADMINISTRASIE FOOI	-7.20	37.53
06/07/2007	4 LYN NIHISTRAT KAART NR.9060	0.00	37.53
06/07/2007	STAATFOOI	-1.50	36.03
09/07/2007	4 LYN NIHISTRAT KAART NR.9060	0.00	36.03
09/07/2007	STAATFOOI	-1.50	34.53
09/07/2007	CSH DEPOSITO VANAF NR.9060	100.00	134.53
11/07/2007	KORT DEF FOOI CSH	0.00	134.53
11/07/2007	TRANSAKSIE FOOI	0.50	133.03
13/07/2007	KONTANTDEPOSITO VERW: 250	300 000.00	300 133.03
13/07/2007	KONTANTDEF FOOI	-3 150.00	296 983.03
14/07/2007	SALDONAVRAAG KAART NR.9060	0.00	296 983.03
14/07/2007	SALDONAVRAAG FOOI	-1.50	296 981.53
17/07/2007	KONTANTDEPOSITO VERW: 020	600 705.46	897 687.00
17/07/2007	KONTANTDEF FOOI	-6 308.40	891 379.24
18/07/2007	4 LYN NIHISTRAT KAART NR.9060	0.00	891 379.24
18/07/2007	STAATFOOI	-1.50	891 377.74

*** EINDE VAN NAVRAAG 18/07/2007 14:18:00 ***

GSM

SEQ 29/2021-2255

Dec 2007

ABSA

ABSA Bank Limited/Bupetk. Reg No 1986/004794/06

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

ABSA BANK MALL @ REDS
FLEXI REKENING
REKENINGNOMMER : 90 6219 6036
REKENINGSTATUS : OOP
SALDO : 454309,10
BESKIKBARE SALDO : 454259,10

REKENINGNAAM : H/A PROTECH & PARTNERS

STAAT VIR DIE PERIODE 01/12/2007 TOT 10/01/2008

DATUM	TRANS BESKRYWING	TRANS.TAK	BEDRAG	SALDO
03/12/2007	ADMIN FOOI	MALL @ REDS	0,00	277047,71
	ADMINISTRASIE FOOI		7,20- A	277040,51
04/12/2007	TP/PAD TJEK BET	WIERDA PARK	24114,65-	252925,86
	TRANSAKSIE FOOI		40,00- A	252885,86
	KAART NR. 9069			
06/12/2007	PINPAD DT OORP	WIERDA PARK	3176,38-	249709,48
	KREDIET REK:0466546404285102 9			
	TRANSAKSIE FOOI		14,75- A	249694,73
	KAART NR. 9069			
/12/2007	PINPAD DT OORP	WIERDA PARK	13779,80-	235914,93
	KREDIET REK:0000000826014832 9			
	TRANSAKSIE FOOI		14,75- A	235900,18
	KAART NR. 9069			
05/12/2007	TP/PAD TJEK BET	WIERDA PARK	2240,10-	233660,08
	TRANSAKSIE FOOI		40,00- A	233620,08
	KAART NR. 9069			
07/12/2007	KONTANTDEPOSITO	WIERDA PARK	247500,00	481120,08
	VERW: inv417			
	KONTANTDEPOSITO FOOI		2598,75- A	478521,33
03/12/2007	KREDIETRENTE	MALL @ REDS	84,93	478606,25
12/12/2007	TP/PAD ONTTREKKING	WIERDA PARK	5000,00-	473606,26
	TRANSAKSIE FOOI		60,10- A	473546,16
	KAART NR. 9069			
03/01/2008	ADMIN FOOI	MALL @ REDS	0,00	473546,16
	ADMINISTRASIE FOOI		7,50-	473538,66
08/ /2008	KREDIETRENTE	MALL @ REDS	120,82	473659,48
10/01/2008	PINPAD DT OORP	MALL @ REDS	3289,00-	470370,48
	KREDIET REK:0466546404285102 9			
	TRANSAKSIE FOOI		15,50-	470354,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	3876,00-	466478,98
	TRANSAKSIE FOOI		45,00-	466433,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	12074,88-	454359,10
	TRANSAKSIE FOOI		45,00-	454314,10
	KAART NR. 9069			
10/01/2008	AANBIEDINGSNAVRAAG	MALL @ REDS	0,00	454314,10
	AANBIEDINGSNAVRAAG FOOI		5,00-	454309,10

Dec 2007 = Bank Cost = R 2,775-55
Interest = R 84-93

Member of the Barclays Group

Authorised Financial Services Provider/Gemagtigde Finansiële Diensteverskaffer – Registered Credit Provider/Geregistreerde Kredietverskaffer, Reg-no NCRCP7

ABSA 19884 (06/2007)

G Smit

SEQ 29/2021-2256

ABSA

ABSA Bank Limited/Beperk, Reg No 1986/004

Member of the Barclays Group BARCLAYS Bank

DEPOSIT SLIP/DEPOSITOSTROKIE

Credit
Krediteer

Date
Datum

Paid in by
Inbetaal deur

Signature
Handtekening

Tel ( )

	R	c
Notes/Note		
Coins/Munte		
MO/PW and/en PO		
Subtotal/Subtotaal		
Branch name/Clearing code Tak naam/Verrek kode		

Drawer's name
Trekkers se naam

	Bank
1	
2	
3	

Total
Totaal R

Authorised Financial Services Provider/Gemagtigde Finansiële Dienste Verskaffer

Acc no/Rek-no

Dep reference
Dep-verwysing

G Smith

E

TOP SECRET

SARS Enforcement

INTEROFFICE MEMORANDUM

Special Funds Expenditure

TO	A.P. Janse van Rensburg	CC	
FROM	Helgard Lombard	REFERENCE	SPU\
TEL NUMBER	0832709922	DATE	02 January 2008
PRIORITY			
SUBJECT	Written Authorization – Special Funds Expenditure		
RECOMMENDATION			

Forwarded to you for:

☑ Approval
☐ For Your Records
☐ Action as required
☐ Verification
☐ Information
☐ Proof Reading

On completion please forward to:

☑ Sender
☐ Other

PURPOSE

1. This document serves as a confirmation of all verbal authorisations given with regard to expenditure of the SPU's special funds.
2. The following expenditures have been authorized verbally:

Item	Date	Description	Motivation	Amount
a.	27 Sep '07	MTN airtime.	Airtime to be used with an operational Mobile Phone.	R 300.00
b.	11 Oct '07	GBC Cross-cut Shredder.	Shred confidential documents and notes.	R 899.00

TOP SECRET

SARS Enforcement

INTEROFFICE MEMORANDUM

c.	12 Oct '07	RX504 TeleEye DVR, 80GB HDD, 3G HSDPA modem, Power Dist Boxes (x5), with alarm sensor and relay control adaptor.	DVR needed for operational deployment with off-site monitoring capabilities.	R 23,721.53
d.	23 Oct '07	Sony SR300 with bag, charger, window tripods (x2) and 2GB DUO Memory Card.	Procurement of a HDD Video camera for operational videos and photos.	R 11,448.00
e.	23 Oct '07	Sony NP-FH70 6.5HRS battery for Sony HDD Camera.	Standby battery for operational employment.	R 850.00
f.	31 Oct '07	TelSIP VOIP telephones (x10).	Secure communication between members of the SPU.	R 2,990.00
g.	31 Oct '07	Consumables : Spindle CD's and DVDs (x2).	Data storage and \ or distribution of information, videos and \ or audio recordings.	R 748.00
h.	08 Nov '07	TelSIP VOIP telephones (x3).	Secure communication between members of the SPU.	R 897.00
i.	09 Nov '07	Cash to Keith Hector.	As per instruction.	R 1,600.00
j.	09 Nov '07	Nokia E70 Phone and TeleEye Mobile Software.	Off-site monitoring of the RX 504 TeleEye DVR, using a mobile phone.	R 5,298.96
k.	10 Nov '07	USB – RS232 Converter.	Install Biometric Access System at client's office.	R 160.00
l.	20 Nov '07	Cash to Dante le Roux : Rental of facility at Fontainedal R 684.00 Rental of facility at Fontainedal R 684.00 Rental of shooting facility R 1,050.00	As per instruction.	R 2,418.00
m.	05 Dec '07	Panasonic RR-US450 Digital Voice Recorder. (1 x Ops ; 1 x IP)	Recording of audio during operations.	R 1,800.00
n.	12 Dec '07	Cash to Erich Khwela.	As per instruction.	R 5,000.00
o.	21 Dec '07	Marantz PMD660 Solid State Recorder, 1GB Compact Flash Card, Remote control unit.	Operational employment – 1 x field unit ; 1 x permanent installation IP.	R 12, 074.88

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SARS Enforcement

INTEROFFICE MEMORANDUM

REQUEST

3. Written authorisation is requested to confirm the abovementioned verbal authorisations.

_____

Helgard Lombard

02 January 2008

RECOMMENDED / NOT RECOMMENDED

_____

Manager:

Date:

APPROVED / NOT APPROVED

_____

Manager:

Date:

SEQ 29/2021-2260

Qty	Description	Distribution											
2	Pinhole Camera	AL	GN										
5	High Resolution Covert Camera	AL	VP	VP	GN	S							
3	Mini Dome Camera	AL	AL	TM									
2	CMOS Snake Camera	GN	JW										
1	CMOS Button Camera	S											
12	Microphone with pre-amplifier	VP	VP	TM	GC	GC	JI	AL	AL	KP	S	S	S
12	DC Regulated Power Supply (Audio Units)	VP	VP	TM	GN	GN	JI	AL	AL	KP	S	S	S
10	TeleEye RX-504, 4-Video Input, Record 100fps	VP	TM	GN	JW	AL	S	S	S	S	S		
10	120 GB Notebook Seagate HDD	VP	TM	GN	JW	AL	S	S	S	S	S		
10	Ethernet Router GPRS\3G\HSDPA	VP	TM	GN	JW	AL	S	S	S	S	S		
10	Mobile Phone Video Monitoring Software	DSc	TM	GC	(GC)	JW	AL	S	S	S	S		
6	5/8 Port Unmanaged Switch 10\100M	VP	AL	JW	TM	GN							
6	Digital Voice Recorder (Changed to 512MB memory)	S(KP)	S	S	S	S	S						
4	Marantz PMD660, 1GB Flash Mem, Remote Control	VP	TM	GN	AL								
1	Sennheiser HD 200 Headphone	S(KP)											
5	Sennheiser HD 202 Headphone	JW	S	S	S	S							
4	Sennheiser HD 280Pro Headphone	VP	TM	GN	AL								
5	Notebook Speakers (Audio Enhancement - Laptop)	AL	GN	S	S	S							
12	E12 Cleo Wireless Panel with GSM Communicator	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
24	Wireless PIRs	2	3	3	2	3	2	1	2	2	9	4	
12	Wireless Transmitter with NO\NC Connections	1	S	1	S	1	S	S	S	S	S	1	S
12	3 Amp 16VAC Transformers	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
12	Keyring	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
9	Additional PIRs	(See wireless PIRs)											
2	Additional Keypads												
1	Outdoor Beam Housing	AL											
2	White Noice Generator	S	S										
3	Nokia E90 (Remote Video Monitoring)	TM	GN	AL									
5	Modem Huawei 3G\HSDPA\GPRS\EDGE	S	S	S	S	S							
2	Nokia E65 (Remote Video Monitoring)	GN	S										
4	Nokia N80												
11	Nokia N73												
1	Bio-metric Reader, capture station & software	AL											
3	TekEye Time Relay units	AL	JW	GN									

SEQ 29/2021-2261

	Adv V.P. Pikoli	VP											
	Adv L.F. McCarthy	LM											
	Adv T. Mngwengwe	TM											
	Adv G.C. Nel	GN											
	Adv J.I. Welch	JW											
	Mr. A. Leask	AL											
	Mr. D. Schmidt	DSc											
	Ms K. Pillay	KP											
	Ms A. Annandale	AA											
	Ms D. Scholtz	DS											
	Ms L. September	LS											
	Jenade	Ops											
	Document Center	DC											
	Spare	S											

Protech Security Consultants
P.O.Box 50072
Wierda Park, 0149
Cell : 078-483-9922
e-mail : helgard.lombard@telkomsa.net

Asset List

Client

Name	NPA (DSO)
Address	P.O. Box 1511
City	**SILVERTON, 0127**
Att :	Mr. A.G. Leask

Qty	Description
	CCTV Cameras
2	KPC Pinhole Cameras
5	High Resolution (PIR) Covert Cameras
2	Mini Dome Cameras
1	Mini Dome Camera (Inside Fire Detector)
2	CMOS Snake Camera
1	CMOS Button Camera
	Digital Video Recorders & Peripherals
10	TeleEye RX-504 DVR, 4-Video Input, Record 100fps
10	120GByte Notebook HDD (Installed in RX-504)
10	Ethernet Router GPRS\3G\HSDPA
6	5/8 Port Unmanaged Switch 10\100Mbps
10	M303 Mobile Phone Video Monitoring Software
	Audio Equipment
12	Electret Microphones with Pre-amplifier
12	DC Regulated Power Supply (Audio Units)
6	Digital Voice Recorders (512MByte Recording Memory)
4	PMD660 Marantz Stereo Recorders
4	Remote Control Units for PMD660 Marantz Recorder
4	1GByte Flash Memory Cards for Audio recording
5	Logitech Notebook Speakers (USB powered)
1	Sennheiser HD200 Headphone
5	Sennheiser HD202 Headphone
4	Sennheiser HD280Pro Headphone

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Asset List

Client

Name	NPA (DSO)
Address	P.O. Box 1511
City	SILVERTON, 0127
Att :	Mr. A.G. Leask

Qty	Description
	Alarm System
12	E12 Cleo Wireless Panel with GSM Communicator in Grey Tamper Box, 7A\h 12VDC Battery with 3Amp Charger unit.
12	3Amp 16VAC Transformers
24	Wireless PIR detectors
12	Wireless Transmitters with NO\NC Connectors
12	Keyring (3-button)
14	Keypads
1	Outdoor Beam Housing
	Cellular Equipment
15	Gold Lock Encryption Software
11	Nokia N73 Cellular telephones
4	Nokia N80 Cellular telephones
2	Nokia E65 Cellular telephones
3	Nokia E90 Cellular telephones (Remote video access)
5	Modems Huawei E620 3G\HSDPA\GPRS\EDGE
	Electronic Countermeasure Equipment
2	REI White Noise Generators
2	Explorer Cases
	Access Equipment
1	IDU-5 Biometric Reader
1	Biometric Enrol reader
1	600VA UPS
1	300Kg Magnetic Lock
1	12VDC 10A Power Supply Unit

GSM

Protech Security Consultants
P.O.Box 50072
Wierda Park, 0149
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Asset List

Client

Name	NPA (DSO)
Address	P.O. Box 1511
City	**SILVERTON, 0127**
Att :	Mr. A.G. Leask

Qty	Description
	Security Software
3	Ashampoo Magical Security (File Encryption)
.1	Ashampoo Security Pack 2 - Anti-spyware 2; Anti-virus; Firewall Pro; Magical Security 128 bit encryption

Gsm

Qty	Description	Distribution											
2	Pinhole Camera	AL	GN										
5	High Resolution Covert Camera	AL	VP	VP	GN	S							
3	Mini Dome Camera	AL	AL	TM									
2	CMOS Snake Camera	GN	JW										
1	CMOS Button Camera	S											
12	Microphone with pre-amplifier	VP	VP	TM	GC	GC	JI	AL	AL	KP	S	S	S
12	DC Regulated Power Supply (Audio Units)	VP	VP	TM	GN	GN	JI	AL	AL	KP	S	S	S
10	TeleEye RX-504, 4-Video Input, Record 100fps	VP	TM	GN	JW	AL	S	S	S	S	S		
10	120 GB Notebook Seagate HDD	VP	TM	GN	JW	AL	S	S	S	S	S		
10	Ethernet Router GPRS\3G\HSDPA	VP	TM	GN	JW	AL	S	S	S	S	S		
10	Mobile Phone Video Monitoring Software	DSc	TM	GC	(GC)	JW	AL	S	S	S	S		
6	5/8 Port Unmanaged Switch 10\100M	VP	AL	JW	TM	GN							
6	Digital Voice Recorder (Changed to 512MB memory)	S(KP)	S	S	S	S	S						
4	Marantz PMD660, 1GB Flash Mem. Remote Control	VP	TM	GN	AL								
1	Sennheiser HD 200 Headphone	S(KP)											
5	Sennheiser HD 202 Headphone	JW	S	S	S	S							
4	Sennheiser HD 280Pro Headphone	VP	TM	GN	AL								
5	Notebook Speakers (Audio Enhancement - Laptop)	AL	GN	S	S	S							
12	E12 Ciao Wireless Panel with GSM Communicator	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
24	Wireless PIRs	2	3	3	2	3	2	1	2	2	3	4	
12	Wireless Transmitter with NO\NC Connections	1	S	1	S	1	S	S	S	S	S	1	S
12	3 Amp 16VAC Transformers	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
12	Keyring	GC	LS	TM	DC	LM	KP	AA	JW	DS	VP	AL	S
9	Additional PIRs	(See wireless PIRs)											
2	Additional Keypads												
1	Outdoor Beam Housing	AL											
2	White Noice Generator	S	S										
3	Nokia E90 (Remote Video Monitoring)	TM	GN	AL									
5	Modem Huawei 3G\HSDPA\GPRS\EDGE	S	S	S	S	S							
2	Nokia E65 (Remote Video Monitoring)	GN	S										
4	Nokia N80												
11	Nokia N73												
1	Bio-metric Reader, capture station & software	AL											
3	TekEye Time Relay units	AL	JW	GN									

GSM

	Adv V.P. Pikoli	VP											
	Adv L.F. McCarthy	LM											
	Adv T. Mngwengwe	TM											
	Adv G.C. Nel	GN											
	Adv J.L Welch	JW											
	Mr. A. Lasak	AL											
	Mr. D. Schmidt	DSc											
	Ms K. Pillay	KP											
	Ms A. Annandale	AA											
	Ms D. Scholtz	DS											
	Ms L. September	LS											
	Jenade	Ops											
	Document Center	DC											
	Spare	S											

G Sm

9

Access Point : Addresses and IMEI numbers

IP Address	Owner	IMEI : Router \ Modem \ Mobile
192.168.1.3	DSO Ops Support - Jenade	
192.168.1.6	Box	354114010065895
192.168.1.7	Box	354114010066083
192.168.1.8	Box	354114010066174
192.168.1.9	J. Welch	354114010063148
192.168.1.10	Box	354114010063304
192.168.1.11	Box	354114010066???
192.168.1.12	Ops Support Modem - Jenade	
192.168.1.13	Box	354114010066356
192.168.1.14	Nokia E90 G.C.Nel	
192.168.1.15	A.G. Leask	354114010063585
192.168.1.16	P.V. Pikoli	354114010066489
192.168.1.17	G.C. Nel	354114010066257
192.168.1.18	Danie Schmidt	Nokia 9300I

GSM

Item	Description	Serial Number	Owner	Registration no
1	Marantz PMD660 Solid State Recorder	20030722011288	Adv Gerrie Nel	
2	Marantz PMD660 Solid State Recorder	20030722011289	Adv Vusi P. Pikoli	
3	Marantz PMD660 Solid State Recorder	20030722011270	Andrew G. Leask	
4	Marantz PMD660 Solid State Recorder	20030722011266	Adv Thanda Mngwengwe	
5	Diasonic DDR5100 Voice Recorder		Kalyani Pillay	
6	TeleEye RX504	VTC28947	Adv Thanda Mngwengwe	
7	TeleEye RX504	VTC28954	Andrew G. Leask	341e089513
8	HSDPA Router	IMEI:354114010063189	Andrew G. Leask	
9	Ethernet Switch	A330167303013	Andrew G. Leask	
10	TeleEye RX504	VTC28928	Adv Gerrie Nel	89b4ecf12f
11	TeleEye RX504	VTC28928	Ops Support - Jenade	8765127b3d
12	TeleEye RX504	VTC28955	Adv Vusi P. Pikoli	243f0986e4
13	HSDPA Router	354114010063148	Adv John Welch	
14	TeleEye RX504	VTC28952	Adv John Welch	145c0af3b5
15	Diasonic DDR5100 Voice Recorder		Adv John Welch	
16	HSDPA Router	IMEI:354114010063304	Spare - Earmarked for L.F. McCarthy	(192.168.1.10)
17	HSDPA Router	IMEI:354114010066257	Adv Gerrie Nel	

SEQ 29/2021-2268

I

NPA Alarm Systems

Cell no	User	
0836427907	V.P. Pikoli	NPA01
0836785246	A.G. Leask	NPA02
0836292989	G.C. Nel	NPA03
0836293808	L. September	NPA04
0836293865	T. Mngengwe	NPA05
0836294256	Doc. Centre	NPA06
0836345305	L.F. McCarthy	NPA07
0836347365	A. Annandale	NPA08
0836347266	K. Pillay	NPA09
0836347376	J. Welch	NPA10
0836379157	D. Scholtz	NPA11
0836389231	Spare	NPA12

Outhsa – hoar alarm bly aktiefiele van hoar kantoor. N.

McCarthy. → Riana. 0847037785 ESIO
David. 4334 (2 x codes)

Doc Centre. → Jaunen 1793 Patterson. 0798861888
Landi 9832
Peter Katau 1926
0768451474
(3 x codes)

Lyfwaspe → Hoof alarm af.

0799243952

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Keyring/User Name 1 - Zone Func = partition; 1=GroupA and 2=GroupB	171	40	1	Andrew Leask
Keyring/User Name 2 - Zone Func = partition; 1=GroupA and 2=GroupB	172	40	1	Piet Jonker
Keyring/User Name 3 - Zone Func = partition; 1=GroupA and 2=GroupB	173	40	1	Nella
Keyring/User Name 4 - Zone Func = partition; 1=GroupA and 2=GroupB	174	40	1	Neels
Keyring/User Name 5 - Zone Func = partition; 1=GroupA and 2=GroupB	175	40	1	Baps
Keyring/User Name 6 - Zone Func = partition; 1=GroupA and 2=GroupB	176	40	1	Slang
Keyring/User Name 7 - Zone Func = partition; 1=GroupA and 2=GroupB	177	40	1	Adv Gerie Nel
Keyring/User Name 8 - Zone Func = partition; 1=GroupA and 2=GroupB	178	40	1	Anton
Keyring/User Name 9 - Zone Func = partition; 1=GroupA and 2=GroupB	179	40	1	Piet van der Merwe
Keyring/User Name 10 - Zone Func = partition; 1=GroupA and 2=GroupB	180	40	1	Thee Pienaar
Keyring/User Name 11 - Zone Func = partition; 1=GroupA and 2=GroupB	181	40	1	Hein van der Merwe
Keyring/User Name 12 - Zone Func = partition; 1=GroupA and 2=GroupB	182	40	1	Piet Spoor

User Code 1	159	4	0323
User Code 2	160	4	0227
User Code 3	161	4	0987
User Code 4	162	4	0887
User Code 5	163	4	0787
User Code 6	164	4	6433
User Code 7	165	4	1212
User Code 8	166	4	0587
User Code 9	167	4	0354
User Code 10	168	4	0324
User Code 11	169	4	0321
User Code 12	170	4	0358

4

SEQ 29/2021-2270

ashampoo

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Thank you for your order.

Below you will find your cleverbridge reference number. For the most prompt and accurate service, always refer to this reference number in any communication with us regarding this order.

Your cleverbridge reference number 1611514

Payment Information

Your credit card has been successfully authorized. Please note that the charge on your credit card will appear in the name of "www.cleverbridge.net".

Your Products

Qty.	Product Name	Delivery
1	Ashampoo® Security Pack 2 339.98 instead of $119.96 - 227.89 instead of $79.98	e-mail

If you do not already have the product installed, you can download it here.

1	Ashampoo® AntiSpyWare 2 (incl. 1 year signature updates)	e-mail

Your license key: AASWB0-77094E-E8OF03

Important Information for entering your License Key

Please note that the code is case-sensitive (i.e. take note of upper and lower case lettering) and that there should be no blank spaces before or after the code. Otherwise the program will identify the code as incorrect.

Also, please be sure not to mix up the letters O and I with the numbers 0 (zero) and 1 (one). In some cases both the letter and the number are used, thereby we recommend entering the license code using copy and paste. To do this, mark the code using the left mouse button, then press the right mouse button and choose "copy". Afterwards, go back to the program, right-click in the field where the code should be input, and choose the option "paste".

If you do not already have the product installed, you can download it here.

1	Ashampoo® AntiVirus (incl. 1 year signature updates)	e-mail

Your license key: AAVRA0-770200-B8C1AC

Important Information for entering your License Key

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Also, please be sure not to mix up the letters O and I with the numbers 0 (zero) and 1 (one). In some cases both the letter and the number are used, thereby we recommend entering the license code using copy and paste. To do this, mark the code using the left mouse button, then press the right mouse button and choose "copy". Afterwards, go back to the program, right-click in the field where the code should be input, and choose the option "paste".

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1	Ashampoo® FireWall PRO	e-mail

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Also, please be sure not to mix up the letters O and I with the numbers 0 (zero) and 1 (one). In some cases both the letter and the number are used, thereby we recommend entering the license code using copy and paste. To do this, mark the code using the left mouse button, then press the right mouse button and choose "copy". Afterwards, go back to the program, right-click in the field where the code

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should be input, and choose the option "paste".

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Ashampoo® Magical Security 2 e-mail

Your license key: AMS2A0-77008E-068485

Important information for entering your License Key

Please note that the code is case-sensitive (i.e. take note of upper and lower case lettering) and that there should be no blank spaces before or after the code. Otherwise the program will identify the code as incorrect.

Also, please be sure not to mix up the letters O and I with the numbers 0 (zero) and 1 (one). In some cases both the letter and the number are used, thereby we recommend entering the license code using copy and paste. To do this, mark the code using the left mouse button, then press the right mouse button and choose "copy". Afterwards, go back to the program, right-click in the field where the code should be input, and choose the option "paste".

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872754002987
124458418500
118162829147
071867235001
931571947269
433276056572

wap.telecare.com/m303.wml

(Installed)

Open up

~~Set~~ Activation code Connect through GPRS

(Activated)

Connection (Edit)

Menu – Tools – Settings – Connection

Access points – Options – New Access point

- Enter connection name. (GLS)
- Access point name: www.gls.net

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AMS2A0-770050-043C4F
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Also, please be sure not to mix up the letters O and I with the numbers 0 (zero) and 1 (one). In some cases both the letter and the number are used, thereby we recommend entering the license code using copy and paste. To do this, mark the

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code using the left mouse button, then press the right mouse button and choose "copy". Afterwards, go back to the program, right-click in the field where the code should be input, and choose the option "paste".

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TeleEye RX Series

Mobile Video Recording Server

RX504

User Guide

TeleEye

www.TeleEye.com

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Release Version 1.1

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Table of content

SECTION 1 1
INTRODUCTION 1
1. *Introduction* 1
2. *Features* 1
3. *Package Contents* 1
4. *Front panel description* 2
5. *Rear panel description* 2
SECTION 2 3
INSTALLATION 3
1. *Install Hard Disk* 3
2. *Remove Hard Disk* 4
3. *Mobile data modem installation* 5
4. *Wireless LAN adaptor installation* 6
5. *Mount to vehicle* 6
6. *Video installation* 8
7. *Alarm installation* 8
8. *Power connection* 9
SECTION 3 10
BASIC SETUP 10
1. *Before setup* 10
2. *Format Hard Disk* 10
3. *Hard Disk available event* 11
4. *Network setup* 12
5. *Mobile data modem setup* 13
SECTION 4 15
OPERATION 15
1. *Live operation through mobile data modem* 15
2. *Live operation through LAN / wireless LAN* 16
3. *Recording* 17
4. *Video extraction* 18
APPENDIX 1 20
LIMITED WARRANTY 20
APPENDIX 2 21
*sure*LINK TECHNOLOGY 21
APPENDIX 3 25
FIRMWARE UPGRADE 25
APPENDIX 4 26
SECURITY MODE 26
APPENDIX 5 30
SPECIFICATION 30

GSM

Section 1

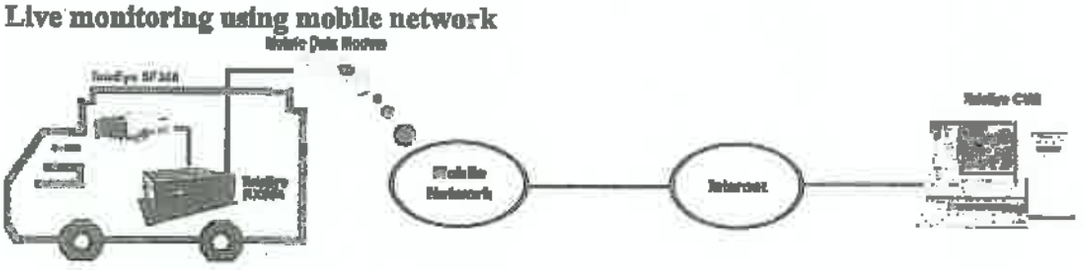
Introduction

1. Introduction

***Tele*Eye** RX504 is a robust video recording server designed for fleet security applications. By using the award-winning SMAC-M multi-streaming video compression technology, ***Tele*Eye** RX504 delivers no compromise performance on simultaneous recording and transmission via mobile network.

***Tele*Eye** RX504 can continuously record videos of every single detail during the vehicle in service. By connecting ***Tele*Eye** RX504 to a mobile data modem, the driver can push a button to trigger the ***Tele*Eye** RX504 to send an alarm and seamless video back to the central monitoring station via mobile networks such as HSDPA, UMTS, EDGE or GPRS in an emergency situation. In conjunction to a WiFi gateway, the recorded data can be reviewed and extracted to the central storage server via a WiFi network after the vehicle returning back to the depot.

Live monitoring using mobile network



Video extraction and playback via WiFi

2. Features

- 4 video, 16 alarm inputs; 4 relay outputs
- Recording up to 25/30fps on D1; 100/120fps on CIF resolution
- Live monitoring via HSDPA, UMTS, EDGE and GPRS (require mobile data modem)
- Playback and video extraction via WiFi (require WiFi gateway)
- Fast detachment and shock protection design

3. Package contents

1. ***Tele*Eye** RX504
2. NULL modem cable C03FF
3. WX-30 installation CD version 3.10.04
4. Hard disk mounting screws with rings

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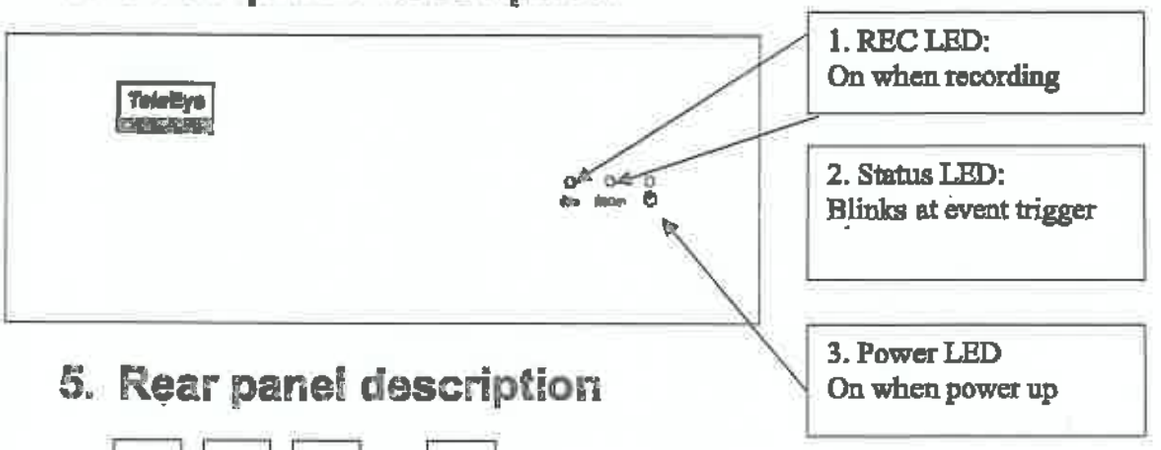
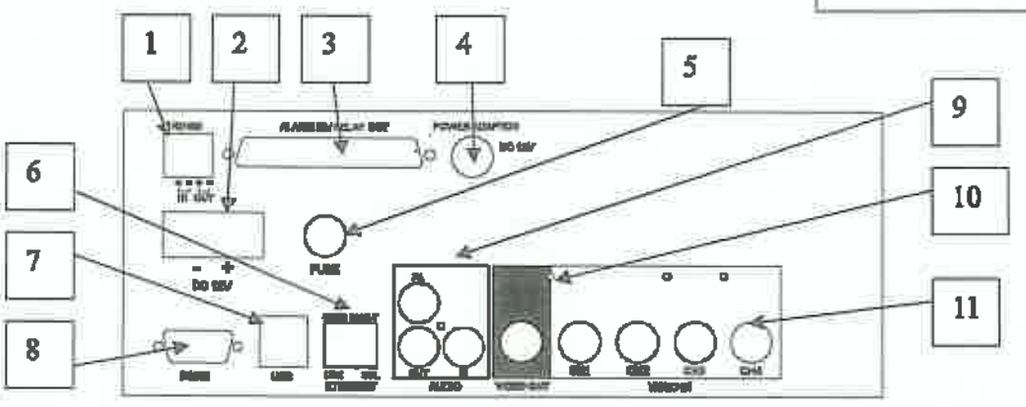
5. User manual
6. Hard disk recommendation list
7. Warranty card
8. Registration card
9. R-E220 mobile data modem (optional)
10. Wireless LAN adaptor (optional)
11. Vibration bracket (optional)

4. Front panel description



5. Rear panel description



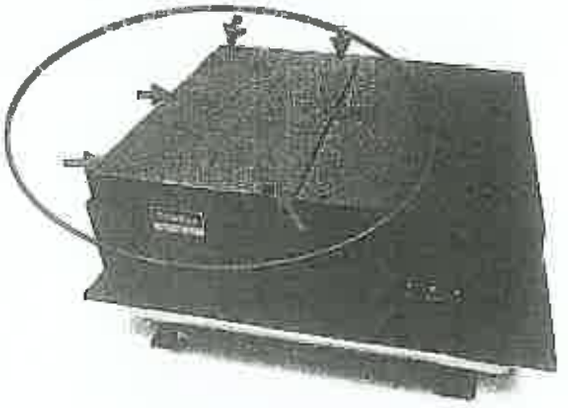
Item	Description
1. RS-485 (IN / OUT)	For telemetry use
2. Power terminal	Connect to input power (10-24V DC)
3. Alarm IN Relay Out	External alarm input and relay output
4. Power adaptor	*Reserved*
5. FUSE	3Amp protection fuse socket
6. Ethernet	RJ45 socket for network connection
7. USB	For connecting 3G USB modem
8. RS-232	Connect NULL modem cable for setup use
9. Audio	*Reserved*
10. Video Out	Video output BNC type connector
11. Video In	Video input BNC connectors

Section 2

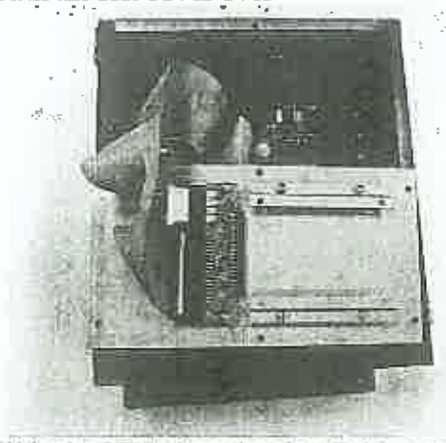
Installation

1. Install Hard Disk

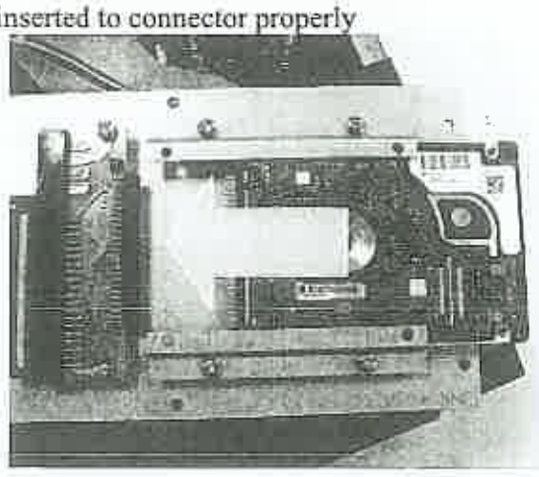
1. Remove left cover screw



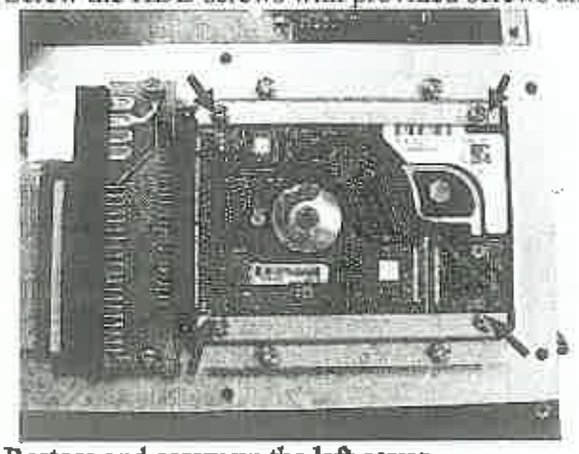
2. Turn the left cover over



3. Slide the HDD into the slot. Take care for the hard **disk pins, make sure all pins be** inserted to connector properly



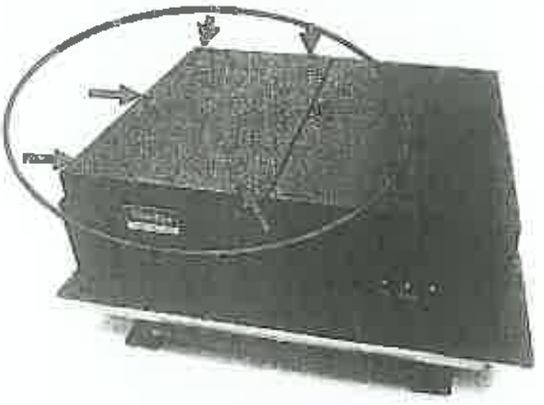
4. Screw the HDD screws with provided screws and rings.



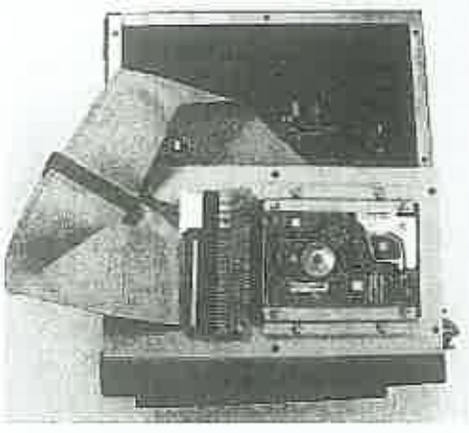
5. Restore and screw up the left cover

2. Remove Hard Disk

1. Remove left cover screw as shown in following figure



2. Turn the left cover over as shown in the following figure



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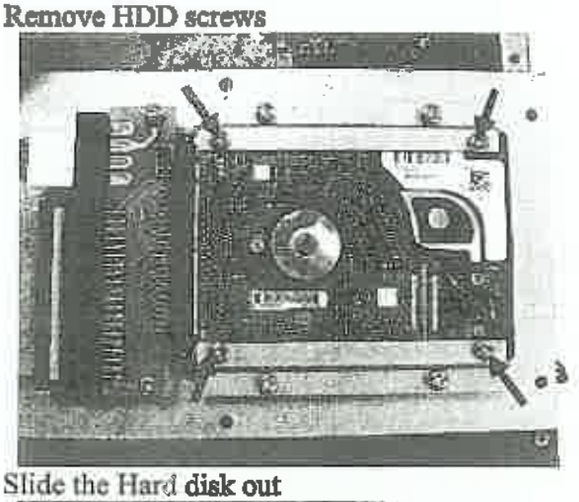
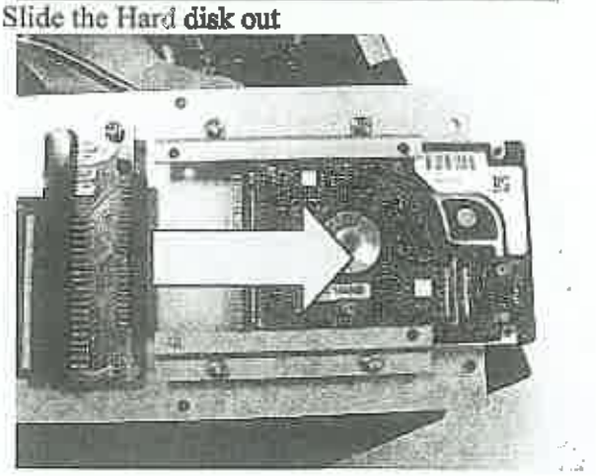
3. Remove HDD screws

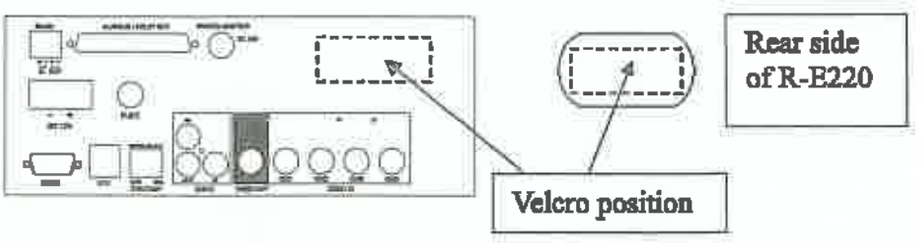


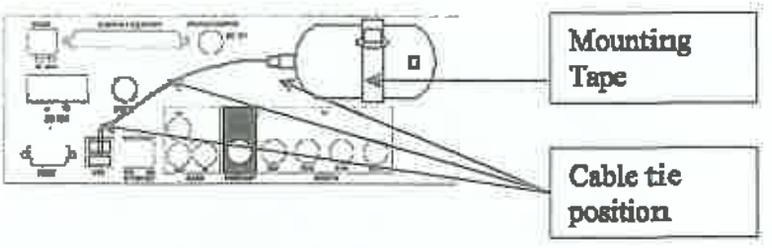
4. Slide the Hard disk out



3. Mobile data modem Installation

1. Stick provided Velcro to R-E220 and RX504's rear panel, then stick together as following figure:





2. Tighten the mounting tape at RX504 real panel
3. Use provided cable tie to fix USB cable on RX504's rear panel

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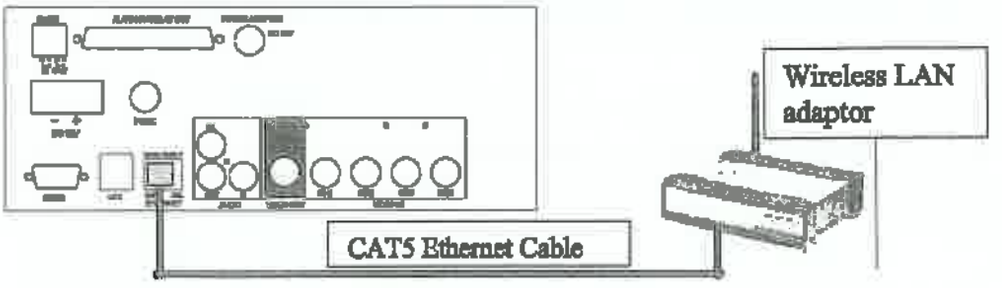
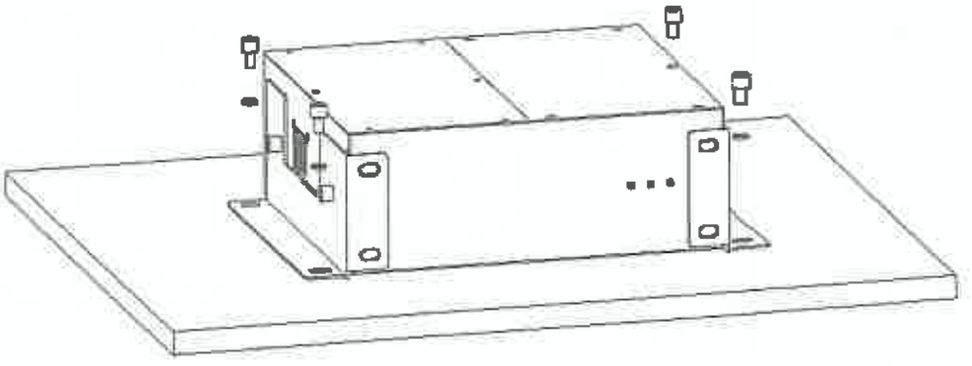
4. Wireless LAN adaptor installation

1. Only use Wireless LAN Client with CAT5 cable interface, connect the Wireless Client to RX504's Ethernet socket.

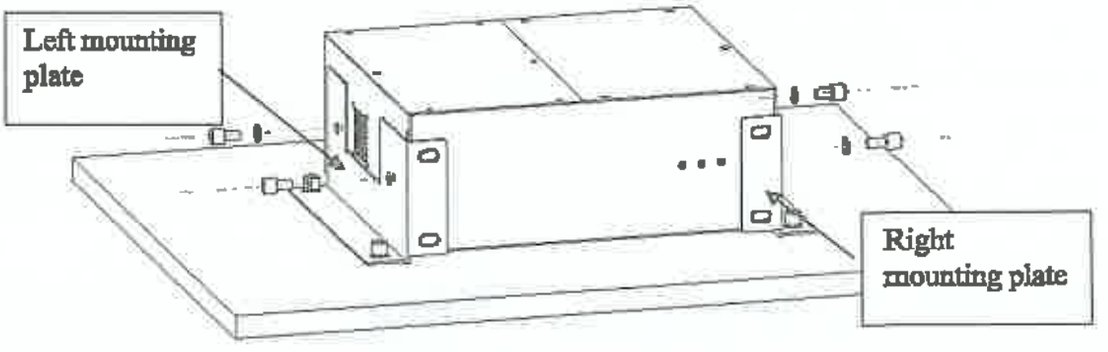


5. Mount to vehicle

1. Horizontal mount
   i. Measure the position of the mounting screws and drill holes on the mounting surface
   ii. Screw up the screws on the mounting surface



2. Vertical mount
   i. Remove four side mounting screws on RX504 as shown follow



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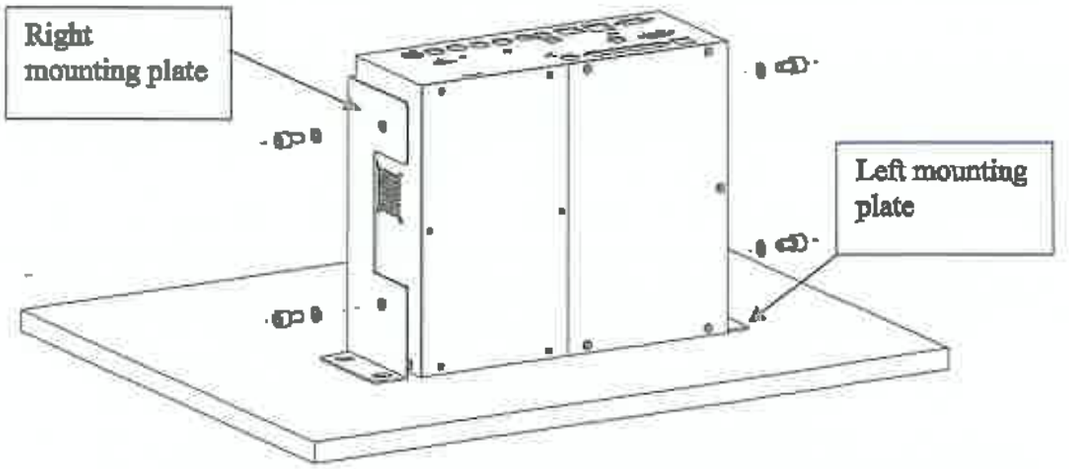
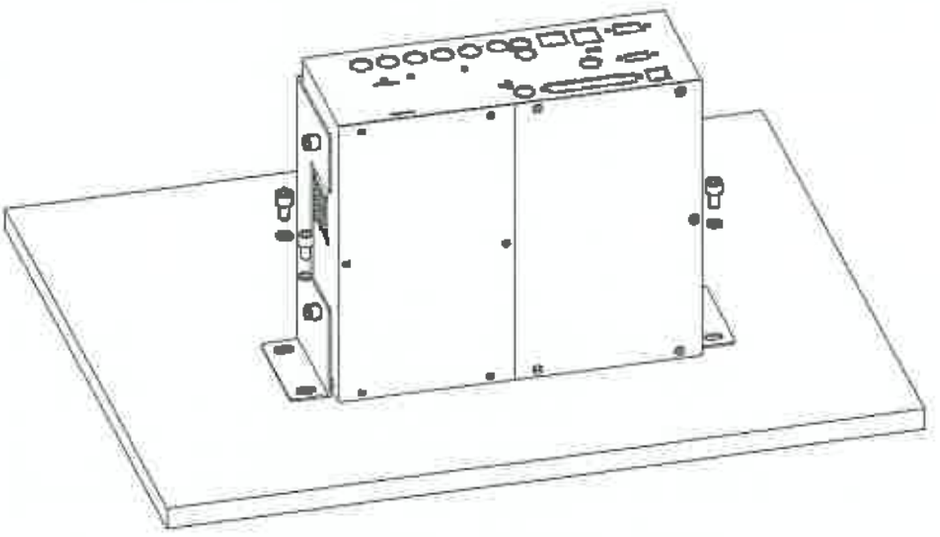
ii. Switch left and right mounting plate as shown in the following figure



iii. Rotate to RX504 front panel face down and screw up the side mounting screw to RX504

iv. Measure the position of the mounting screws and drill holes on the mounting surface

v. Screw up the screws on the mounting surface



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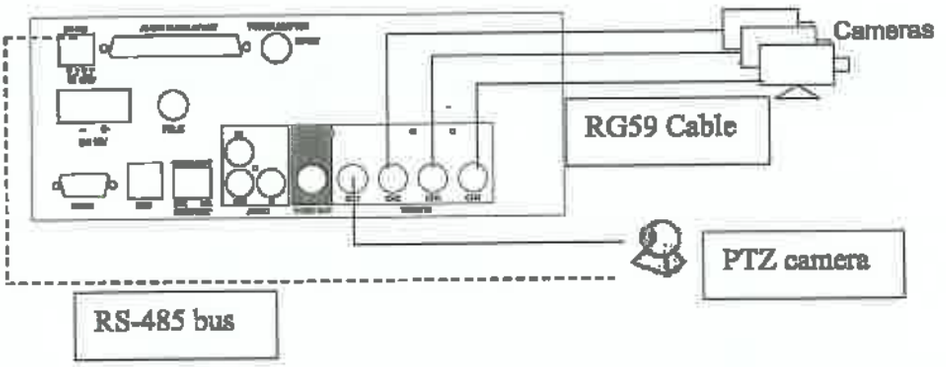
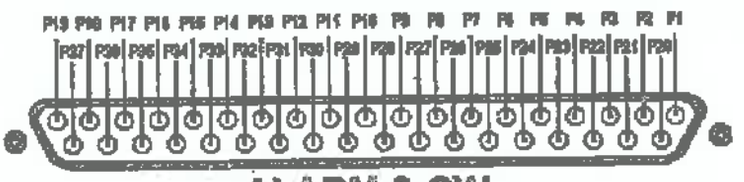
6. Video installation



For fix cameras, connect cameras to video inputs using RG59 cable. For PTZ cameras, connect camera's video output to RX504's video input using RG59 cable, and connect RS-485 to RX504's RS-485 out.

7. Alarm installation

***TeleEye* RX** supports up to 16 alarm ports in that order with tamper detection for connecting with alarm sensors, 4 additional input sensors and 4 relay ports for control. The definitions of alarm and relay control ports are shown in the following diagram.



Pin assignment for *TeleEye* RX

Pin 1	ALARM 1	Pin 20	GND
Pin 2	ALARM 2	Pin 21	GND
Pin 3	ALARM 3	Pin 22	GND
Pin 4	ALARM 4	Pin 23	GND
Pin 5	ALARM 5	Pin 24	GND
Pin 6	ALARM 6	Pin 25	GND
Pin 7	ALARM 7	Pin 26	GND
Pin 8	ALARM 8	Pin 27	GND
Pin 9	ALARM 9	Pin 28	ARM/DISARM
Pin 10	ALARM 10	Pin 29	SECURITY SWITCH
Pin 11	ALARM 11	Pin 30	POWER FAILURE
Pin 12	ALARM 12	Pin 31	SYSTEM TAMPER
Pin 13	ALARM 13	Pin 32	ALARM 14
Pin 14	ALARM 15	Pin 33	ALARM 16
Pin 15	RELAY 0a	Pin 34	RELAY 0b
Pin 16	RELAY 1a	Pin 35	RELAY 1b
Pin 17	RELAY 2a	Pin 36	RELAY 2b
Pin 18	RELAY 3a	Pin 37	RELAY 3b
Pin 19	N/A		

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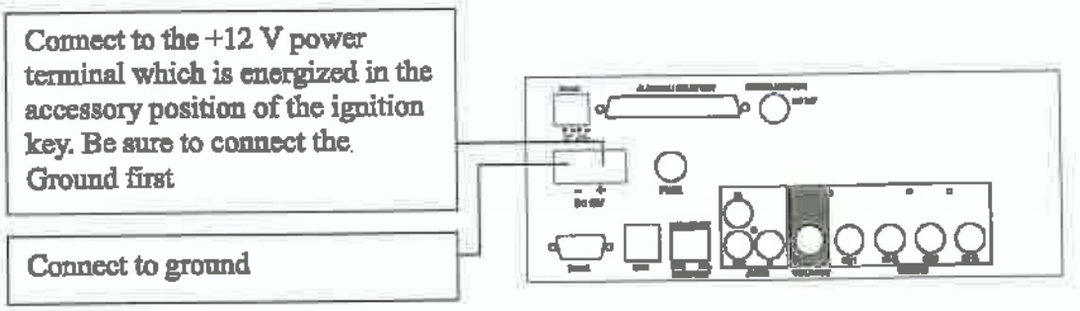
8. Power connection



1. Connect RX504 Ground terminal to car ground.
2. Connect RX504 +12 V terminal to the +12 V power terminal which is energized in the accessory position of the ignition key.

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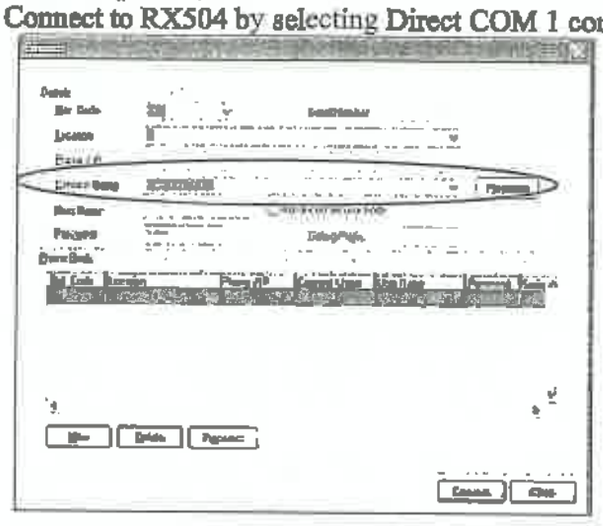
Section 3

Basic Setup

1. Before setup

1. Prepare a Laptop with COM port which running Windows XP
2. Install provided ***TeleEye*** WX-30 software
3. Power up RX504
4. Connect RX504 to PC by using provided NULL modem cable
5. Run ***TeleEye*** WX-30
6. Click Connections > Connect
7. Click Properties, select 57600 bit rate
8. Connect to RX504 by selecting Direct COM 1 connection



2. Format Hard Disk

New Hard Disk need to be formatted before use.

1. Click **Transmitter -> Settings**
2. Click **[HDD Management]** option on **{Transmitter Setup}** panel to enter **{HDD Management}** panel.

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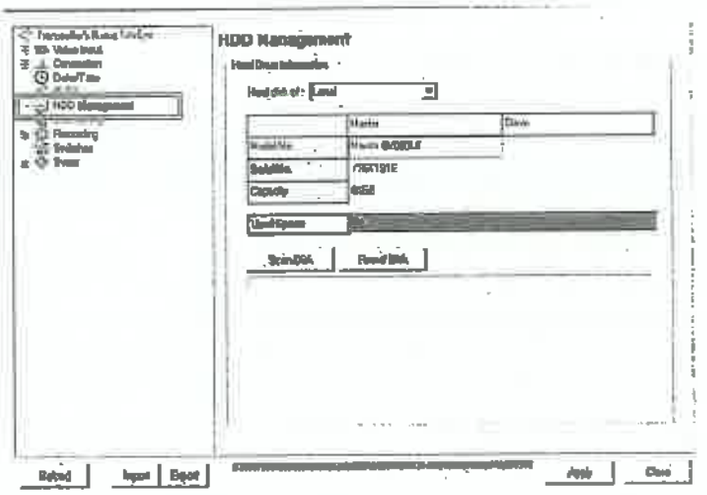
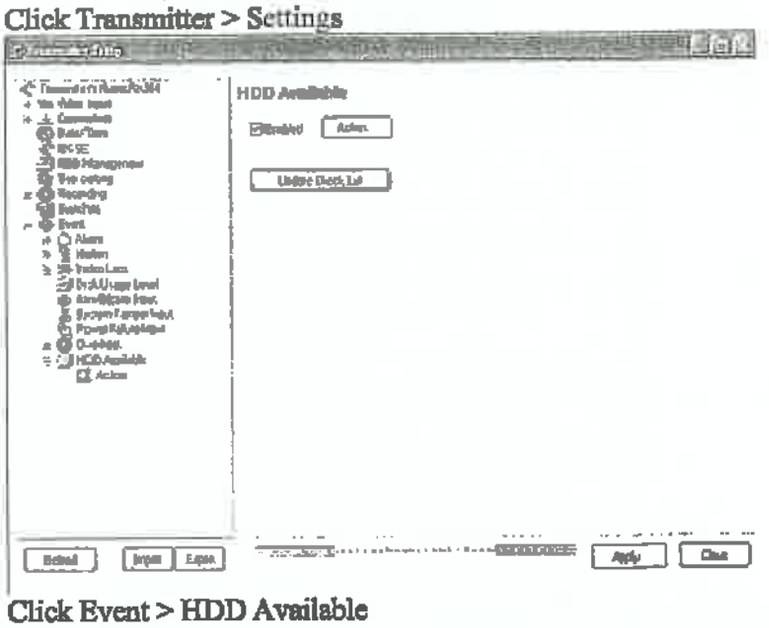


3. Click [Format Disk] to start format the Hard Disk.
4. RX504 will need to restart after Hard Disk format.

3. Hard Disk available event

Hard Disk available event triggers when any HDD failure or HDD changes happen. It is recommended to enable this event after format Hard Disk. Like other events, it can associate with dialback, E-mail and buzzer action etc.

1. Click Transmitter > Settings



2. Click Event > HDD Available
3. Check Enable
4. Click Action

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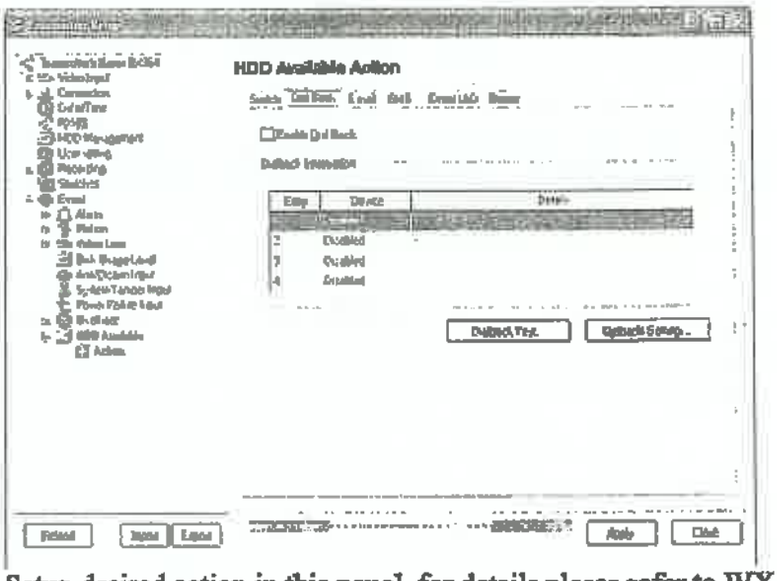
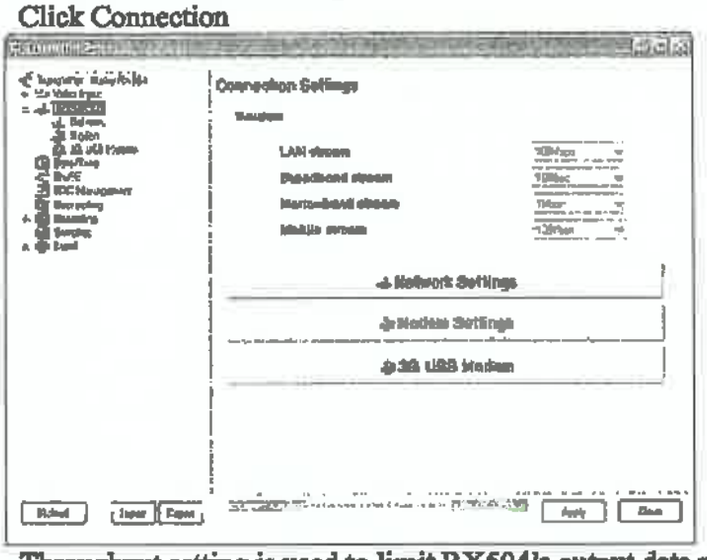


5. Setup desired action in this panel, for details please refer to WX-30 User manual.
6. Click [Update Check List] after change or format Hard Disk.

4. Network setup

1. Click Transmitter > Settings
2. Click Connection



3. Throughput setting is used to limit RX504's output data rate at individual video stream.
4. Select 100Mbps for LAN stream
5. Narrowband throughput, following are suggested initial throughput for reference only.
   - HSDPA / UMTS: 512kbps
   - EDGE: 64kbps
   - GPRS: 19.2kbps

   Noted that mobile data rate varies with different environment. If video delayed, please select lower throughput.
6. Click Network Settings

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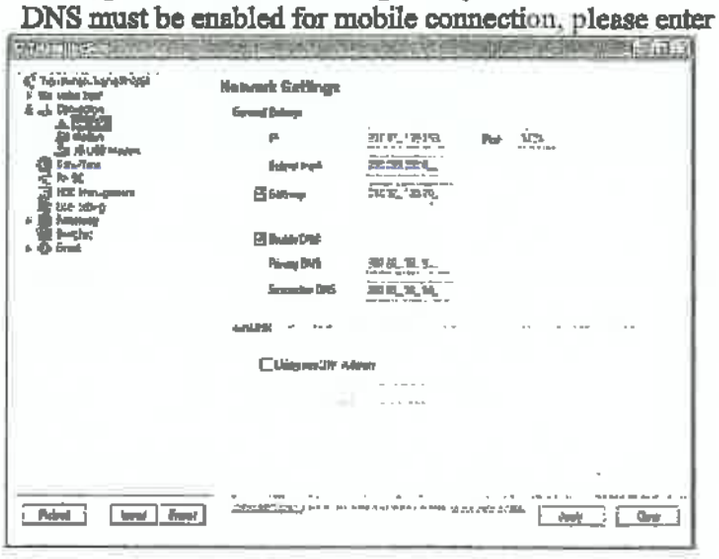
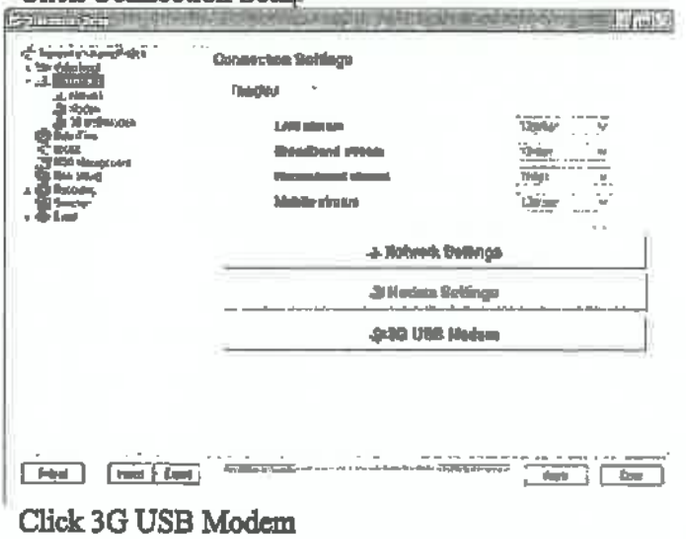
7. Set IP, port, subnet mask and gateway
8. DNS must be enabled for mobile connection, please enter valid DNS addresses.



5. Mobile data modem setup

Make sure the mobile service provider support streaming at Internet connection.

1. Click Connection Setup



2. Click 3G USB Modem

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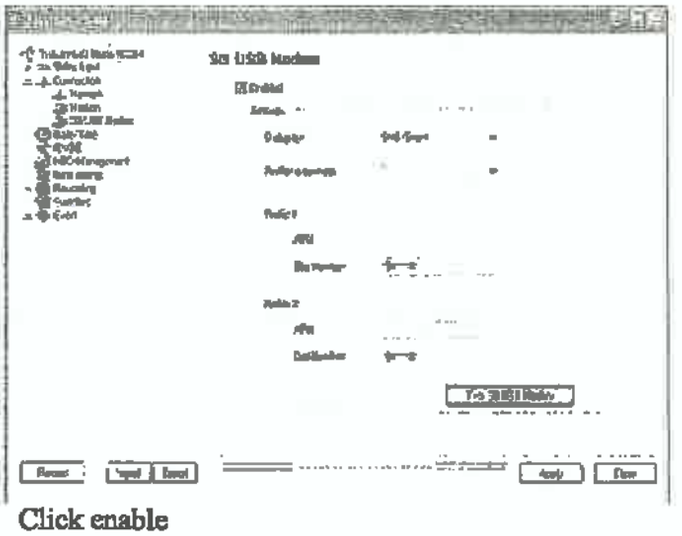


3. Click enable
4. Set dialup mode: Start up and SMS / Event
    1. In SMS / Event mode, RX504 will dial up to Internet only when event trigger a dialback action or receive a valid dialback SMS message. This mode is recommended to user who do not has real IP for mobile network connection
    2. Startup mode will dial up to Internet when RX504 power up. This mode is only suitable for user who has real IP for mobile network connection.
5. RX504 support 2 profiles, select desired profile according to the SIM card.
6. Enter APN and dial number of the SIM card, according to telecom service provider's setting
7. Click Test 3G USB Modem to test the configuration
8. Click Apply to save settings

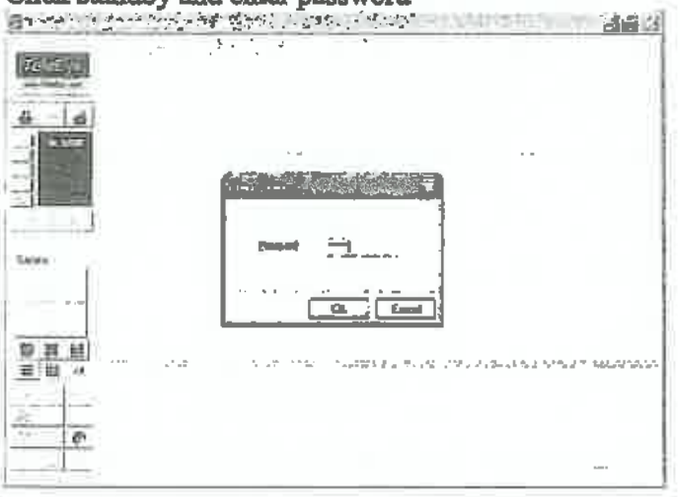
GSM

Section 4

Operation

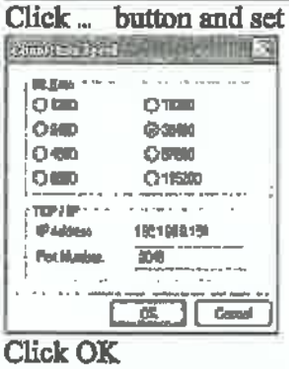
1. Live operation through mobile data modem

1. SMS / Event mode
    1. Run ***TeleEye*** WX-30
    2. Click standby and enter password



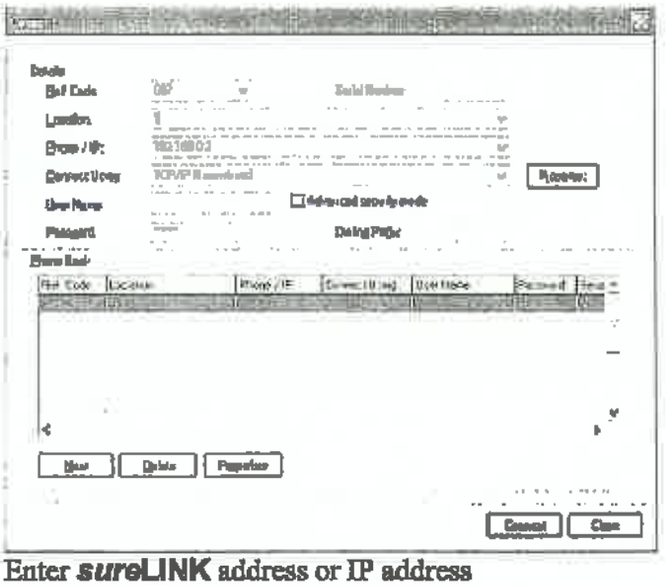
    3. Select Narrowband

    4. Click ... button and set listen port



    5. Click OK
    6. Send SMS to the SIM card's number using the following format:
    7. teip<space><dialback ip><space><port><space>endip
       e.g. teip 202.73.90.90 2048 endip
    8. RX504 will dialback to the given IP once received the SMS.
2. Startup mode
    1. Run ***TeleEye*** WX-30
    2. Click connect

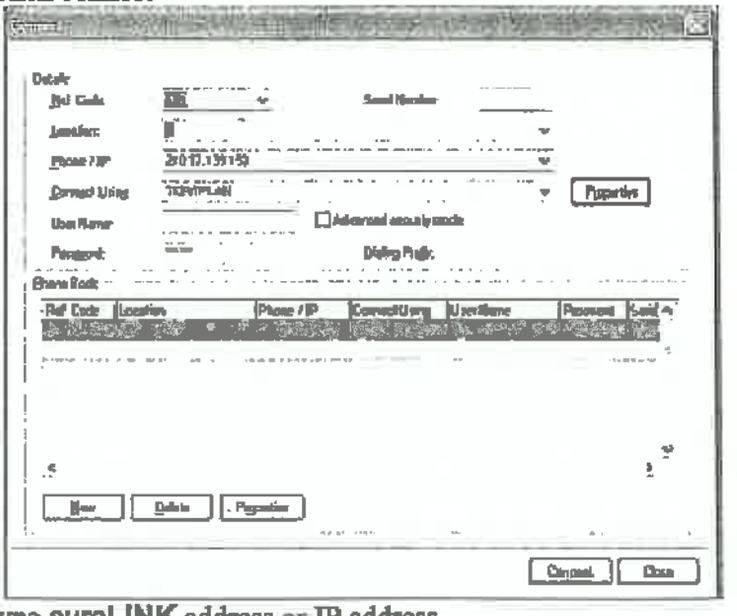
GSM



3. Enter ***sure*LINK** address or IP address
4. Select TCP/IP Narrowband
5. Enter password
6. Click Connect

2. Live operation through LAN / wireless LAN

1. Run ***Tele*Eye** WX-30
2. Click connect

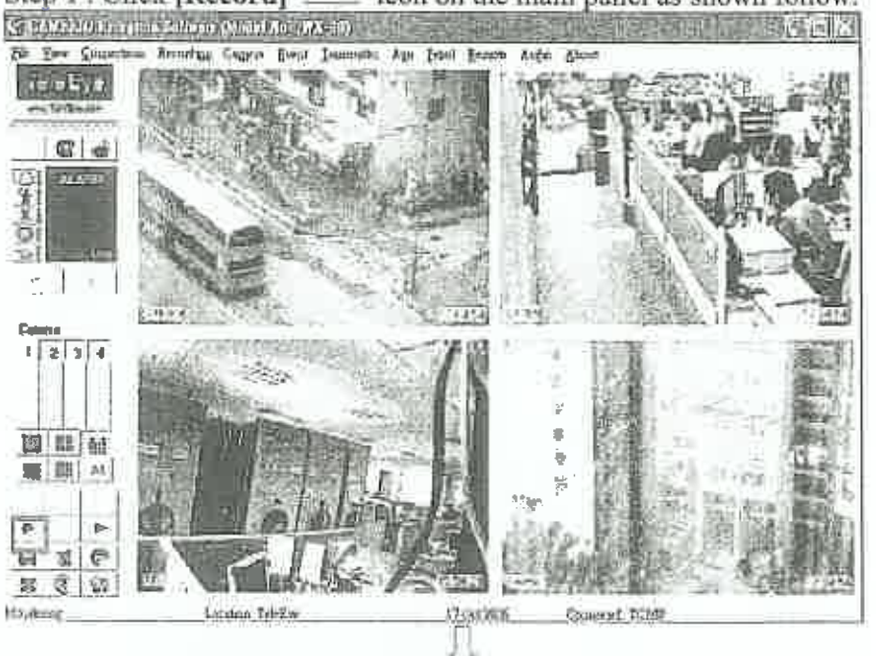


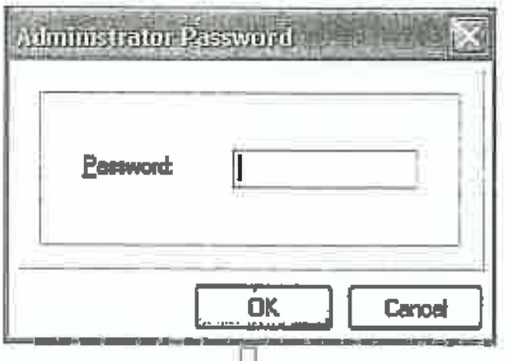
3. type ***sure*LINK** address or IP address
4. Select TCP/IP LAN
5. Enter password
6. Click Connect

3. Recording

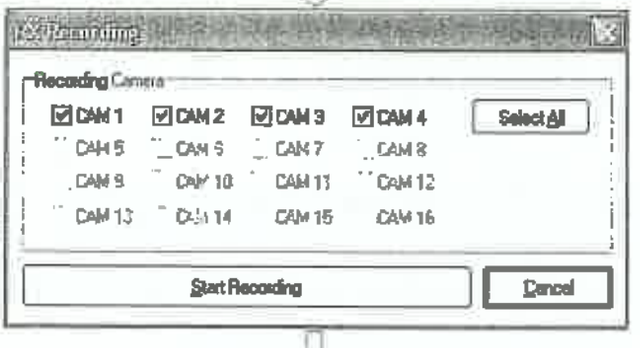
Manual Recording Procedure :

Step 1 : Click **[Record]** icon on the main panel as shown follow.





Step 2 : **Enter the administrator password.**



Step 3 : **{RX Recording} panel pop up. Click the checkbox to select the camera for recording. [Select All] is to select all cameras for recording.**

Step 4 : **Press [Start Recording] to start recording now.**

6 sm

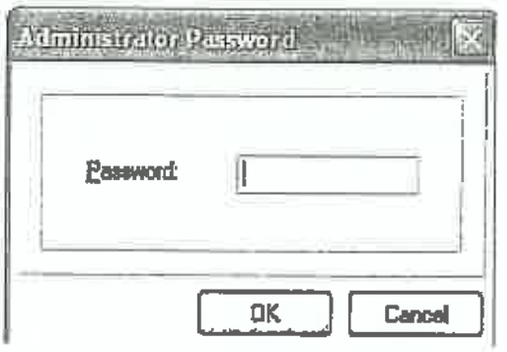
4. Video extraction

Extract footage for back up purpose. This function can back up the data stored in the transmitter into local hard disk. User only need to select the amount of memory and starting time for back up and the function will calculate the end time automatically.

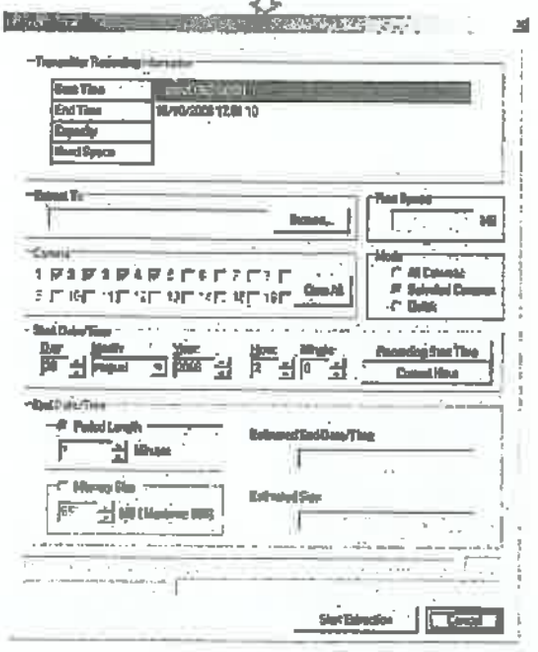
It is recommended to use LAN / wireless LAN connection to achieve maximum extraction speed. See Section 4.2.

Step 1: Click [Transmitter] > [Setup] > [recording]

Step 2: Click on [Footage Extraction] button



Step 3 : {Administrator Password} panel will pop up. Input the administrator password and click [OK].

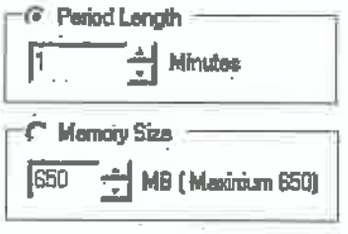


Step 4 : {Footage Extraction} panel will pop up. Click [Browse..] to choose a folder for extraction.

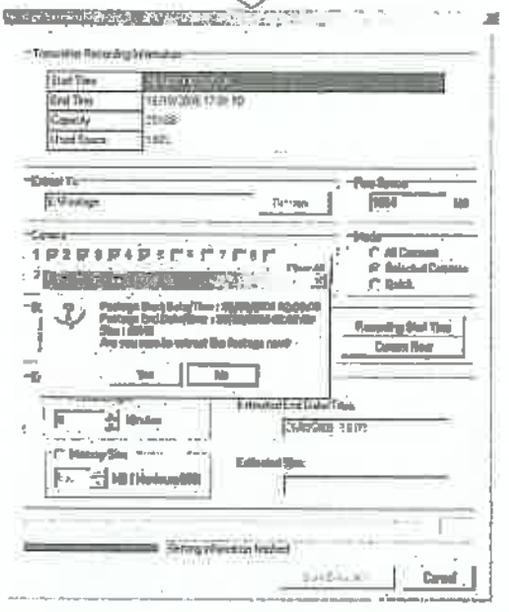
Step 5: In {Footage Extraction} panel, select camera(s) for footage extraction.

Gsm

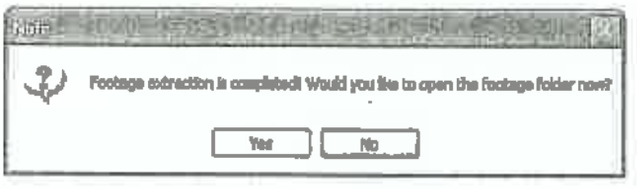
Step 6: Select mode for footage extraction.
Note: Lower frame rate for quick mode.



Step 7 : Input Start Date / Time and Period Length / Footage Size in the boxes provided.
(Note(Optional):
1. Click [Recording Start Time] to select start time of the recording log.
2. Click [Current Hour] to select current hour of the transmitter.)
Click [Start Extraction] to start.



Step 8 : A {Format} panel will pop up. Click [Yes] to continue



Step 9 : When the extraction is finished, {Note} will pop up. Click [Yes] or [No] to choose open the footage folder or not.

☞ Backup will not be successful if --

1. Two sites carrying out backup process in the remote site at the same time.
2. Recording retention process carrying out at the same time.

GSM

Appendix 1

Limited Warranty

Conditions, Limitations and Liabilities of This Warranty:

1. Signal Communications Ltd. (hereinafter called ***Tele*Eye**) provides free repairing labour and free repairing parts for the first 12 months. Please present the Warranty Card and the original invoice when you are asking for service support.
2. In case of applicable, ***Tele*Eye** staff shall request a remote access inspection or trouble shooting through internet, PSTN, ISDN, or mobile media.
3. When service is required, the Customer is responsible for all the transportation costs.
4. Outdoor services are not included. Subject to ***Tele*Eye**, outdoor services will be provided at extra charges.
5. This warranty does not extend to cover any damages or malfunction resulting from disaster, environmental factor, abnormal humidity/temperature, improper voltage, electrostatic discharge, misuse, negligence, ignorance, accident, mold, or repairs /modifications made by any person(s) other than the authorized personnel of ***Tele*Eye**.
6. ***Tele*Eye** reserves the right to charge Customer an inspection fee, on-site service fee or cost of parts if (i) no fault in the equipment can be found during inspection or (ii) the defect is caused at conditions those mentioned in point 5 above or (iii) Customer fail in providing access methods to the site or the equipment, e.g. specified access permit or key. Such determination is up to the sole discretion of ***Tele*Eye**.
7. The warranty is void if any of the cabinet seal has been removed or opened if there is any such sign not being made by any authorized personnel of ***Tele*Eye**.
8. Under no circumstance shall ***Tele*Eye** be liable for any damages to any parties so caused by the usage of the above specified equipment or so caused during service provision.
9. The conditions, limitations and liabilities of this warranty card may be extended to further terms and conditions or superseded by other terms and conditions when otherwise specified on any of the products.
10. Customer shall be responsible for backing up the data contained in the disk products.
11. ***Tele*Eye** shall have no responsibility arising out of any damage to, or loss of the data contained in the disk products.
12. All the above determinations are up to the sole discretion of ***Tele*Eye**.

G Smith

Appendix 2

sureLINK Technology

sureLINK technology is available in **TeleEye RX**, which enables you to connect to the **TeleEye RX** with broadband dynamic IP Internet connection. If you can only use broadband dial-up account to connect to the Internet through your computer, **sureLINK** provides a solution for sharing the Internet connection between your computer and the **TeleEye RX**.

sureLINK is a group of additional functions, services and software provided for the **TeleEye RX** so as to make it connect to the Internet in any connection methods. Such function can only be used if you have applied for this service. After you have done so, you also need to configure the **TeleEye RX** to make **sureLINK** available. This section will help you to configure and use it.

By using of **sureLINK** technology, the powerful **TeleEye RX** can work on broadband Internet economically. You can perform a cost effective and convenient remote live video monitoring anytime and anywhere.

sureLINK Address

You can apply for a **sureLINK** address (domain name), such as *www.hkpublic.teleeye.teleeye.net*, for your **TeleEye RX**. You can use this name to login or browse the built-in web server **. One of the advantages is that you are not required to memorize the IP address (e.g. 210.177.50.156) of the **TeleEye RX**. Since the **sureLINK** address is fixed while the IP address may change periodically (in case when dynamic IP is used), you do not need to worry about the expiration of the IP address. The **sureLINK** address can also be used in **TeleEye RX** web browsing to see live video on standard web browser (e.g. IE, Netscape).

Refreshing Rate

When **sureLINK** address feature is enabled, the **TeleEye RX** will periodically update its current IP address to our database to ensure that the **sureLINK** address is always forwarded to a valid IP. You can set this update period through WX-30 software.

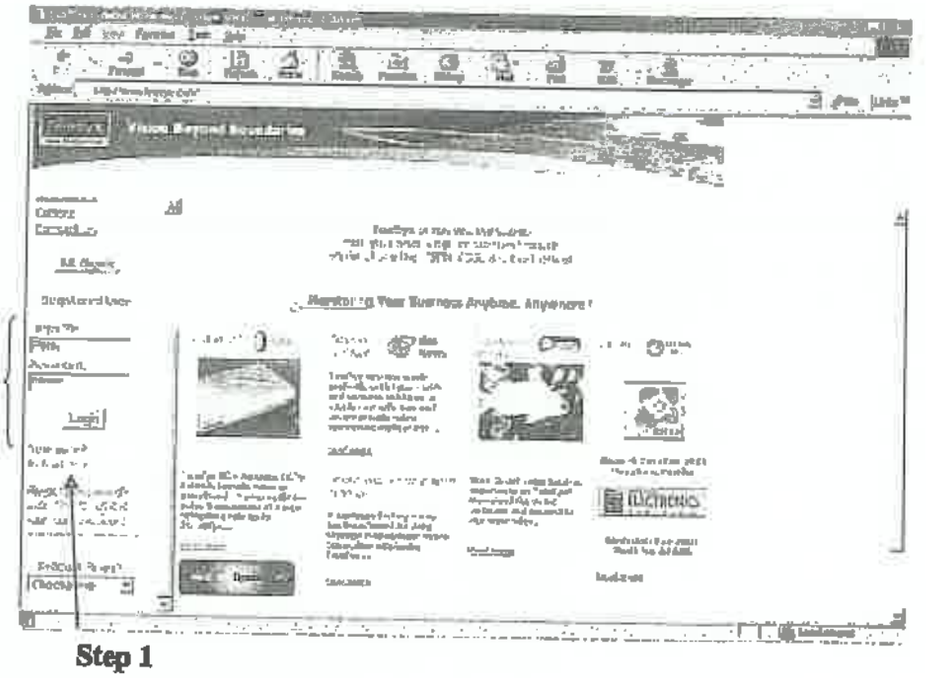
DNS Services:

Assigned when the **TeleEye RX** can directly access the Internet without the help of **TeleEye** Proxy Server

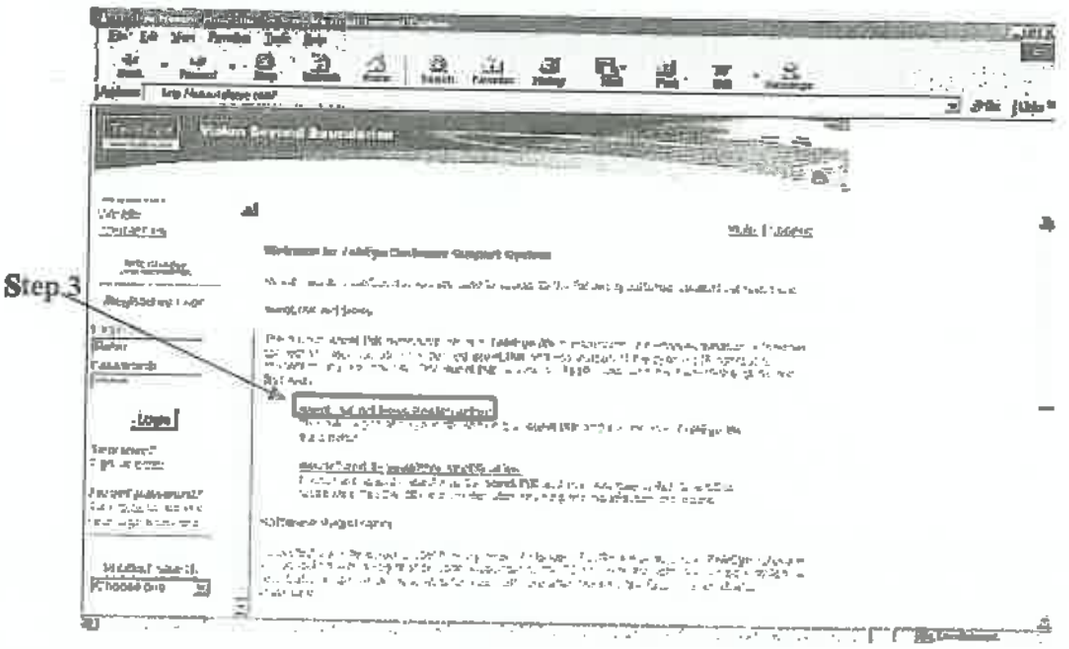
GSM

How to Apply for *sureLINK* Address

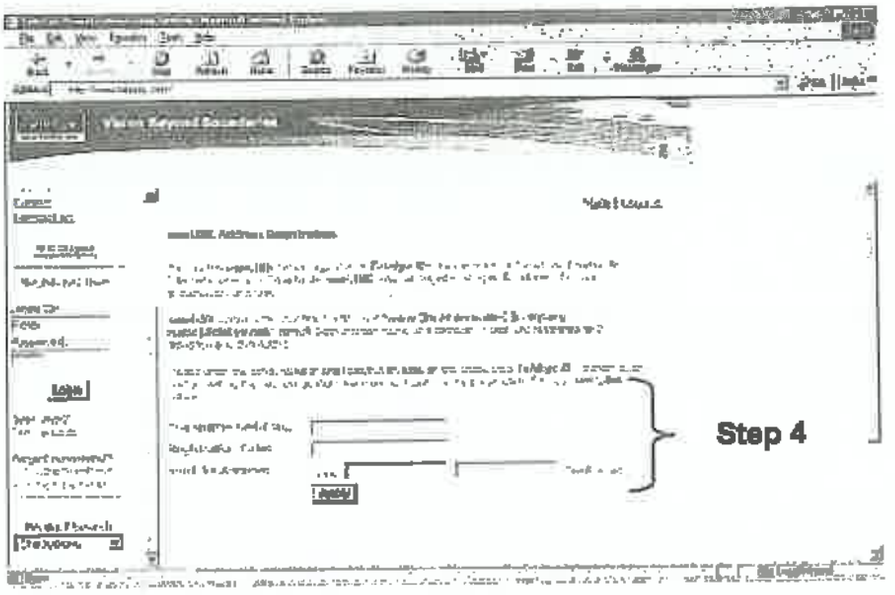
You can apply for ***sureLINK*** by visiting our web site at ***http://www.TeleEye.com***



1. **Sign up to create your user account**
2. **Login the page using your registered name and password.**
3. **Click *sureLINK* Address Registration button**



GSM



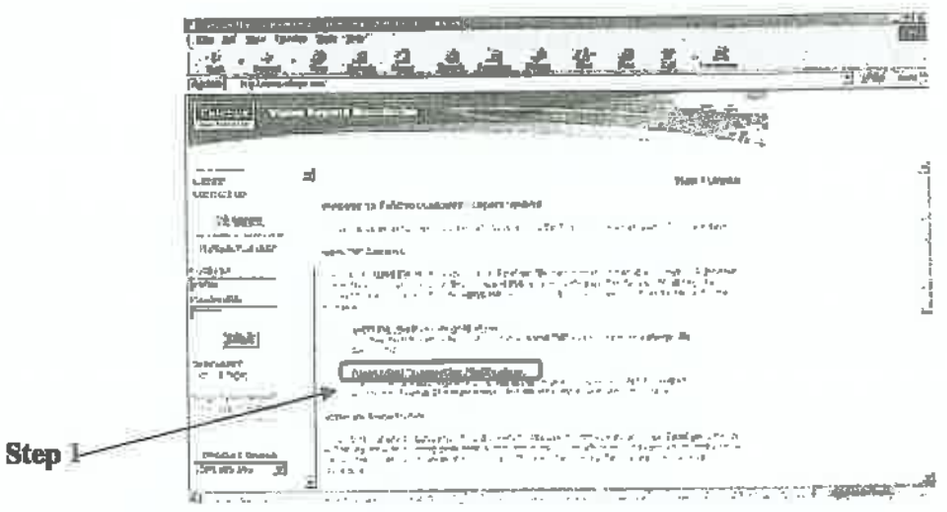
4. Enter a ***sure*LINK** address (**Domain Name**), your ***Tele*Eye RX Serial No.** and **Registration Code** in the fields provided respectively. Then click the **Apply** button. The process is then completed.

After we receive your domain name registration for your ***Tele*Eye RX**, your application will be processed. Normally, it requires about 2 to 3 working days to activate ***sure*LINK** for your ***Tele*Eye RX**. You will receive a notification e-mail when your ***sure*LINK** service is ready.

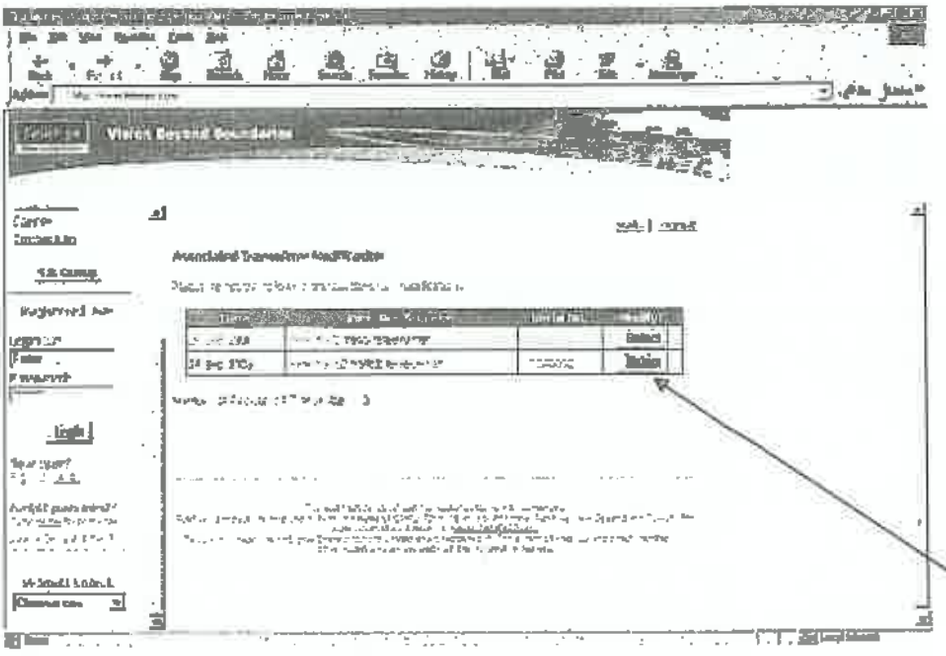
Video Server Modification

Since the ***sure*LINK** (Domain name) address corresponds to a single transmitter, if you change from one transmitter to another one, you have to inform us to update our database record. To do this, you can visit our ***Tele*Eye** Product Support again and follow the steps as below:

1. Transmitter Modification > Select a ***sure*LINK** address (**Domain Name**) you want to modify

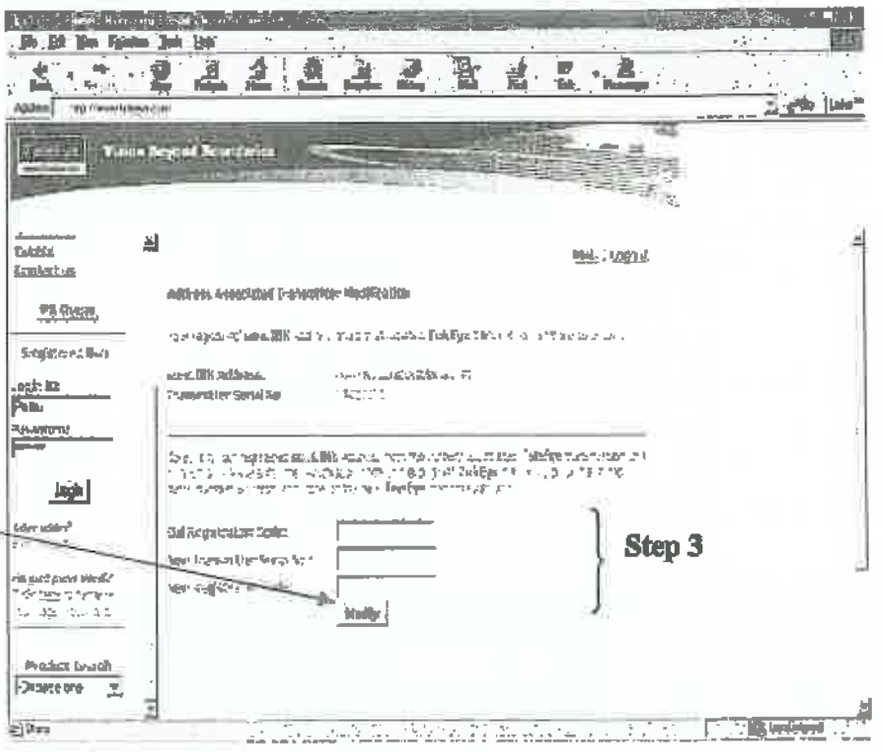


GSM



Step 2

2. **Enter the Old Registration Code, New Transmitter Serial Number and New Registration Code at each field provided. Click Modify button to submit the form.**

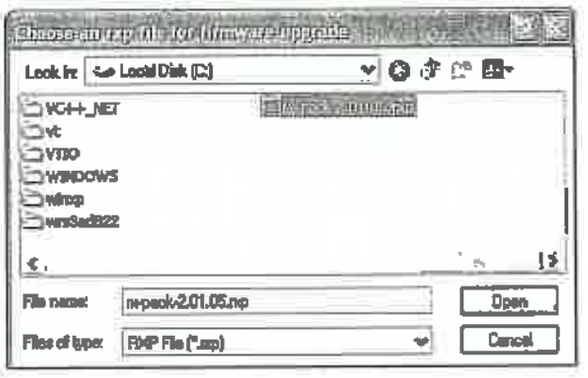


If the above procedure is completed successfully, the *sure*LINK will be effective immediately.

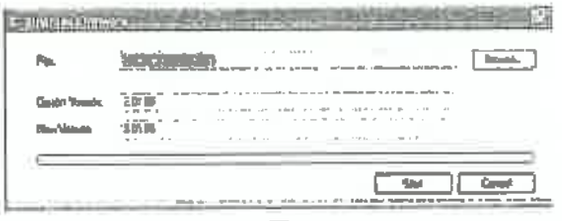
Appendix 3

Firmware Upgrade

Step 1 : Click Transmitter -> Settings On {**Transmitter Information**} panel, click **[Upgrade Firmware]**



Step 2 : A panel **[Choose an RX file for firmware upgrade]** will pop up.
Choose the rxp file and click **[Open]**.



Step 3: A panel **[Upgrade Firmware]** will pop up and click **[Start]** to start upgrading.

Step 4: A warning message will pop up, click **[Yes]** to continue

Step 5: Wait until the progress bar became full.
*****Do not close the panel until upgrading finished.***

Kcsm

Appendix 4

Security Mode

On RX504, there are 2 security modes: BASIC and ADVANCED. User can either choose BASIC security mode for simple usage or ADVANCED security mode for multiple user accounts and flexible access right. The comparison of the security modes can be found in the following table:

Description		Basic Security Mode	Advanced Security Mode
Number of account		2	20
Account apply on		reception software	reception software and local OSD
Password length		6	4 – 10
Password encryption		No	Yes
Login	Reception software	Only password	User name and password
	Local menu	- -	Only password
Access right		Operation System setting	Video monitoring Audio monitoring and PA Playback Camera Control Event Control Switch Control Video backup Recording System setting User account

- 6 concurrent users in both security modes

GSM

Basic security mode -- User account

ADMINISTRATOR

Type	Default	Remark
User name	ADMINISTRATOR	FIXED
Access right	Operation and System setting	FIXED
Network password	000000	Available to change

USER

Type	Default	Remark
User name	USER	FIXED
Access right	Operation	FIXED
Network password	123456	Available to change

Basic security mode -- Access right

Group	Features Involved
Operation	Video/audio monitoring, PTZ, Playback, Switch control
System setting	Start/stop recording, Video backup, System setting, Restart transmitter Firmware upgrade

Advanced security mode -- User account

Account structure

Type	Description	Remark
General setting		
User name	Login user name from remote software	4-16 characters case insensitive unique between each account
Account type	LOCAL / NETWORK / BOTH	allow user to login from local OSD / remote software / both
Access right	Access right of the user account	(Access right)
Network account type setting		
Network password	Login password from remote software	4-10 characters case insensitive

In factory default, 2 preset accounts: ADMINISTRATOR and USER1 are stored in the transmitter.

Administrator account: ADMINISTRATOR**

Type	Default	Remark
User name	ADMINISTRATOR	FIXED
Account type	BOTH	FIXED
Access right	ALL	FIXED
Network password	000000	Available to change
Local password	111111	Available to change
Local time out	15 MINS	Available to change

**Administrator account cannot be removed

Normal account: USER1

Type	Default	Remark
User name	USER1	FIXED
Account type	BOTH	Available to change
Access right	VIDEO MONITORING	Available to change
Network password	123456	Available to change
Local password	123456	Available to change
Local time out	15 MINS	Available to change

G 5m

Advanced security mode -- Access right

Group	Features Involved
VIDEO MONITORING#	basic video monitoring with fixed cameras browsing the event status**
AUDIO MONITORING and PA	audio monitoring** PA with microphone, PA with pre-recorded voice clips
PLAYBACK	video playback** browsing event logs , connection log, setting log and operation log
CAMERA CONTROL	PTZ**
EVENT CTRL	clear event
SWITCH CONTROL	switch control
{All video monitoring}, {audio monitoring} & {playback} access right group will be enabled	
VIDEO BACKUP[1]	video extraction and backup
RECORDING[1]	start/stop recording start/stop schedule recording
SYSTEM SETTING[1]	video format, camera installation, throughput control setting change live video quality, brightness, contrast network and modem setting data/time setting hard-disk formatting recording setting switch setting event setting firmware upgrade shutdown/restart
All access right group will be enabled	
USER ACCOUNT[2]	setting import/export user account setting switch transmitter security mode restore factory setting

at least one camera should be selected

** Video monitoring dependence. For example, if user has no access right on camera 2 monitoring, he cannot browse event status, control PTZ and playback on this camera.

[1] Automatic enable all video monitoring, audio monitoring and playback permission

[2] Automatic enable all access right permission

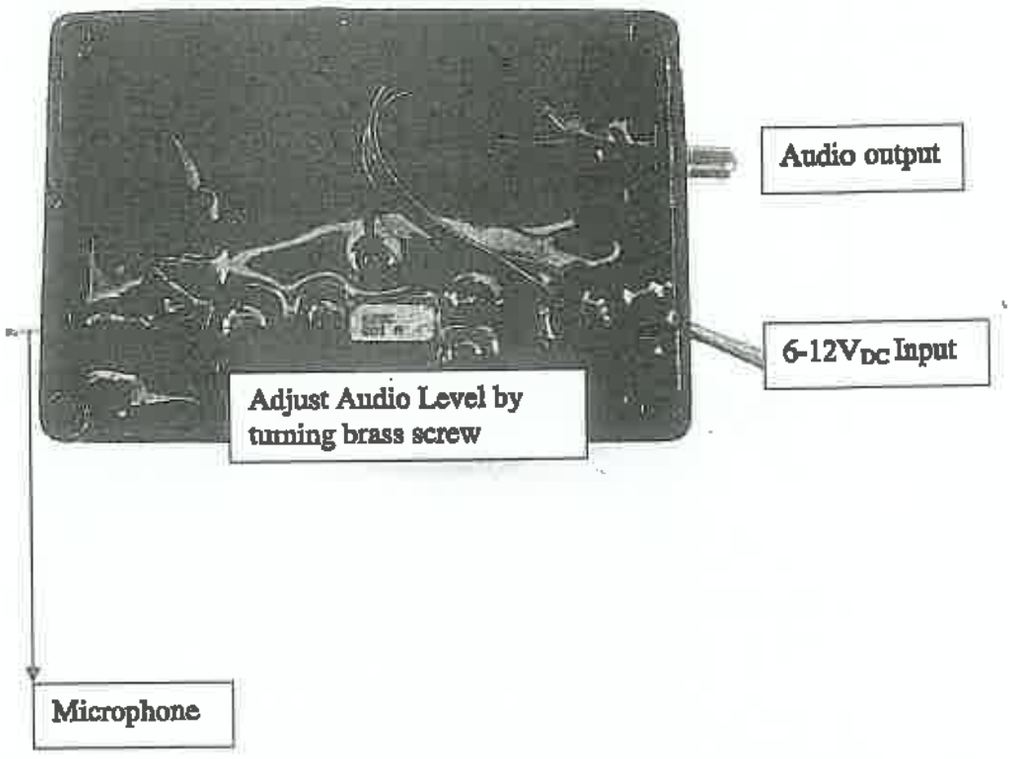
Mesm

Instructions – Microphone with Pre-amp

1. Open the "Black Box" and adjust the audio level by turning the brass screw clock or anti-clock wise until the audio input is to your satisfaction.

2. Power consumption: 1.2mA

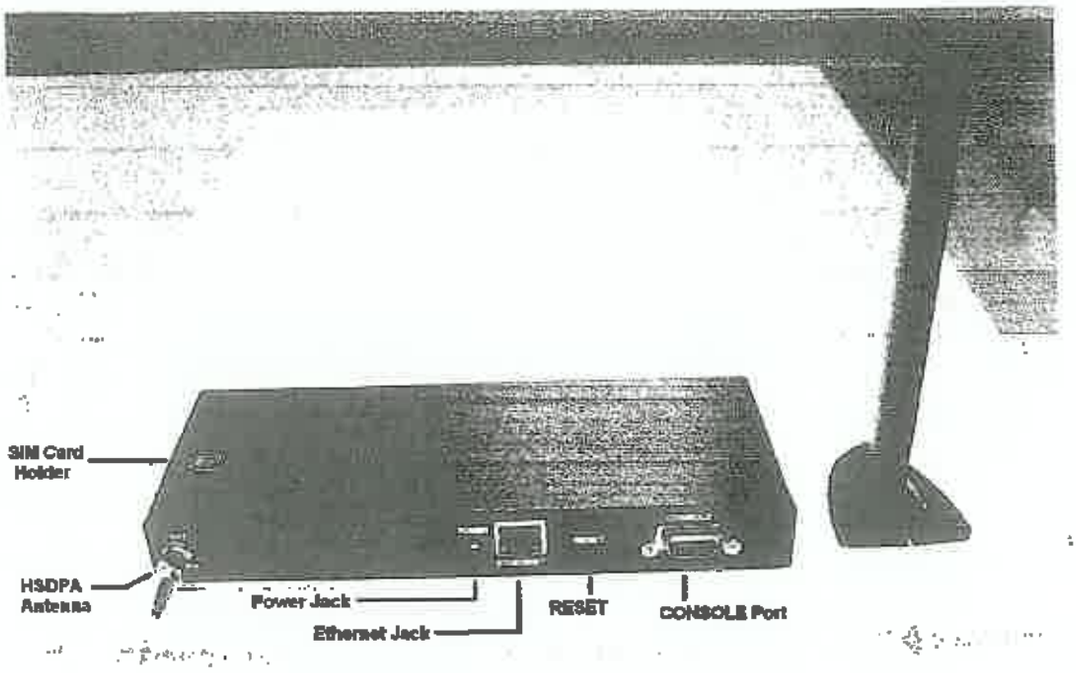
3. Power: Red + Black –
   (Polarity sensitive)



GSM

HSDPA-220C Wireless Router

1. Back panel description



HSDPA Router

SIM card holder : Please insert SIM card into SIM card holder same direction as shown on top panel.

HSDPA Antenna: Please install HSDPA Antenna on this position.

Power Jack: Please plug in power adaptor. It is 12VDC 2A.

Ethernet Jack: Plug in RJ45 cable.

Console port: It is for debug purpose during in production.

2. Front Panel:

USB port is for adding extra USB device. It is reserved for dedicate purpose. It will be based on what customer needs. So far it can be implemented for ADSL's failover back up purpose.

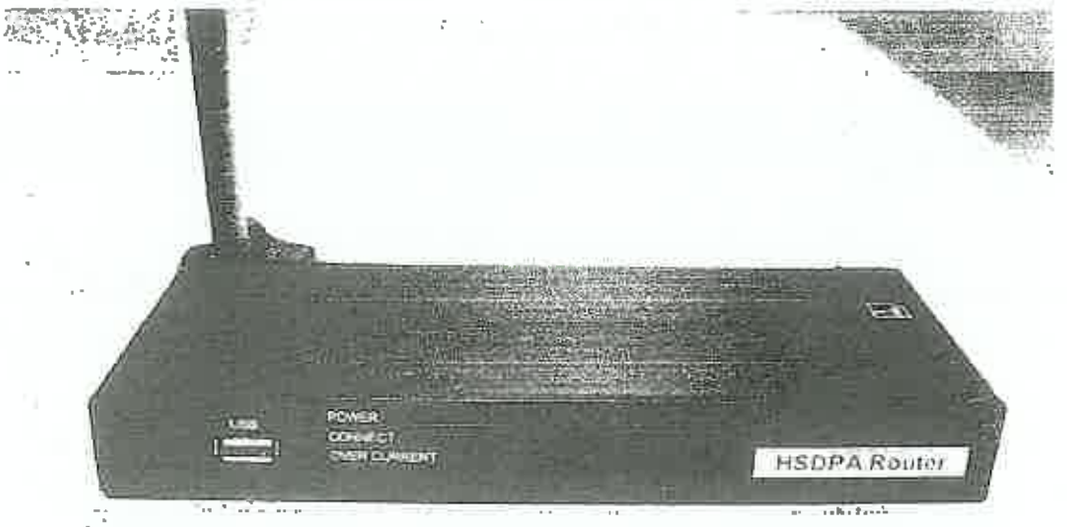
LED descriptions:

POWER: To show it provides power as standard USB 5V 500mA.

CONNECT: Once device is under router control, the LED will be ON.

OVER CURRENT: If device drain more power then LED will be ON.

Mosm



Installation

1. Package. It includes
   1 piece Router, 1pc HSDPA GSM antenna, 1 piece Power adaptor, 1 piece RJ45 LAN cable.

Fig-1

Fig-2

2. Installation. Insert SIM card into SIM card holder .SIM card can be pushed out by presing in plastic rod as Fig-2

   Plug in RJ45 LAN cable both to Router & PC. Install GSM antenna into "HSDPA ANT" position as shown on Fig-1. Plug in power adaptor. LEDs will be ON.

3. Software setup

   a. Under Windows, Control panel - LAN network – Content- Internet Protocol (TCP/IP), select fix IP & DNS address. Please enter following setting as Fig-3.
      Enter followings:
      IP address: 192.168. 0.100
      Subset Mask: 255.255.255.0
      Default Gateway: 192.168.0.1
      DNS address :168.126.63.1

Gsm

b. Please type in http://192.168.0.1 into IE browser, then PC will link to Router automatically.

```
C:\>ipconfig

Windows IP Configuration


Ethernet adapter 區域連線:

        Connection-specific DNS Suffix  . :
        IP Address. . . . . . . . . . . . : 192.168.0.100
        Subnet Mask . . . . . . . . . . . : 255.255.255.0
        Default Gateway . . . . . . . . . : 192.168.0.1
```

Enter this address for browser

b. After setup software pop up, type in password & user name as "admin" for both as default at 1st time as Fig-4.

admin

*****

Fig-4

4. Mode

It can select PPP auto or bridge mode.

User ID, Password for network.

PIN is for entering PIN code on SIM card. If PIN code is disabled, then column will not be shown

Initial string is for initializing HSDPA modem. For GPRS attachment, it will be **+CGDCONT=1,"IP","internet"** please check with your service provider to confirm such information. Please be aware that high case and lower case characters are matter.

Tel Number: is either *99# or *99***1# for modem to dial in most of case. Please check with service provider to confirm.

Apply & Reboot: Once default value has been changed, please click on this to make sure new settings will be applied. Otherwise it may not change the default value.

Once setting is finished, click on "**Connect**" to have router to link to HSDPA data network.

Gsm

Home Status Ethernet SNMP SNTP DNS DHCP
MODE NAT Router VRRP System Reboot Upgrade

PPP auto
Bridge

PIN has verified.

+CGDCONT=1,"IP","internet

*99#

Apply & Reboot Cancel

Home Status Ethernet SNMP SNTP DNS DHCP
NAT Router VRRP System Reboot Upgrade

0 Days 0 Hours 7 Minutes 50 Seconds

CPU ARM 940T RISC Processor
OS LINUX (kernel 2.4.22)

Interface	IP Address	Subnet Mask	Status
eth0	192.168.0.1	255.255.255.0	Up

Connect

Status: To check status, there are several options.

Syslog: This is to check the procedures step by step. It includes time, commands issued, responses from modem.

Device: It is to check the status of router itself.

Route: This is for router address setting.

GSM

	Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
Page	MODE	NAT	Router	VRRP	System	Reboot	Upgrade

Syslog Reload

```
Jan  1 00:07:45 syslog: Exit.
Jan  1 00:07:45 syslog: Sent 3162 bytes, received 3218
bytes.
Jan  1 00:07:45 syslog: Connect time 1.5 minutes.
Jan  1 00:07:45 syslog: Couldn't release PPP unit: Invalid
argument
Jan  1 00:07:45 syslog: Sent 3162 bytes, received 3218
bytes.
Jan  1 00:07:45 syslog: Connect time 1.5 minutes.
Jan  1 00:07:45 syslog: Connection terminated.
Jan  1 00:07:45 syslog: rcvd [LCP TermAck id=0x2]
Jan  1 00:07:45 syslog: Script /etc/ppp/ip-down finished
(pid 208), status = 0xff
Jan  1 00:07:45 syslog: sent [LCP TermReq id=0x2 "User
request"]
Jan  1 00:07:45 syslog: Script /etc/ppp/ip-down started
(pid 208)
Jan  1 00:07:45 syslog: Terminating on signal 15.
Jan  1 00:06:24 syslog: Script /etc/ppp/ip-up finished
(pid 205), status = 0xff
```

	Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
	MODE	NAT	Router	VRRP	System	Reboot	Upgrade

Device Reload

eth0	Rx	Total bytes	14'682	Packet received	1128
		Packet errors	0	Packet dropped	7
		Packet overruns	0	Packet frame	0
		Packet compressed	0	Packet multicast	0
	Tx	Total bytes	909083	Packet transmitted	1178
		Packet errors	0	Packet dropped	0
		Packet overruns	0	Packet collisions	0
		Packet carriers	0	Packet compressed	0

GSM

Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
MODE	NAT	Router	VRRP	System	Reboot	Upgrade

Device Reload

Syslog Device

eth0	Rx	Total bytes	141662	Packet received	1128
		Packet errors	0	Packet dropped	0
		Packet overruns	0	Packet frame	0
		Packet compressed	0	Packet multicast	0
	Tx	Total bytes	808083	Packet transmitted	1178
		Packet errors	0	Packet dropped	0
		Packet overruns	0	Packet collisions	0
		Packet carriers	0	Packet compressed	0

Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
MODE	NAT	Router	VRRP	System	Reboot	Upgrade

Route Reload

Dest IP:	Subnet Mask	Gateway	Interface
192.168.0.0	255.255.255.0	0.0.0.0	eth0

Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
MODE	NAT	Router	VRRP	System	Reboot	Upgrade

Enable

Redirect IP Address:

Protocol: TCP

Port Range:

Add

Apply Cancel

Ethernet

GSM

Ethernet: To check LAN settings.

Home Status SNMP SNTP DNS DHCP
MODE NAT Router VRRP System Reboot Upgrade

Static
192.168.0.1
255.255.255.0
192.168.0.1

Apply Cancel

Router: To check router setting or set up routing table.

Status SNMP DNS DHCP
Reboot

Disable

Apply Next >> Cancel

SNMP settings:

Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
MODE	NAT	Router	VRRP	System	Reboot	Upgrade

[illegible]	Enable
[illegible]	public
[illegible]	private
[illegible]	
[illegible]	
[illegible]	
[illegible]	public
[illegible]	192.168.0.21
[illegible]	192.168.0.21
[illegible]	Disable
[illegible]	Disable
[illegible]	Disable
[illegible]	Disable

VRRP settings:

Home	Status	Ethernet	SNMP	SNTP	DNS	DHCP
MODE	NAT	Router		System	Reboot	Upgrade

[illegible]	Disable
[illegible]	
[illegible]	

Apply Cancel

SNTP settings:

Home | Status | Ethernet | SNMP | DNS | DHCP
MODE | NAT | Router | VRRP | System | Reboot | Upgrade

Enable

GMT+9:00

Apply Cancel

System settings :

Home | Status | Ethernet | SNMP | SNTP | DNS | DHCP
MODE | NAT | Router | VRRP | | Reboot | Upgrade

admin

90

Enable

Apply Cancel

DNS settings:

Home | Status | Ethernet | SNMP | SNTP | | DHCP
MODE | NAT | Router | VRRP | System | Reboot | Upgrade

168.126.63.1

168.126.63.2

Apply Cancel

Reboot: It is to reboot router.

G Sm

Home Status Ethernet SNMP SNTP DNS DHCP
Page MODE NAT Router VRRP System Upgrade

Reboot

DHCP settings:

Home Status Ethernet SNMP SNTP DNS
Page MODE NAT Router VRRP System Reboot Upgrade

Enable
192.168.0.60
192.168.0.65
255.255.255.0
48
48
192.168.0.1

Apply Cancel

Upgrade: If there is new release firmware, then it can use this upgrade function to change to latest firmware release version. The file format for upgrade will be .bin file. Use wrong file may cause router to corrupt. Choose location of file, then click Upgrade. When it is finished, press reset button for 30 seconds and release it. The check version to make sure it is the version has been upgraded.

Home Status Ethernet SNMP SNTP DNS DHCP
Page MODE NAT Router VRRP System Reboot

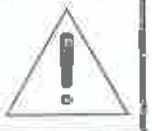
HSDPA Net-0.0.5-0004

Upgrade

GSM

CAUTION

RISK OF ELECTRIC SHOCK
DO NOT OPEN



CAUTION: TO REDUCE THE RISK OF ELECTRIC SHOCK, DO NOT REMOVE COVER (OR BACK). NO USER-SERVICEABLE PARTS INSIDE. REFER SERVICING TO QUALIFIED SERVICE PERSONNEL.

The lightning flash with arrowhead symbol within an equilateral triangle is intended to alert the user to the presence of uninsulated "dangerous voltage" within the product's enclosure. It may be of sufficient magnitude to constitute a risk of electric shock to persons.

The exclamation point within an equilateral triangle is intended to alert the user to the presence of important operating and maintenance (servicing) instructions in the literature accompanying the product.

WARNING

TO REDUCE THE RISK OF FIRE OR ELECTRIC SHOCK, DO NOT EXPOSE THIS PRODUCT TO RAIN OR MOISTURE.

CAUTION:

USE OF CONTROLS OR ADJUSTMENTS OR PERFORMANCE OF PROCEDURES OTHER THAN THOSE SPECIFIED HEREIN MAY RESULT IN HAZARDOUS RADIATION EXPOSURE.

WARNINGS

Do not expose the equipment to rain or moisture.

Do not remove the cover from the equipment.

Do not insert anything into the equipment through the ventilation holes.

Do not handle the mains lead with wet hands.

Do not cover the ventilation with any items such as tablecloths, newspapers, curtains, etc.

No naked flame sources, such as lighted candles, should be placed on the equipment.

When disposing of used batteries, please comply with governmental regulations or environmental public instruction's rules that apply in your country or area.

Do not place anything about 0.1 meter above the top panel.

Make a space of about 0.1 meter around the unit.

No objects filled with liquids, such as vases, shall be placed on the apparatus.

When the switch is in the OFF position, the equipment is not completely switched off from MAINS.

Copyright

Recording and playback of any material may require consent. For further information refer to the following US ordinances:

- Copyright act of 1956
- Dramatic and Musical Performance Act 1958
- Performers Protection Acts 1963 and 1972
- any subsequent statutory enactments and orders

SEQ 29/2021-2319

IMPORTANT SAFETY INSTRUCTIONS

READ BEFORE OPERATING EQUIPMENT

This product was designed and manufactured to meet strict quality and safety standards. There are, however, some installation and operation precautions which you should be particularly aware of.

1. Read these instructions.
2. Keep these instructions.
3. Heed all warnings.
4. Follow all instructions.
5. Do not use this apparatus near water.
6. Clean only with dry cloth.
7. Do not block any ventilation openings. Install in accordance with the manufacture's instructions.
8. Do not install near any heat sources such as radiators, heat registers, stoves, or other apparatus (including amplifiers) that produce heat.
9. Do not defeat the safety purpose of the polarized or grounding-type plug. A polarized plug has two blades with one wider than the other. A grounding type plug has two blades and a third grounding prong. The wide blade or the third prong are provided for your safety. If the provided plug does not fit into your outlet, consult an electrician for replacement of the obsolete outlet.

10. Protect the power cord from being walked on or pinched particularly at plugs, convenience receptacles, and the point where they exit from the apparatus.
11. Only use attachments/accessories specified by the manufacturer.
12. Use only with the cart, stand, tripod, bracket, or table specified by the manufacturer, or sold with the apparatus. When a cart is used, use caution when moving the cart/apparatus combination to avoid injury from tip-over.
13. Unplug this apparatus during lightning storms or when unused for long periods of time.
14. Refer all servicing to qualified service personnel. Servicing is required when the apparatus has been damaged in any way, such as power-supply cord or plug is damaged, liquid has been spilled or objects have fallen into the apparatus, the apparatus has been exposed to rain or moisture, does not operate normally, or has been dropped.

Additional Safety Information!

- This product should not be placed in a built-in installation such as a bookcase or rack unless proper ventilation is provided or the manufacturer's instructions have been adhered to.
- Apparatus shall not be exposed to dripping or splashing and that no objects filled with liquids, such as vases, shall be placed on the apparatus.
- When the switch is in the OFF position, the apparatus isn't completely switched-off from the MAINS.

SEQ 29/2021-2320

NOTE TO CATV SYSTEM INSTALLER:

This reminder is provided to call the CATV (Cable-TV) system installer's attention to Article 820-40 of the NEC, which provides guidelines for proper grounding and, in particular, specifies that the cable ground shall be connected to the grounding system of the building, as close to the point of cable entry as practical.

NOTE:

This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

NOTE:

Changes or modifications may cause this unit to fail to comply with Part 15 of the FCC Rules and may void the user's authority to operate the equipment.

SEQ 29/2021-2321

CE marking (only EU version)

CE **English**
This product is in conformity with the EMC directive and low-voltage directive.

CE **Française**
Cet appareil est conforme á la directive EMC et á la de directive sur les basses tensions.

CE **Deutsch**
Dieses Gerät entspricht den EMC-Richtlinien und den Richtlinien für Niederspannungsgeräte.

CE **Nederlands**
Dit apparaat voldoet aan de EMC-richtlijnene en de richtlijnen voor apparatuur met laag voltage.

CE **Italiano**
Quest' unitá è conforme alle direttive EMC ed alla direttiva sulle basse tensioni.

CE **Português**
Esta unidade está em conformidade com as directivas EMC e as directivas de baixa voltagem.

CE **Español**
Esta unidad estáde acuerdo con las normas EMC y las relacionadas con baja tensión.

CE **Svenska**
Produkten är tillverkad i enlighet med EMC-direktivet och direktivet för lågspänningsutrustning.

Equipment mains working system
This product complies with household power and safety requirements in your area.

SEQ 29/2021-2322

This Class B digital apparatus complies with Canadian ICES-003.

Cet appareil numérique de la Classe B est conforme á la norme NMB-003 du Canada.

SI DICHIARA CHE L'APPARECCHIO SINTO-AMPLIFACATORE SR-39 RISPONDE ALLE PRESCRIZIONI DELL'ART. 2 COMMA 1 DEL D.M. 28 AGOSTO 1995 N° 548.

FATTO A EINDHOVEN, IL 1/1/1997.

MARANTZ EUROPE B.V.
5600 EINDHOVEN
THE NETHERLANDS

"Este aparato lleva elementos antiparasitarios necesarios para cumplir con los limites que se establecen en el Anexo V del Reglamento sobre Pertubaciones Radioelectricas e Interferencias aprobado en el Real Decreto 138/1989. (B.O.E. de 9 Febrero 1989)."

SEQ 29/2021-2323

Table of Contents

Package contents 3

Introduction 4
- Features 4

Preparation 6
- Installing the carry strap 6
- Installing batteries 6

Controls and Connections 7
- Top side 7
- Front side 12
- Left / Right side 13
- Rear side 14
- Display 15

Basic operation 16

CF cards 17
- To insert a CF card 17
- To eject a CF card 17
- CF card security 18
- CF card Format 18

Recording 19
- Connection Diagram 19
- Recording Procedure 19
- Audio input for recording 20
- Recording Format parameters 21
- Recording time chart 21
- Recording Level Control 22
- Microphone Attenuator 22
- Pre Record 22
- Silent Skip (Automatic Pause Recording) 22
- Add a Track manually 22
- Add a Track automatically 23

Playback 23
- Connection Diagram 23
- Playback Procedure 24
- Track Access 24
- Search 24
- Audible Search 25
- Audio output for playback 25

EDL Mark 25
- Add an EDL mark manually 25
- Search the EDL mark 25
- Add an EDL mark automatically 26

Edit 26
- 1. Trk Erase (How to erase tracks) 27
- 2. TrkMkErase (How to erase all EDL marks within one track) 27
- 3. AllMkErase (How to erase all EDL marks) 28
- 4. Format (How to format a CF card) 28

SEQ 29/2021-2324

Virtual Track and Copy Segment 29
Virtual Track 29
Copy Segment 29
Virtual Track Edit Mode 29
Creating a Virtual Track 30
Using Copy Segment to create a new file 31
Entering Virtual Playback mode 32
Virtual Track EDIT mode 33
Copy SEG?
[How to convert a Virtual Track to a new file] .33
Copy SEG A?
[How to convert all Virtual Tracks to new files] 34
VT Erase?
[How to erase a Virtual Track] 34
AVT Erase?
[How to erase all Virtual Tracks] 35
USB mode 36
Computer compatible 36
How to connect via the USB port 36
Diagram of file structure 37
Machine ID 37
Additional Functions 38
Battery 38
Auto power off 38
Beep Alarm 38
Key lock 39
Set Date and Time 39
LED level meter 39
Phantom Power 39
Display 40
Preset Setup 41
Table of Preset defaults (USA) 42
Table of Preset defaults (Europe) 43
Troubleshooting 55
Error Message 57
Specifications 58
LIMITED WARRANTY..... 59

SEQ 29/2021-2325

Package contents

- PMD660

- 64MB CF card (US only)
  (shipped formatted and installed)

- AC adapter

- USB cable

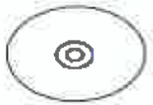
- Audio cable

- Carry strap

- Security screws (2)
  ISO 3x10 (3mm x 10mm long) For CF card door.

- Plastic pin and retainer
  (spare - for Memory compartment door)

- CD-ROM
  Contents of the CD may vary.
  Contents usually include:
    PDF format manual(s)
    Several languages may be included.



- This User Guide
- Customer Registration Document

SEQ 29/2021-2326

Introduction

Thank you for selecting the Marantz Professional PMD660 Portable Solid State Recorder.
The PMD660 is an audio recorder that records in digital audio formats onto a Compact Flash™ memory card (CF card) or Microdrive™.
CF cards, also used in digital cameras, are widely available at consumer electronics retailers and computer resellers.

Features

- Stereo (2 channels) and mono (1 channel) audio recording and playback.

- Audio inputs may be from :
  - the built-in microphone(s),
  - condenser or dynamic microphone(s) connected to the MIC IN jacks, or
  - line level audio sources connected to the LINE IN jack.

- Audio outputs may be from :
  - the built-in speaker,
  - headphones connected to the PHONES jack, or
  - analog audio devices such as an amplifier or other devices connected to the LINE OUT jack.

- Records onto various types of CF cards.
  (Please refer to the Marantz Professional web site www.d-mpro.com for what kind of media are recommended.)

- Computer compatible
  The PMD660 records directly onto CF cards.
  Recordings can be transferred to your desktop or laptop computer by removing the CF card from the PMD660 or by connecting the PMD660 to your computer via the USB port. Audio recorded in the popular MP3 compression format is directly available for intranet or Internet file sharing.
  - MS-DOS™ and Windows compatible file system.

- Easy one control recording
  Simply push the REC button.

- Automatic recording
  The PMD660 can be set to stop recording when there is silence (Silent Skip) and automatically start when sound resumes. The PMD660 can be set to automatically add an EDL mark to the track at each such starting point.

- Manual and automatic record level control (ALC).

- Two different recording formats :
  - Compressed recording using MPEG1 Layer III (MP3) mono and stereo.
  - MP3 compressed at 128kbps (stereo) or 64kbps (mono).
  - Uncompressed recording using 16-bit linear Pulse Code Modulation (PCM).

SEQ 29/2021-2327

- Security – CF cards
  For security, the CF card compartment door can be secured with a screw. Requiring a tool to open the CF card compartment reduces casual removal of the CF card.

- Pre-Recording memory buffer records 2 seconds of audio before recording is started.

- Playback aids
  A common problem with lengthy voice or other recordings is difficulty in locating one or more specific passages for playback. The PMD660 has several ways to mark specific record starting points.

- Tracks
  - A new track (file) is automatically started each time you begin a recording.
  - It is not possible to record over a previously recorded track unless it is first erased.
  - An Auto Track feature can add tracks every minute or other selected recording intervals. (Minute track: Setting the interval to one minute provides a new track every minute of a recording. This permits navigation of a large audio recording by time.)
  - A new track can be started during recording by pressing the REC button (if the "Manual Trk" preset is turned On).

- EDL marks*
  EDL (Edit Decision List) marks can be created during recording manually or automatically. EDL marks help you find specific points in the recording.
  - During playback, you can instantly locate EDL marks.
  - Up to 255 EDL marks can be added to a CF card. EDL marks are numbered consecutively starting at one. During recording, you can manually add an EDL mark by pushing the MARK button. EDL marks can also be added automatically.

  * The EDL marking system is proprietary to Marantz Professional solid state recorders.

- Virtual Track
  Virtual Track allows you to set an in point and an out point within a file for later immediate playback access.

- Copy Segment
  Copy Segment works just like the copy and paste function of your standard word processing program. It allows you to "highlight" a section of a track(file) by setting an in point and an out point, and then paste that section into a new track(file) without destroying the original track(file).

- Setup
  Three menu selectable Presets make it easy to switch between your commonly used input, recording format and other menu selections.

- Time / Date stamp
  A built-in date and time generator marks (stamps) the beginning of each track.

- There are three ways to power the PMD660 ;
  - Included AC adapter.
  - AA Alkaline batteries (4 hours).
  - Rechargeable Ni-MH batteries.

- REMOTE jack for optional Marantz Model RC600PMD permits a wired remote for controlling the recording process.

SEQ 29/2021-2328

Preparation

Installing the carry strap

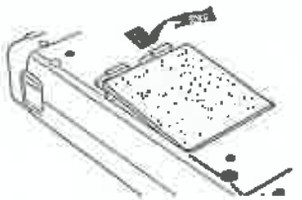
1. Put the carry strap through the shaft of PMD660.

2. Put the carry strap through the stopper of PMD660.

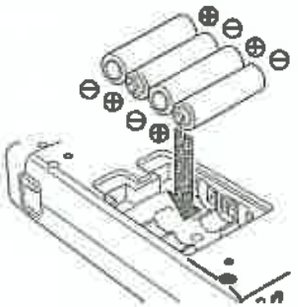
3. Secure the carry strap by putting it through the second stopper.

Installing batteries

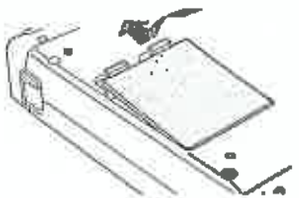
1. Remove the battery compartment.



2. Insert the new batteries (AA type) with correct +/ -polarity.



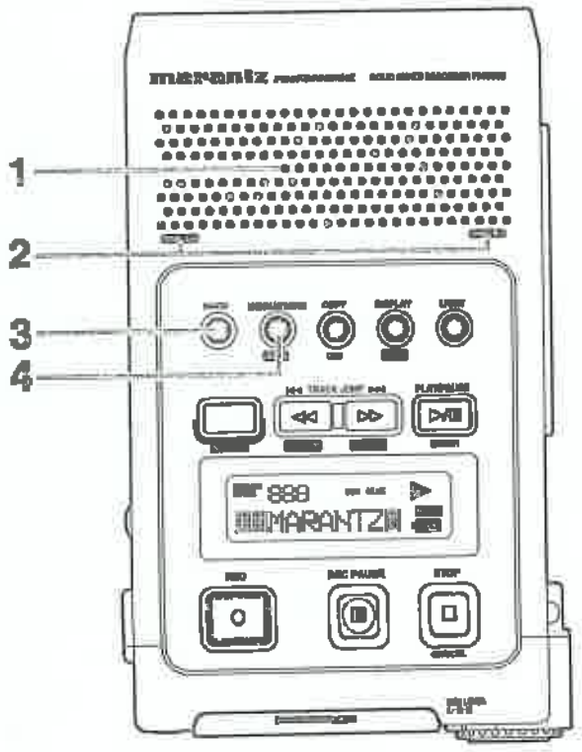
3. Close the battery compartment.



SEQ 29/2021-2329

Controls and Connections

Top side



1. Speaker
When "Output" in the preset menu is set to "SP/HP" or "SP/HP+LINE", the played back audio signal is output the internal speaker. Headphones plugged into the PHONES jack mute the internal speaker. HP/SPK VOL controls the built-in Speaker and Headphone volume.
See Page 44, How to select an output for playback.

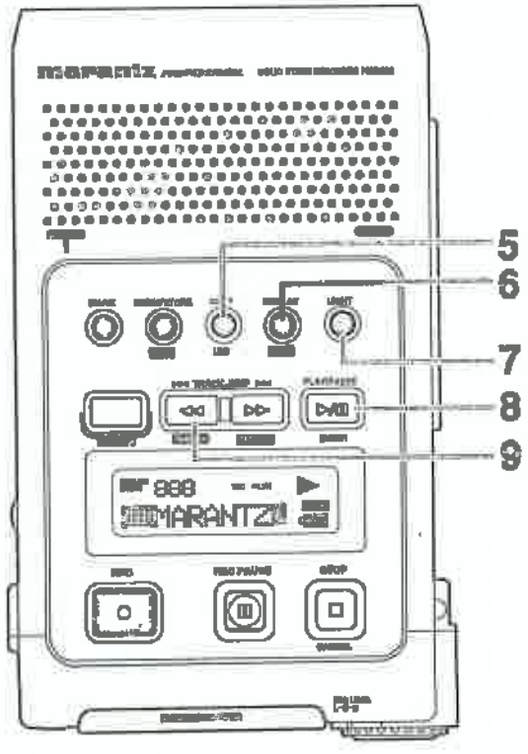
2. MIC (Internal microphones)

3. MARK button
Push the MARK button to add an EDL Mark manually during pause, recording, or playback.
Adding an EDL Mark during recording introduces an audible click in the recording when using the internal microphone.

4. MENU / STORE / EDIT button

- **MENU**
  Menu, accessed from stop by pushing the MENU button, lets you set or change recording and playback parameters, such as changing inputs and setting the Date and Time.
- **STORE**
  Push the STORE button while in the preset menu to write menu changes and return to stop mode.
  See page 41, How to set or change the preset parameters.
- **EDIT**
  Edit menu, accessed from stop by pushing and holding the SHIFT button then pushing the EDIT button, lets you erase tracks, erase EDL marks and format the CF card.

SEQ 29/2021-2330



5. COPY / USB button

- **Copy (Copy segment)**
  During playback, push the COPY button to copy mode and setup the start point and end point.
  See page 29, How to Virtual Track and Copy Segment.

- **USB**
  Push and hold the USB button while you turn on the PMD660's POWER switch.
  The CF card in the PMD660 appears as an external drive on a connected computer. It may also be removed for data transfer.
  See page 36, How to connect via the USB port.

6. DISPLAY / LOCK button

- **DISPLAY**
  Push to tab through alternate information displays.
  Displays are slightly different in Stop, Record and Play.
  See Page 40, Display, for more information.

- **LOCK**
  Secures the PMD660 in its present state during Record, Playback or Stop.
  Push and hold the SHIFT button while pushing the DISPLAY/LOCK button to lock all functions except the LIGHT button.

SEQ 29/2021-2331

7. LIGHT button

Push the LIGHT button to momentarily turn the Display light on.

Push and hold for one second to switch the Display light on. Push to switch the Display light off.

8. PLAY/PAUSE / ENTER button

- **PLAY/PAUSE (playback)**

  From stop, push to begin playback.

  During playback, push to pause playback.

  During play - pause, push to resume playback.

- **ENTER (menu)**

  During menu functions, push to accept the current setting and switch to the next menu item to be set.

9. TRACK JUMP ⏮ / ◀◀ / MARK- button

- **TRACK JUMP ⏮**

  During playback, push to jump to the previous track.

  If pushed while playing, the first track jumps to the last track on the CF card.

- **◀◀**
  - During playback, push and hold the ◀◀ button to "rewind" and do a 2X speed audible search in the reverse direction. Release to return to normal forward playback.
  - During play - pause, push and hold the ◀◀ button to rewind quickly. The rewind is at 10X speed for three seconds, then it automatically speeds up to 140x speed.

Note:

If the ◀◀ button is held past the beginning of a track, the rewind will continue into the previous track.

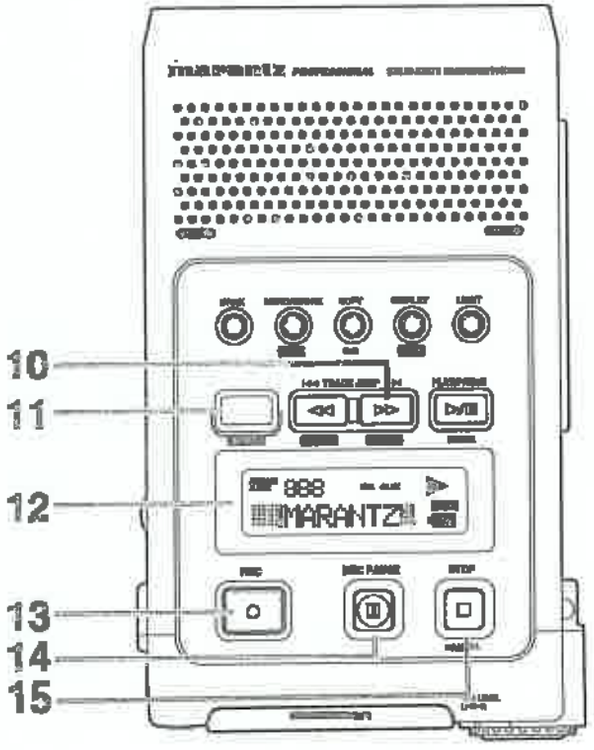
During Edit menu and Menu functions, push the ◀◀ button to increment a parameter in the - direction.

- **MARK-**

  From Stop push and hold the SHIFT button while pushing the Mark- button to tab through the EDL marks on the CF card.

  To start playback from the displayed EDL Mark, push the PLAY/PAUSE button.

SEQ 29/2021-2332



10. TRACK JUMP ⏭ / ⏩ / MARK+ button

- **TRACK JUMP ⏭**
  During playback, push to jump to the next track.
  If pushed while playing, the last track jumps to the first track on the CF card.

- **⏩**
  - During playback, push and hold the ⏩ button to "fast forward" and do a 2X speed audible search in the forward direction. Release to return to normal forward playback.
  - During play - pause, push and hold the ⏩ button to fast forward quickly. The fast forward is at 10X speed for three seconds, then it automatically speeds up to 140x speed.

Note:
If the ⏩ button is held past the end of a track, the fast forward will continue into the next track.
During Edit menu and Menu functions, push the ⏩ button to increment a parameter in the + direction.

- **MARK+**
  From Stop, push and hold the SHIFT button while pushing the Mark+ button to tab through the EDL marks on the CF card.
  To start playback from the displayed EDL Mark, push the PLAY/PAUSE button.

SEQ 29/2021-2333

11. SHIFT button
Push and hold the SHIFT button while you push other buttons (white labels) to activate alternate functions.

12. Display
Labels, icons and alphanumeric messages on the display communicate the status of PMD660.

13. REC button
From Stop, push to start recording.
From Record - pause, push to resume recording.
During recording, push to increment the track (start a new audio file), if "Manual Trk" is turned on in the Preset menu.

14. REC PAUSE button
From Stop, push to enter record - pause. This allows you to check your record level prior to recording.
During recording, push to pause.
The REC indicator will flash when paused.

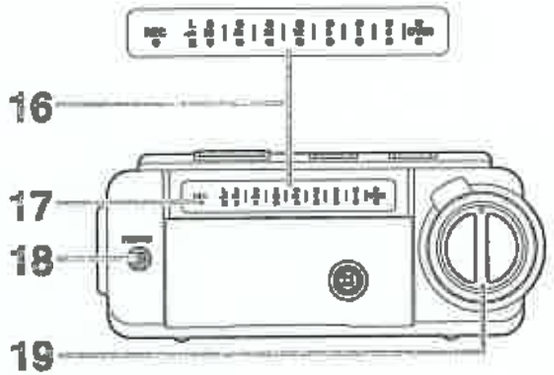
15. STOP / CANCEL button

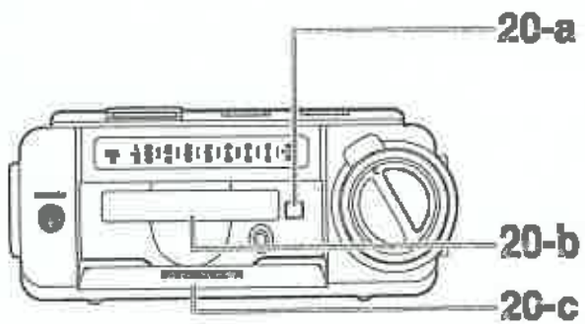
- **STOP**
  During recording, push to stop recording and end the track (file).
  During playback, push to stop playback and end the playback session.
  When you resume, playback starts at the beginning of the current track.

- **CANCEL**
  During menu operations, push to cancel all entries made and return to stop mode.

SEQ 29/2021-2334

Front side





16. Level meter
The louder the sound input to the recorder on the Left/Right channel, the more LED lights are displayed. When the "Meter Mode" of preset menu is "Peak Only", only a peak level is displayed. (page 52)

17. REC Indicator
Red indicator light is lit and steady during Record and flashing during Record pause.

18. PHONES jack
Stereo headphones are plugged into this jack.
Set "Output" of the preset menu to SP/HP (See Page 44).

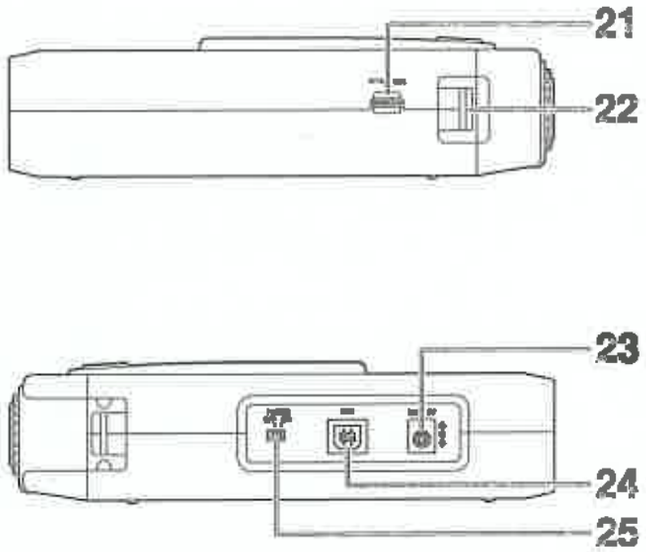
19. REC LEVEL controls
Turn to adjust the record level when the "LevelCont" of preset menu is "Manual" or "ALC+Manual".
The inside control (Right channel) and outside control (Left channel) turn together, unless you hold one while turning the other.
The optimum record level is when the level meter goes as close to 0dB as possible but does not go OVER.

20. CF card compartment
Pull the card door open to access the CF card.

20-a. Card eject button
20-b. CF card slot
20-c. CF card door

SEQ 29/2021-2335

Left / Right side



21. HP/SPK VOL control
Turn to adjust the volume of headphones plugged into the PHONE jack or the built-in speaker. Audio on the built-in speaker is automatically interrupted when recording with the internal microphone.

22. Carry strap shaft
Attach the supplied carry strap here.

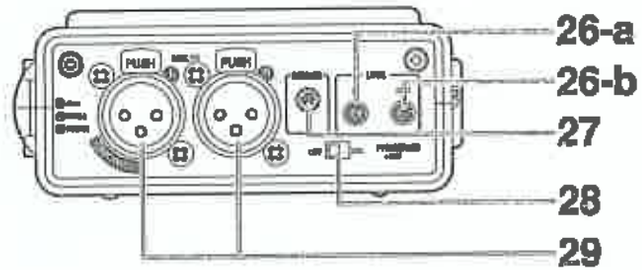
23. DC IN jack
Plug the supplied AC adapter in this jack.
The power supplied is 2.0A at 5V DC.
The PMD660 automatically switches to adapter power if it was running on battery power. If AC power is interrupted by a power outage or unplugging the adapter, the PMD660 automatically switches to battery power.

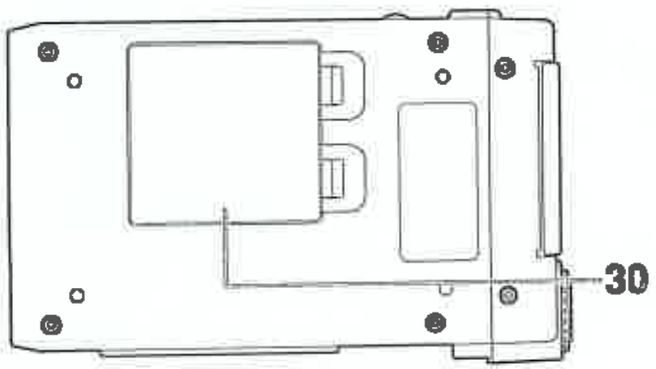
24. USB port
Plug the supplied USB cable in this port and connect the other end to your computer.

25. POWER switch
Slide to turn Power on or off.

SEQ 29/2021-2336

Rear side





26. LINE IN/OUT jack
Plug external line level audio devices in this jack.

a. LINE IN
Plug stereo audio cable in this jack to record from the output of an external unit.

b. LINE OUT
Plug stereo audio cable in this jack to connect to the input of an amplifier or other external unit..
Set "Output" of the preset menu to "LINE" or "SP/HP+LINE" (See Page 44).

27. REMOTE jack
This jack accepts the optional wired remote Marantz model RC600PMD. Model RC600PMD connects via a TRRS (Tip Ring Ring Sleeve) connector.
Model RC600PMD permits:
- Starting recording (Same as the REC button).
- Pausing recording (Same as the REC PAUSE button).
- Adding EDL marks (Same as the MARK button).

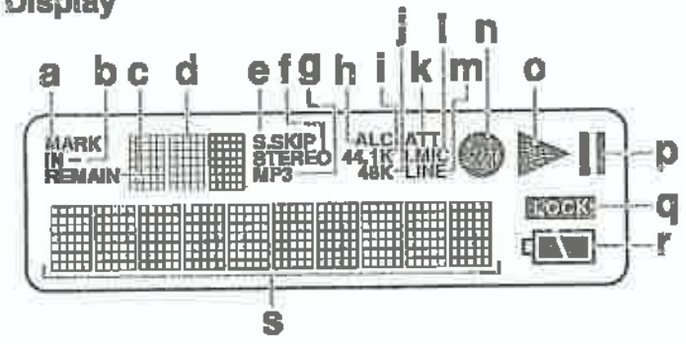
28. PHANTOM power switch
Switch to on to provide +48V of power for a condenser microphone(s).

29. MIC IN jacks
Plug external microphones in the MIC IN jacks.
For mono recording, use the Left jack.

30. Battery compartment
Pick and pull to open the Battery compartment.

SEQ 29/2021-2337

Display



a. MARK
The MARK label appears when the number displayed on the upper alphanumeric display refers to EDL marks.

b. IN-
The IN- label appears when the beginning (start point) of Copy segment function has been set.

c. REMAIN
The REMAIN label appears to indicate remaining time.

d. Upper alphanumeric display
Displays track number, number of tracks on CF card, EDL mark number, number of EDL's on CF card.

e. S.SKIP
The S.SKIP label appears when Silent Skip is enabled.

f. STEREO
The STEREO label appears when the recording channel is stereo.

g. MP3
The MP3 label appears when the audio file is MP3.

h. ALC
The ALC label appears when the PMD660 automatically responds to changes in recording input level.

i. 44.1K
The 44.1K label appears when the recording audio wave(s) is 44,100 samples per second.

j. 48K
The 48K label appears when the recording audio wave(s) is 48,000 samples per second.

k. ATT
The ATT label appears when input from a microphone(s) connected to the MIC IN jacks is cut by -20dB.

l. I.MIC/MIC
The I.MIC label appears when input selected for recording is the internal microphone. The MIC label appears when external microphone(s) is selected.

m. LINE
The LINE label appears when input selected for recording is the LINE IN jack.

n. Record
The Record symbol appears when the PMD660 is in record mode. It appears with the Play symbol when recording and appears flashing when in record - pause.

o. Play
The Play symbol appears when the PMD660 is in playback, playback pause, recording, or recording pause.

p. Pause
The Pause symbol appears when the PMD660 is in playback pause or recording pause.

q. LOCK
The Lock symbol appears when the PMD660 is in key lock.

r. Battery
The Battery symbol appears in most displays to indicate battery usage.

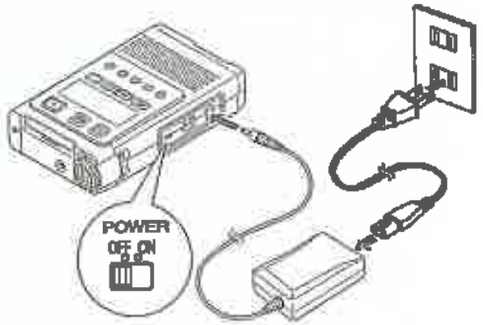
s. Lower alphanumeric display
Displays a variety of information including remaining time, clock time, menu settings, etc.

SEQ 29/2021-2338

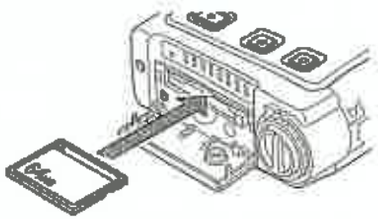
Basic operation

The PMD660 comes factory preset for recording voice using its built-in (internal) microphone.
These are settings for recording a meeting, not settings for recording a vocal performance.

1. Unpack the AC adapter and the PMD660.
   a. Plug AC adapter into 100 - 240VAC power.
   b. Plug the adapter jack into the PMD660 at DC IN.



2. Install a CF card.
   See page 17 for installing a CF card.



Note: Outside of the USA, a CF card is not included.

3. Slide the POWER switch to turn on.

a. A full display will appear. Wait for the PMD660 to initialize.

b. The display will change to this display for a newly formatted CF card.

SEQ 29/2021-2339

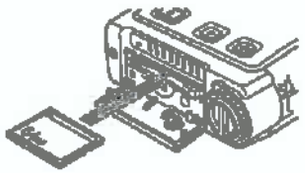
CF cards

The PMD660 records onto various types of CF (Compact Flash) cards.
Please refer to the Marantz Professional web site at www.d-mpro.com for what kinds of media are recommended.

To insert a CF card

a. Open the CF card door.

b. Fully insert the CF card.



c. Close the CF card door.

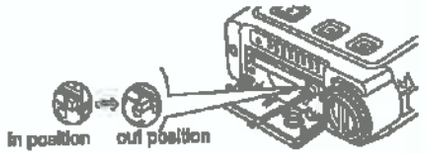
Note:
If the CF card door won't latch, check that the Card eject button is in the click in position.

To eject a CF card

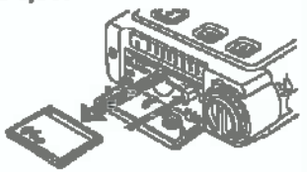
a. Slide the POWER switch to turn off.

b. Open the CF card door.

c. Push the card eject button so it is in click out position.



d. Push the Card eject button and remove the CF card.



- If the CF card door opens while power is on, "Door Open" is displayed and the PMD660 turns off.
- If recording is in progress, opening the CF card door automatically stops recording and writes critical track information to properly close the file before powering off.

SEQ 29/2021-2340

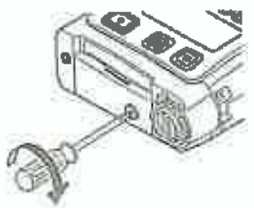
CF card security

The supplied CF card compartment security screw requires using a small Phillips screwdriver to open the CF card compartment door. This reduces the possibility that the CF card will be misplaced or stolen.

a. Remove the plastic pin and then the retainer.

b. Insert the screw.

c. Tighten the screw with a small Phillips screwdriver tight enough so the screw cannot be removed with a fingernail.



CF card Format

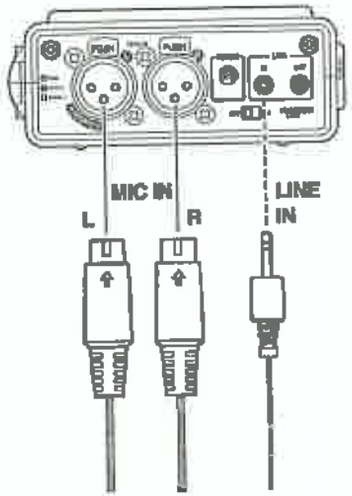
Formatting a CF card **erases all audio files on the CF card** and prepares it for use in the PMD660.
If the CF card is formatted other than FAT16 or FAT32 (FAT=file allocation table), please format in your computer.

Setup the **"Format"** in the Edit menu. (page 28)

SEQ 29/2021-2341

Recording

Connection Diagram



Recording Procedure

1. Slide the POWER switch to turn on.

2. Push the REC button to begin recording.

The Rec indicator will be lit and steady while recording.
The display will show the information display of recording.
(page 40)

SEQ 29/2021-2342

3. Push the REC PAUSE button to pause recording.

4. Push the STOP button to stop recording and end the track (close the audio file).

The display will show the information display of stop.

Audio Inputs for recording

Audio Inputs for recording are selected using the Input Menu.

Channel : Stereo

Display	Input Menu
I. MIC	Internal Mic Recording (Stereo, L/R ch)
MIC	External Mic Recording (Stereo, L/R ch)
LINE	LINE Recording (Stereo, L/R ch)

Channel : Mono

Display	Input Menu
I. MIC	Internal Mic Recording (Mono, L ch)
MIC	External Mic Recording (Mono, L ch)
LINE	LINE Recording (Mono, L ch)

Setup the **"Input"** (page 44) and **"RecChannel"** (page 46) of the preset menu.

SEQ 29/2021-2343

Recording Format parameters

The PMD660 can record in several compression algorithms.

- Compressed recording using MPEG1 Layer III (MP3) mono and stereo.
- Uncompressed recording using 16-bit linear Pulse Code Modulation (PCM).

Channel : Stereo

RecFormat	Sampling Rate	Bitrate	File Extension
MP3-44.1kHz	44.1kHz	128 kbps	.mp3
MP3-48kHz	48kHz	128 kbps	.mp3
PCM-44.1kHz	44.1kHz	1412 kbps	.wav
PCM-48kHz	48kHz	1536 kbps	.wav

Channel : Mono

RecFormat	Sampling Rate	Bitrate	File Extension
MP3-44.1kHz	44.1kHz	64 kbps	.mp3
MP3-48kHz	48kHz	64 kbps	.mp3
PCM-44.1kHz	44.1kHz	705.5 kbps	.wav
PCM-48kHz	48kHz	768 kbps	.wav

The record file of PCM is BWF (Broadcast Wave Format). (Europe only)

Setup the **"Rec Format"** and **"RecChannel"** of the preset menu. (page 46)

Recording time chart

All times are approximated record times.
Different media manufacturers allow more or less space for error correction and the like on their respective products.

	bit rate	64 kbps	128 kbps
	.mp3	mono	stereo
CARD SIZE	32 MB	1:08	0:33
	64 MB	2:13	1:06
	128 MB	4:26	2:13
	256 MB	8:52	4:26
	340 MB	11:46	5:53
	512 MB	17:44	8:52
	(1 GB) 1024 MB	35:28	17:44
	(2GB) 2048MB	70:56	35:28
	(4GB) 4096MB	141:52	70:56

	fs	44.1 kHz	
	PCM	mono	stereo
CARD SIZE	32 MB	0:06	0:03
	64 MB	0:12	0:06
	128 MB	0:24	0:12
	256 MB	0:48	0:24
	340 MB	1:04	0:32
	512 MB	1:36	0:48
	(1 GB) 1024 MB	3:13	1:35
	(2GB) 2048MB	6:27	3:13
	(4GB) 4096MB	12:54	6:27

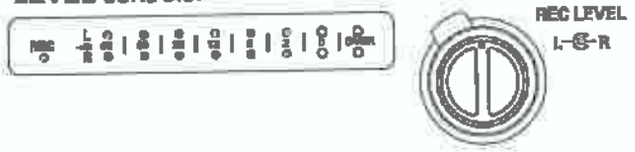
	fs	48 kHz	
	PCM	mono	stereo
CARD SIZE	32 MB	0:05	0:02
	64 MB	0:11	0:05
	128 MB	0:22	0:11
	256 MB	0:44	0:22
	340 MB	0:59	0:29
	512 MB	1:28	0:44
	(1 GB) 1024 MB	2:57	1:28
	(2GB) 2048MB	5:55	2:57
	(4GB) 4096MB	11:51	5:55

SEQ 29/2021-2344

Recording Level Control

The recording level control lets you select the type of input level control.

- At Manual, you control the input level with the REC LEVEL controls.



  - The inside control(Right Channel) and outside control (Left Channel) turn together unless you hold one while turning the other.
  - The optimum record level is when the level meter goes as close to 0dB as possible but does not go OVER.

- At ALC (Automatic Level Control), the PMD660 automatically responds to changes in input level.

- At ALC+Manual, ALC is selected and fine tuning of the recording level is enabled.

Setup the **"LevelCont."** of the preset menu. (page 51)

Microphone Attenuator

The microphone attenuation switch permits the direct use of microphones that differ in sensitivity.

- At 0dB, No microphone attenuation.
- At -20dB, Input from a microphone(s) connected to the MIC IN jacks is cut by -20dB.

Setup the **"Mic Atten."** of the preset menu. (page 52)

Pre Record

When PreRecord is on and the PMD660 is in record pause, it 'listens to' the selected audio input(s) and continuously buffers 2 seconds of audio.
Then, when record is started, the PMD660 writes the previously buffered 2 seconds of audio to the card & continues to record from there.

Setup the **"PreRecord"** of the preset menu. (page 47)

Silent Skip (Automatic Pause Recording)

Silent Skip automatically pauses recording when there is a period of silence and resumes recording when sound resumes.

The Silent Skip Menu setting permits:

- Turning Silent Skip On or Off.
- Adjusting the margin sound level that defines silence in -60dB, -54dB, -38dB or -20dB.

Setup the **"Silent Skip"** of the preset menu. (page 50)

Add a Track manually

When Manual Trk (Manual Track Incrementing) is On during recording, push the REC button to increment the track.
A new track is created at that point.
The continuity of sound is not guaranteed and depends on the speed of a card or the file size.

Setup the **"Manual Trk"** of the preset menu. (page 47)

SEQ 29/2021-2345

Add a Track automatically

With Auto Trk(Automatic Track incrementing) on, a new track is begun automatically at specified intervals of recording time.
Automatic Track can be set to increment every 1, 5, 10, 15 or 30 minutes, or every 1, 2, 6, 8, 12 or 24 hours.
Automatic Track makes finding a particular point in a recording easier. For example, if a new track begins every minute during playback, the Minute Track makes finding a particular passage easier because of the relationship between track numbers and time. During playback, you can select track 4 to play approximately the 3rd minute of recording. To go directly to the beginning of the 10th minute, select track 11, etc.

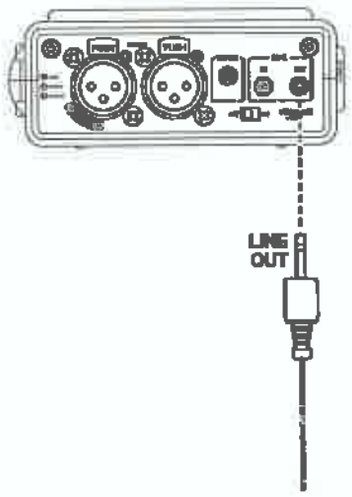
Track #	Recording time minutes:seconds
1	0:00 – 1:00
2	1:01 – 2:00
3	2:01 – 3:00

The continuity of sound is not guaranteed and depends on the speed of a card or the file size.

Setup the **"Auto Trk"** of the preset menu. (page 48)

Playback

Connection Diagram



SEQ 29/2021-2346

Playback Procedure

1. Slide the POWER switch to ON.

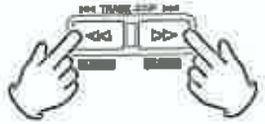
2. Push the PLAY/PAUSE button to begin playback.

The PLAY indicator will be lit and steady while in playback.

3. Push the PLAY/PAUSE button again to pause playback.

4. Push the STOP button to stop playback.

Track Access



- TRACK JUMP ⏮
  During playback, push to jump to the previous track.
  If pushed while playing the first track, it jumps to the last track on the CF card.

- TRACK JUMP ⏭
  During playback, push to jump to the next track.
  If pushed while playing the last track, it jumps to the first track on the CF card.

Search

-
  During play - pause, push and hold the ◀◀ button to rewind quickly. The rewind is at 10X speed for three seconds, then it automatically speeds up to 140X speed.

-
  During play - pause, push and hold the ▶▶ button to fast forward quickly. The fast forward is at 10X speed for three seconds, then it automatically speeds up to 140X speed.

Notes:
- If the ▶▶ button is held past the end of a track, the fast forward will continue into the next track.
- If the ◀◀ button is held past the beginning of a track, the rewind will continue into the previous track.

SEQ 29/2021-2347

Audible Search

- During playback, push and hold the ◄◄ button to "rewind" and do a 2X speed audible search in the reverse direction. Release to return to normal forward playback.

- During playback, push and hold the ►► button to "fast forward" and do a 2X speed audible search in the forward direction. Release to return to normal forward playback.

Audio outputs for playback

Audio outputs for playback are selected using the Output Menu. Selections are:

- The built-in speaker or headphones connected to the PHONES jack. (SP/HP)
- Analog audio devices such as an amplifier or other device connected to the LINE OUT jacks. (LINE)

Setup the "Output" of the preset menu. (page 44)

Note:

When SP/HP+LINE is selected, signal is output from the Line output as well as from the speakers or headphones. The line output in that case can be controlled using the HP/SPKVOL on the left side of the unit.
The initial setting is SP/HP+LINE.

EDL Mark

EDL (Edit Decision List) marks can be created during recording manually or automatically. EDL marks help you find specific points in the recording.

- The EDL marking system is proprietary to Marantz.
- During playback, you can instantly locate EDL marks.
- Up to 255 EDL marks can be added to a CF card.
- EDL marks are numbered consecutively starting at one.
- During recording, you can manually add an EDL mark by pushing the MARK button. EDL marks can also be added automatically.

Add an EDL mark manually

Push the MARK button to add an EDL Mark manually during pause, recording or playback.
During recording, adding an EDL Mark introduces an audible click in the recording when using the internal microphone.

Search the EDL mark

- MARK+

From Stop or playback, push and hold the SHIFT button while pushing the Mark+ button to tab through the EDL marks on the CF card.
To start playback from the displayed EDL Mark, push the PLAY/PAUSE button.

SEQ 29/2021-2348

- MARK-

From Stop or playback, push and hold the SHIFT button while pushing the Mark- button to tab through the EDL marks on the CF card.
To start playback from the displayed EDL Mark, push the PLAY/PAUSE button .

Add an EDL mark automatically

The Auto Mark Menu item turns the automatic EDL mark feature Off or On.
See page 25 to manually add EDL marks.

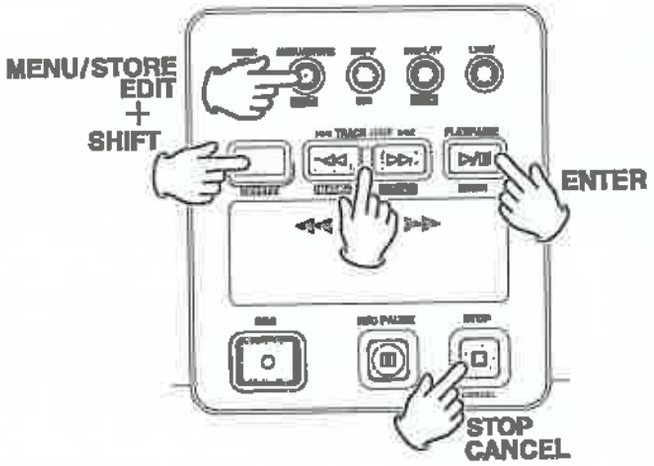
- If Auto Mark is on and the machine is in record - pause, when recording is resumed a mark will be added.
- If Auto Mark is on and the PMD660 is recording audio below the sound threshold for more than three seconds, audio that crosses the threshold will cause a mark to be added.

The Auto Mark Menu setting permits:
- Turning Auto Mark On or Off.
- Adjusting the margin sound level that defines silence in -60dB, -54dB, -38dB or -20dB.

Setup the "**Auto Mark**" of the preset menu. (page 49)

Edit

Edit menu, accessed from stop by pushing and holding the SHIFT button then pushing the MENU/STORE EDIT button, lets you erase tracks, erase EDL marks and format the CF card.



Edit mode includes:
1. **Trk Erase**
2. **TrkMkErase**
3. **AllMkErase**
4. **Format**

SEQ 29/2021-2349

1. Trk Erase (How to erase tracks)

TrkErase lets you erase a selected track.
After identifying the track number you want to erase.

1. Select the Trk Erase Edit menu choice:
   While in stop, push and hold the SHIFT button then push the MENU/STORE EDIT button.
   "Trk Erase" will appear in the display.

2. Push the ENTER button.
   The Display switches to track number flashing.

3. Push the the ◄◄ or ►► button until the track number you want to erase is flashing.

4. Push the ENTER button.
   "Executing" will be displayed until Trk Erase is finished.
   Then "Completed" will be displayed.
   • Display returns to step 3 so you can erase another track.

5. Push the STOP/CANCEL button to cancel.

Note:
The related virtual track(s) and EDL marks associated with the erased track will also erase.

2. TrkMkErase (How to erase all EDL marks within one track)

TrkMkErase lets you erase all of a track's EDL marks.
Decide on which track's EDL marks you want to erase.

1. Select the TrkMkErase Edit menu choice:
   While in stop, push and hold the SHIFT button then push the MENU/STORE EDIT button.
   "Trk Erase" will appear in the display.

2. Push the ◄◄ or ►► button until "TrkMkErase" is displayed.

3. Push the ENTER button.
   The Display switches to track number flashing.

4. Push the ◄◄ or ►► button so the track number whose EDL marks you want to erase is flashing.

5. Push the ENTER button.
   "Executing" will be displayed until TrkMkErase is finished.
   Then, "Completed" will be displayed
   • Display returns to step 4 so you can erase another track's EDL marks.

6. Push the STOP/CANCEL button to cancel.

Note:
EDL marks will automatically be renumbered.

SEQ 29/2021-2350

3. AllMkErase (How to erase all EDL marks)

AllMkErase lets you erase all EDL marks on the CF card.

1. Select the AllMkErase Edit menu choice:
   While in stop, push and hold the SHIFT button then push the MENU/STORE EDIT button.
   "Trk Erase" will appear in the display.

2. Push the ◄◄ or ►► button until "AllMkErase" is displayed.

3. Push the ENTER button.
   The Display switches to "All" flashing.

4. Push the ENTER button.
   "Executing" will be displayed until AllMkErase is finished.
   Then "Completed" will be displayed.
   The PMD660 and display return to stop mode.

5. Push the STOP/CANCEL button to cancel.

4. Format (How to format a CF card)

Format lets you **erase all audio files on the CF card** and prepares it for use in the PMD660.
If the CF card is formatted other than FAT16 or FAT32 (FAT=file allocation table), please format in your computer.

1. Select the Format Edit menu choice:
   While in stop, push and hold the SHIFT button then push the MENU/STORE EDIT button.
   "Trk Erase" will appear in the display.

2. Push the ◄◄ or ►► button until "Format" is displayed.

3. Push the ENTER button.
   The Display switches to "OK?" flashing.

4. Push the ENTER button.
   "Executing" will be displayed until Format is finished.
   Then "Completed" will be displayed.
   The PMD660 and display return to stop mode.

5. Push the STOP/CANCEL button to cancel.

SEQ 29/2021-2351

Virtual Track and Copy Segment

The Marantz Professional PMD660 is the first solid state recorder to incorporate new file editing features like Virtual Track and Copy Segment. Designed with the field reporter in mind, they provide a host of quick and easy to use ways of locating and accessing segments of audio that everyone can utilize.

Virtual Track

Virtual Track allows you to set an In point and an Out point within a file (or across multiple files of the same RecFormat and RecChannel) for later, immediate access. Files marked as Virtual Tracks are stored in the PMD660 and can be accessed quickly by entering the PMD660 in Virtual Playback mode.

See Page 30, Creating a Virtual Track.
See Page 32, Entering Virtual Track Playback mode.

Note:

Because Virtual Tracks are really just location information stored on the card, creating Virtual Tracks requires pratically no memory on your card reserving valuable space for actual recorded material.

Copy Segment

Copy Segment operates exactly like Virtual Track except, instead of storing In and Out points for immediate playback access, Copy Segment physically turns your "highlighted" section into a new and separate file, without destroying the original source file(s).

See Page 31, Using Copy Segment to create a new file.

Virtual Track Edit mode

In addition, Virtual Playback mode has an edit menu that allows you to turn one Virtual Track into a new file, all Virtual Tracks into new files, erase a Virtual Track, and erase all Virtual Tracks.

See Page 33, Virtual Track EDIT mode.

SEQ 29/2021-2352

Creating a Virtual Track

1. During playback, push the COPY/USB button when the audio reaches your desired In Point.

"SetAs IN?" is displayed.

2. Push the PLAY/PAUSE button to store the In point.

"IN-" will flash in the display to indicate the In point has been stored and playback of the file resumes.

3. Continue to let the PMD660 play to your desired Out point, or use the standard transport controls like the ▶▶ or ▶▶I buttons to span greater time lengths.

4. When you have reached your desired Out point, push the COPY/USB button.

"SetAs OUT?" is displayed.

5. Push the PLAY/PAUSE button to store the Out point.

"StoreV. Tr?" is displayed.

6. Push the PLAY/PAUSE button to store your segment as a Virtual Track. "Executing" will be displayed momentarily, and then the display will read "Completed." To playback your created Virtual Track, see page 32, Entering Virtual Playback.

SEQ 29/2021-2353

Using Copy Segment to create a new file

1. During playback, push the COPY/USB button when the audio reaches your desired In Point.

"SetAs IN?" is displayed.

2. Push the PLAY/PAUSE button to store the In point.

"IN-" will flash in the display to indicate the In point has been stored and playback of the file resumes.

3. Continue to let the PMD660 play to your desired Out point, or use the standard transport controls like the ▶▶ or ▶▶I buttons to span greater time lengths.

4. When you have reached your desired Out point, push the COPY/USB button.

"SetAs OUT?" is displayed.

5. Push the PLAY/PAUSE button to store the Out point.

"StoreV. Tr?" is displayed.

6. Push the ◀◀I or ▶▶ button until the display reads "Copy SEG?"

SEQ 29/2021-2354

7. Push the PLAY/PAUSE button to start the Copy process.

"Executing" will be shown on the display.

When the copy procedure is completed, the display will show "Completed" for 1 sec. and then returns to stop mode with your new file as the current track.

Notes:

- When a copy area spans across two or more tracks, a track is connected and copied.
- When the copy area spans across files of different RecFormat or RecChannel, it can not copy.
- The copy area can not exceed 80 minutes.
- When copying a PCM segment, processing time is real time.
- When copying an MP3 segment, processing time is at 8X speed.

Entering Virtual Playback mode

Now that you have created a Virtual Track, to play it back you must put the PMD660 into Virtual Track Playback mode.

1. From stop mode, push the COPY/USB button to enter Virtual Playback mode.

"V. Tr Play" will be shown on the display.

2. Push the PLAY/PAUSE button to play the first Virtual Track. If you have more than one Virtual Track, you can push the ◀◀ or ▶▶ button until the track you wish to play is displayed in the upper numeric display. Then push the PLAY/PAUSE button.

3. To exit Virtual Track Playback mode:
   If a Virtual Track is playing press the STOP button twice.
   If the PMD660 is in Virtual Track Playback mode and stopped, simply push the STOP button once.

SEQ 29/2021-2355

Virtual Track EDIT mode

Just like regular playback mode, Virtual track has its own EDIT mode. Within this EDIT mode, you have the ability to turn one of your Virtual tracks into a new file, all Virtual Tracks into new files, erase a Virtual Track, and erase all Virtual Tracks.

1. To enter Virtual Track EDIT mode, push and hold the SHIFT button and then push the MENU/STORE/EDIT button, while in Virtual Track Playback mode.

See next Frame, How to convert a Virtual Track to a new file.
See Page 34, How to convert all Virtual Tracks to new files.
See Page 34, How to erase a Virtual Track.
See Page 35, How to erase all Virtual Tracks.

Copy SEG?
[How to convert a Virtual Track to a new file]

When in Virtual Track EDIT mode, "Copy SEG?" lets you copy a single Virtual Track to a new file.

After indetifying the track to copy:

1. Select the "Copy SEG?" Edit menu choice:
   While in Virtual Track Play mode, push and hold the SHIFT button and then push the MENU/STORE/EDIT button."Copy SEG?" will appear in the display.

2. Push the ENTER button.
   The display switches to the Track number blinking in the upper numeric display.

3. Push the ◄◄ or ►► button until the Track number you want to copy is flashing.

4. Push the ENTER button.
   "Executing" will be displayed while the copy process works. Then "Completed" will be displayed for one second. The display returns to step 3 so you can copy another track.

5. Push the STOP/CANCEL button to cancel.

SEQ 29/2021-2356

Copy SEG A?
[How to convert all Virtual Tracks to new files]

When in Virtual Track EDIT mode, "Copy SEG A?" lets you copy all of your Virtual Tracks to new files.

1. Select the "Copy SEG A?" Edit menu choice:
   While in Virtual Track Play mode, push and hold the SHIFT button and then push the MENU/STORE/EDIT button.
   "Copy SEG?" will appear in the display.

2. Push the ◄◄ or ►► button until the display reads"Copy SEG A?"

3. Push the ENTER button.
   The display switches "All" blinking in the upper numeric display.

4. Push the ENTER button.
   "Executing" will be displayed while the copy process works.
   Then "Completed" will be displayed for one second.
   The PMD660 and display returns to stop mode.

5. Push the STOP/CANCEL button to cancel.

VT Erase?
[How to erase a Virtual Track]

When in Virtual Track EDIT mode, "VT Erase?" lets you erase a single Virtual Track.

After indetifying the track to erase:

1. Select the "VT Erase?" Edit menu choice:
   While in Virtual Track Play mode, push and hold the SHIFT button and then push the MENU/STORE/EDIT button.
   "Copy SEG?" will appear in the display.

2. Push the ◄◄ or ►► button until "VT Erase?" is displayed.

3. Push the ENTER button.
   The display switches to the Track number blinking in the upper numeric display.

4. Push the ◄◄ or ►► button until the Track number you want to erase is flashing.

5. Push the ENTER button.
   "Executing" will be displayed while the erasing process works.
   Then "Completed" will be displayed for one second.
   The display returns to step 4 so you can erase another track.

6. Push the STOP/CANCEL button to cancel.

SEQ 29/2021-2357

AVT Erase?
[How to erase all Virtual Tracks]

When in Virtual Track EDIT mode, "AVT Erase?" lets you erase all Virtual Tracks from memory.

1. Select the "AVT Erase?" Edit menu choice:
   While in Virtual Track Play mode, push and hold the SHIFT button and then push the MENU/STORE/EDIT button.
   "Copy SEG?" will appear in the display.

2. Push the ◄◄ or ►► button until "AVT Erase?" is displayed.

3. Push the ENTER button.
   The display switches to the "All" blinking in the upper numeric display.

4. Push the ENTER button.
   "Executing" will be displayed while the erasing process works.
   Then "Completed" will be displayed for one second.
   The PMD660 and display returns to stop mode.

5. Push the STOP/CANCEL button to cancel.

SEQ 29/2021-2358

USB mode

The PMD660 records directly onto CF cards.
Recordings can then be transferred to your desktop or laptop computer by removing the CF card from the PMD660, or by connecting the PMD660, to your computer via the USB port.
Audio recorded in the popular MP3 compression format is directly available for intranet or internet file sharing.

Computer compatible

On your computer you can then:
- log and archive audio files
- play audio files

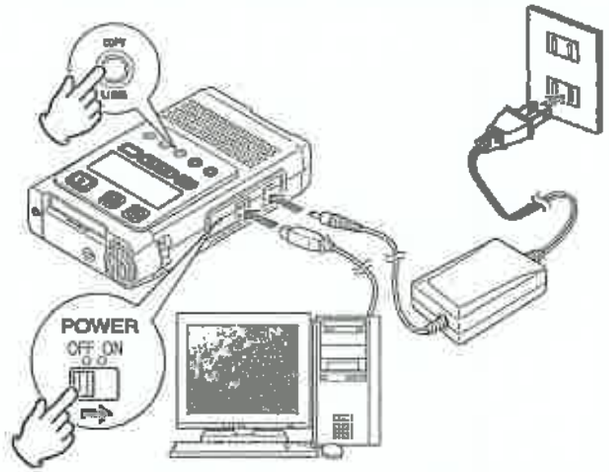
Save audio files to:
- your hard drive
- a floppy
- a CD-R disc

- post streaming audio files on your web site
- use software and your computer to transcribe digital recordings

How to connect via the USB port

The CF card in the PMD660 appears as an external drive on a connected computer.

1. Connect the cable to the PMD660 and your computer.



2. From power off, push and hold the COPY/USB button while turning on the PMD660's POWER switch. "USB" is displayed.

SEQ 29/2021-2359

- The PMD660 cannot be used while in USB mode.
- The CF card in the PMD660 appears as a removable device on your computer.
- The audio files are in a folder that is named MPGLANG1.
- Power off and back on to resume recording or playback on the PMD660.

The AC adapter is highly recommended when transferring data files from the PMD660 to your computer. Insufficient battery power during a data transfer may result in corrupted or unusable file(s).

Notes:

- Do not leave the PMD660 connected to your computer in USB mode without the AC adapter plugged in. Eventually battery power will drain.
- The USB connection can only be made active when the PMD660 is off (neither during recording nor playback).

CAUTION:

- Only copy audio files (tracks) to other volumes.
- Do not modify or delete the EDL file.
- If the EDL and Virtual Track file is missing or damaged PMD660 will not be able to recognize EDL marks and Virtual Tracks.
- Do not remove a CF card during USB mode. Data and the CF card can be damaged.

Diagram of file structure

A file titled PMD660 will appear on your computer.
EDL,Virtual Track and a folder (directory) titled MPGLANG1 will also appear.
Files within the MPGLANG1 folder are numbered from aaaaa001 through the number of tracks recorded to a maximum of aaaaa999.
("aaaaa" depends on the Machine ID parameter).
The file extension will be .mp3 or .wav depending on the "Rec Format" parameter that is set for the recording.

```
Root---PMD660.EDL
     |----PMD660.CPY
     |----MPGLANG1
          |---aaaaa001.MP3
          |---aaaaa002.MP3
          |---aaaaa003.MP3
```

Changes made to file names or structures on your computer will prevent file recognition and playback in the PMD660.

Machine ID

An audio track (file) has Machine ID information. This information is included in a file name. For example, if the Machine ID is "aaaaa", the first file is numbered "aaaaa001.wav" or "aaaaa001.mp3".
Default setting is MZ000.

If "1" is set as the machine ID, audio files recorded using the PMD660 can be played on the PMD570/670.
The machine ID should be 5 characters long to allow playback on the PMD671.

Setup the **"Machine ID"** of the preset menu. (page 54)

SEQ 29/2021-2360

Additional Functions

Battery

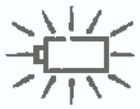
Battery setup
The PMD660 operates on 4 standard AA size Alkaline, or NI-MH batteries.
Setup the "**Battery**" of the preset menu.
(page 53)

Battery Indicator
The Battery symbol appears in most displays to indicate battery life.

indicates that the battery is fully charged.

Indicates that the battery, is half charged. Record or playback time is available.

indicates that the battery charge is getting low. Battery charge is required as there is little record or playback time available.


flashing indicates that the battery is very low!

- If Beep is set to On, the PMD660 will beep.
- If the PMD660 continues to operate, it will automatically shut down.
- If recording, it will write track information, stop recording and power off.
- If in playback, it will stop playback and power off.

Auto power off
If the PMD660 is not operated for 15 minutes during stop or play pause, power can be automatically shut off to conserve battery life.

Setup the "**AutoPowOff**" of the preset menu. (page 53)

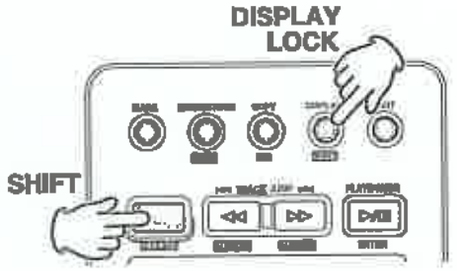
Beep Alarm
When battery charge can provide no more Power and Beep is set to On, the battery indicator will flash and the PMD660 will beep and power off.

Setup the "**Beep**" of the preset menu. (page 54)

SEQ 29/2021-2361

Key lock

The key lock secures the PMD660 in the state it is in during Record, Playback or Stop.
Push and hold the SHIFT button while pushing the DISPLAY/ LOCK button to turn KEY LOCK on. All buttons and functions will cease to operate with the exception of the LIGHT button.



Set Date and Time

The date and time are written on each audio track (file) when the track is started. When an audio track is viewed on a computer, this date and time appears as when the file was 'created'. (US date form is illustrated.)

Setup the "**Date/Time**" of the preset menu. (page 45)

LED level meter

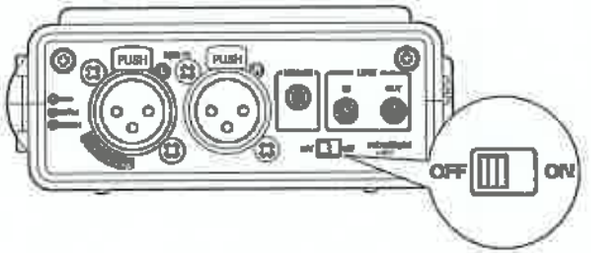
The Level LED lets you select the type of level meters.

- At Normal, the level meter(s) display is normal.
- At Peak Only, the level meter(s) displays only a peak level.

Setup the "**Meter Mode**" of the preset menu. (page 52)

Phantom Power

Switch Phantom to ON to provide +48V of power for a condenser microphone(s).



ON: +48V is supplied to power condenser microphone(s).
OFF: No microphone power is supplied.

It takes a few seconds to begin recording audio after switching ON/OFF.

Microphone recommendations

Professional condenser microphone(s) (which require additional power from either the PMD660's phantom power or from another source) are recommended because they provide greater sensitivity and higher quality audio recording.

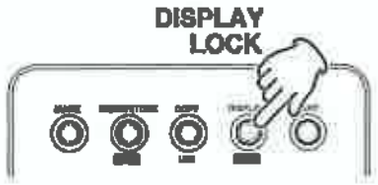
Dynamic microphone(s) can be used, but they do not yield optimum audio quality recordings in some applications.

Consult with your local dealer to select the appropriate microphone(s) for your specific application. In many cases, they can demonstrate the various performances and characteristics of microphones for your use.

SEQ 29/2021-2362

Display

Push the DISPLAY / LOCK button to alternate information displays.



Displays are slightly different in Stop, Record and Play.

- **During Stop:**
  - Remaining record time for the CF card (Default display)
  - ↓
  - Total EDL marks on CF card.
  - ↓
  - Current clock date
  - ↓
  - Current clock time
  - ↓
  - Remaining record time for the CF card (Default display)

- **During Record:**
  - Elapsed record time of the current track (Default display)
  - ↓
  - Remaining record time for the CF card
  - ↓
  - Recording date information
  - ↓
  - Recording time information
  - ↓
  - Recording track name (Machine ID) information
  - ↓
  - Elapsed record time of the current track (Default display)

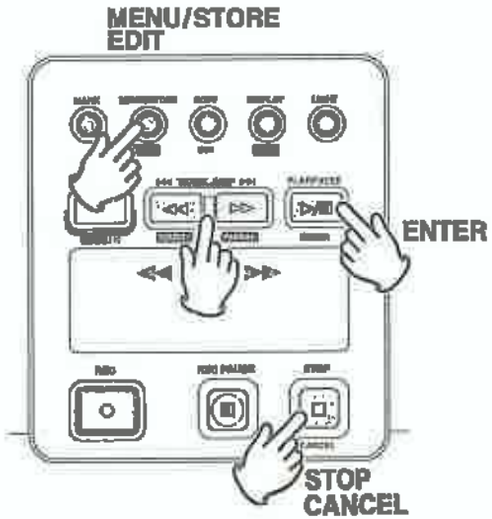
- **During Playback:**
  - Elapsed play time of the current track (Default display)
  - ↓
  - Remaining playing time on the current track
  - ↓
  - Recorded date information
  - ↓
  - Recorded time information
  - ↓
  - Playing track name (Machine ID) information
  - ↓
  - Elapsed play time of the current track (Default display)

SEQ 29/2021-2363

Preset Setup

Presets lets you set or change recording and playback parameters, such as changing Inputs and setting the Date and Time.

Three menu selectable Presets make it easy to switch between your commonly used input, recording format and other menu selections.



General Menu procedure

1. With the PMD660 at Stop, Push the MENU/STORE EDIT button.
2. Push the ◄◄ or ►► button to choose the Preset number.
3. When displayed, push the ENTER button to select that Preset number choice.
4. Push the ◄◄ or ►► button to tab through the sub menu display.
5. When the desired parameter or value is displayed and flashing, push the ENTER button to select it.
6. Repeat steps 2-5 as desired.
7. When finished, push the MENU/STORE EDIT button to store your changes, or push the STOP/CANCEL button to cancel them.

Preset defaults

The default Menu settings for Preset 1, 2 and 3 can be restored by the Default Menu choice. (pages 42 and 43.)

SEQ 29/2021-2364

Table of Preset defaults (USA)

Display	Selection range	Default Setting		
		Preset1	Preset2	Preset3
1. Input	INT MIC/ MIC/ LINE	INT MIC	MIC	MIC
2. Output	LINE, SP/HP, SP/HP+LINE	SP/HP+LINE	SP/HP+LINE	SP/HP+LINE
3. Date/Time	2004 - 2099 Jan - Dec 1 - 31 AM/PM 00:00 - 11:59			
4. Rec Format	MP3-44.1K/ MP3-48K/ PCM-44.1K/ PCM-48K	MP3-44.1K	MP3-44.1K	PCM-48K
5. RecChannel	Stereo/Mono	Stereo	Stereo	Stereo
6. PreRecord	On/Off	On	On	Off
7. Manual Trk	On/Off	On	On	On
8. Auto Trk	Off/1/5/10/15/30min, 1/2/6/8/12/24 hrs	5min	Off	Off
9. Auto Mark	On/Off -60/-54/-38/-20dB	Off -38dB	Off -38dB	Off -38dB
10. Silent Skip	On/Off -60/-54/-38/-20dB	Off -38dB	Off -38dB	Off -38dB
11. LevelCont.	Manual / ALC / ALC+Manual	ALC	Manual	Manual
12. Meter Mode	Normal/Peak Only	Normal	Normal	Normal
13. Mic Atten.	0/-20dB	0dB	0dB	0dB
14. AutoPowoff	On/Off	On	On	On
15. Battery	Alkaline/NiMH	Alkaline	Alkaline	Alkaline
16. Beep	On/Off	On	On	On
17. Machine ID	5-digit ASCII code	MZ000	MZ000	MZ000
18. Default	---			
19. Version	---			
Application:		Meeting compressed	Music compressed	Highest Quality Uncompressed

SEQ 29/2021-2365

Table of Preset defaults (Europe)

Display	Selection range	Default Setting		
		Preset1	Preset2	Preset3
1. Input	INT MIC/ MIC/ LINE	INT MIC	MIC	INT MIC
2. Output	LINE, SP/HP, SP/HP+LINE	SP/HP+LINE	SP/HP+LINE	SP/HP+LINE
3. Date/Time	2004 - 2099 Jan - Dec 1 - 31 00:00 - 23:59			
4. RecFormat	MP3-44.1K/ MP3-48K/ PCM-44.1K/ PCM-48K	PCM-44.1K	PCM-48K	MP3-44.1K
5. RecChannel	Stereo/Mono	Stereo	Stereo	Stereo
6. PreRecord	On/Off	On	On	On
7. Manual Trk	On/Off	On	On	On
8. Auto Trk	Off/1/5/10/15/30min, 1/2/6/8/12/24 hrs	Off	Off	Off
9. Auto Mark	On/Off -60/-54/-38/-20dB	Off -38dB	Off -38dB	Off -38dB
10. Silent Skip	On/Off -60/-54/-38/-20dB	Off -38dB	Off -38dB	Off -38dB
11. LevelCont.	Manual / ALC / ALC+Manual	Manual	Manual	Manual
12. Meter Mode	Normal/Peak Only	.Normal	Normal	Normal
13. Mic Atten.	0/-20dB	0dB	0dB	0dB
14. AutoPowoff	On/Off	On	On	On
15. Battery	Alkaline/NiMH	Alkaline	Alkaline	Alkaline
16. Beep	On/Off	On	On	On
17. Machine ID	5-digit ASCII code	MZ000	MZ000	MZ000
18. Default	---			
19. Version	---			
Application:		High Quality Uncompressed	Highest Quality Uncompressed	Music Compressed

SEQ 29/2021-2366

1. Input (How to select input(s) for recording)
Audio input(s) for recording are selected using the Input Menu.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button until Input is displayed.
5. Push the ENTER button while Input is displayed. The input choice(INT MIC, MIC or LINE) is flashing.
6. Push the ◄◄ or ►► button to tab through the input choices.
7. When correct, push the ENTER button. Display returns to Input.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

Note:
When you choose the INT MIC input, the I.MIC label is displayed. When you choose the MIC input, the MIC label is displayed. When you choose the LINE input, the LINE label is displayed.
The PMD660 records only from the selected input. For example, if the input selected is LINE and no input source is connected to the LINE IN jacks, the PMD660 will record silence. Watch the level meters while in record pause. If the level stays at one display bar, check for the proper input selection.

2. Output (How to select output for playback)
Audio output for playback is selected using the Output Menu.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button until Output is displayed.
5. Push the ENTER button while Output is displayed. The output choice (LINE, SP/HP or SP/HP+LINE) is flashing.
6. Push the ◄◄ or ►► button to tab through the output choices.
7. When correct, push the ENTER button. Display returns to Output.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

Note:
The PMD660 plays back only through the selected output. For example, if the output selected is LINE, no sound output is available in the speaker or headphones (SP/HP) or vice versa.

SEQ 29/2021-2367

3. Date/Time (How to set or change the Date and Time)
The date and time are written on each audio track(file) when the track is started. When an audio track is viewed on a computer, this date and time appears as when the file was 'created'.(US date form is illustrated.)

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Date/Time is displayed.
5. Push the ENTER button while Date/Time is displayed. The Date and time information will be displayed with the month flashing. (Europe : the day flashing)
6. Push the ◄◄ or ►► button until the current month is displayed.
7. Push the ENTER button to confirm the month. The day will be flashing. (Europe : the month flashing)
8. Push the ◄◄ or ►► button until the current day is displayed.
9. Push the ENTER button to confirm the day. The year will be flashing.
10. Push the ◄◄ or ►► button until the current year is displayed.
11. Push the ENTER button to confirm the year. The hour will be flashing.
12. Push the ◄◄ or ►► button until the current hour is displayed.
13. Push the ENTER button to confirm the hour. The minute will be flashing.
14. Push the ◄◄ or ►► button until the current minute is displayed.
15. Push the ENTER button to confirm the minute.
16. Date/Time will be displayed.
17. If you are finished making Menu changes to the Preset, push the MENU/STORE/EDIT button to save your changes.
    (or push the STOP/CANCEL button to cancel all changes)
18. Display returns to stop mode.

Note:
The Date/Time setting will remain for about 5 years if the PMD660 is not plugged in.
Date/Time setting applies to all three presets.

SEQ 29/2021-2368

4. Rec Format

(How to set or change the Rec Format parameters)

The PMD660 can record in several compression algorithms. See explanation and chart below.

- First, determine the input connection you want to record from; INT MIC, MIC, or LINE.
- Second, set the Preset Menu Input choice to correspond with the connection.

RecChannel in menu	Rec Format in menu	bit rate	file extensions
Stereo	PCM-44.1K	1412k	.wav
	PCM-48K	1536k	.wav
	MP3-44.1K	128k	.mp3
	MP3-48K	128k	.mp3
Mono	PCM-44.1K	705.6k	.wav
	PCM-48K	768k	.wav
	MP3-44.1K	64k	.mp3
	MP3-48K	64k	.mp3

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Rec Format is displayed.
5. Push the ENTER button while Rec Format is displayed. The Rec Format choice(PCM 44.1K, PCM-48K, MP3-44.1K or MP3-48K) is flashing.
6. Push the ◄◄ or ►► button to tab through the Rec Format choices.
7. When correct, push the ENTER button. Display returns to Rec Format.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

5. RecChannel

(How to set or change the RecChannel parameters)

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so RecChannel is displayed.
5. Push the ENTER button while RecChannel is displayed. The RecChannel choice (Stereo or Mono) is flashing.
6. Push the ◄◄ or ►► button to tab through the RecChannel choices.
7. When correct, push the ENTER button. Display returns to RecChannel.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

SEQ 29/2021-2369

6. PreRecord
When PreRecord is on and the PMD660 is in record pause, it 'listens to' the selected audio input(s) and continuously buffers 2 seconds of audio. When recording begins, the 2 second pre record buffer is written at the beginning of the new track. The 2 seconds give you time to start recording without missing the first seconds of audio.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so PreRecord is displayed.
5. Push the ENTER button while PreRecord is displayed. The PreRecord choice (On or Off) is flashing.
6. Push the ◄◄ or ►► button to tab through the PreRecord choices.
7. When correct, push the ENTER button. Display returns to PreRecord.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

7. Manual Trk
When Manual Trk incrementing is On during recording, push the REC button to increment the track. A new track is created at that point. A slight break might be heard during playback.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Manual Trk is displayed.
5. Push the ENTER button while Manual Trk is displayed. The Manual Trk choice (On or Off) is flashing.
6. Push the ◄◄ or ►► button to tab through the Manual Trk choices.
7. When correct, push the ENTER button. Display returns to Manual Trk.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

SEQ 29/2021-2370

8. Auto Trk

With Auto Trk (Automatic Track Incrementing) on, a new track begins automatically at specified intervals of recording time.

- Automatic Tracks are silent. Playback across an Automatic Track does not produce any sound.
- Automatic Track can be set to increment every 1, 5, 10, 15 or 30 minutes, or every 1, 2, 6, 8, 12 or 24 hours.
- Automatic Track makes finding a particular point in a recording easier.

For example, if a new track begins every minute during playback :

- The Minute Tracks make finding a particular passage easier because of the relationship between track numbers and time.
- You can select track 4 to play approximately the 3rd minute of recording.
- You can go directly to the beginning of the 10th minute by selecting track 11, etc.

Track #	Recording time minutes:seconds
1	0:00 – 1:00
2	1:01 – 2:00
3	2:01 – 3:00

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Auto Trk is displayed.
5. Push the ENTER button while Auto Trk is displayed. The Auto Trk choice (Off, 1, 5, 10, 15 or 30 minutes, or 1, 2, 6, 8, 12 or 24 hours) is flashing.
6. Push the ◄◄ or ►► button to tab through the Auto Trk choices.
7. When correct, push the ENTER button. Display returns to Auto Trk.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

Note:

If you intend to transfer your PMD660 audio recording to a CD, the Auto Track function makes the CD easily navigable without requiring any post production to divide files into tracks.

SEQ 29/2021-2371

9. Auto Mark

The Auto Mark Menu item turns the automatic EDL mark feature Off or On. See page 25 to manually add EDL marks.

- If Auto Mark is on and the machine is in record - pause, when recording is resumed a mark will be added.
- If Auto Mark is on and the PMD660 is recording audio below the sound threshold for more than three seconds, audio that crosses the threshold will cause a mark to be added.

The Auto Mark Menu setting permits :

- Turning Auto Mark On or Off
- Adjusting the margin sound level that defines silence in -60dB, -54dB, -38dB, or -20dB.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Auto Mark is displayed.
5. Push the ENTER button while Auto Mark is displayed. The On or Off will be flashing.
6. Push the ◄◄ or ►► button to toggle between On and Off.
7. When correct, push the ENTER button. The display switches to sound level flashing.
8. Push the ◄◄ or ►► button to change the margin of sound level choices (-60dB, -54dB, -38dB or -20dB).
9. When correct, push the ENTER button. Display returns to Auto Mark.
10. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
11. Display returns to stop mode.

Note:

The Auto Mark and Silent Skip features use the same level setting.
As the level of Auto Mark is changed, that of Silent Skip also changes automatically.

SEQ 29/2021-2372

10. Silent Skip

Silent Skip automatically pauses recording when there is a period of silence and resumes recording when sound resumes. This feature is often referred to as voice activated recording.

Silent Skip looks for sound below a preset level for three seconds time.

When that occurs, the PMD660 switches to record pause. When a signal above the preset level is input, recording resumes.

The Silent Skip Menu setting permits :

- Turning Silent Skip On or Off.
- Adjusting the margin of sound level that defines silence in -60dB, -54dB, -38dB or -20dB.

When the Auto Mark menu choice is at On, resumption of recording after a record pause by Silent Skip adds an EDL mark.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◁◁ or ▷▷ button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◁◁ or ▷▷ button so Silent Skip is displayed.
5. Push the ENTER button while Silent Skip is displayed. The On or Off will be flashing.
6. Push the ◁◁ or ▷▷ button to toggle between On and Off.
7. When correct, push the ENTER button. The display switches to sound level flashing.
8. Push the ◁◁ or ▷▷ button to change the margin sound level choices (-60dB, -54dB, -38dB or -20dB).
9. When correct, push the ENTER button. Display returns to Silent Skip.
10. Push the ◁◁ or ▷▷ button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
11. Display returns to stop mode.

Note:

The Auto Mark and Silent Skip features use the same level setting.
As the level of Auto Mark is changed, that of Silent Skip also changes automatically.

SEQ 29/2021-2373

11. LevelCont.
The level control allows you to select the type of input level control for recording.

- At Manual, you control the input level with the REC LEVEL controls.
- At ALC, the PMD660 automatically responds to changes in input level.
  (ALC: Automatic Level Control = Automatic Gain Control)
- At ALC+Manual, ALC is selected and fine tuning of the recording level is enabled.

With ALC (Automatic Level Control) on:
If recording is quiet, the input level is increased.
If recording is loud, the input level is decreased.
This is a desirable feature when recording a meeting with several speakers because a speaker close to the microphone and/or with a loud voice will be automatically recorded at a reduced level. A quiet speaker will be recorded at an increased level and is less likely to have their input missed.
ALC is usually undesirable when recording music (voice or instrument) because the transitions in input level may be audible in the recording. This can make the recording 'hissy' by raising the level during quiet passages and recording ambient noise.
The REC LEVEL controls do not work when the ALC is selected.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so LevelCont is displayed.
5. Push the ENTER button while LevelCont is displayed. The LevelCont choice (Manual , ALC or ALC+Manual) is flashing.
6. Push the ◄◄ or ►► button to tab through the LevelCont choices.
7. When correct, push the ENTER button. Display returns to LevelCont.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

SEQ 29/2021-2374

12. Meter Mode

The Meter Mode lets you select the type of level meters.

- At Normal, all the level meters are displayed.
- At Peak Only, the level meter(s) displays only a peak level.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Meter Mode is displayed.
5. Push the ENTER button while Meter Mode is displayed.
   The Meter Mode choice (Normal or Peak only) is flashing.
6. Push the ◄◄ or ►► button to tab through the Meter Mode choices.
7. When correct, push the ENTER button.
   Display returns to Meter Mode.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

Note:

When Peak Only is set, the battery life will be extended.

13. Mic Atten.

The Mic Atten. let you select the direct use of microphones that differ in sensitivity.

- At 0dB there is no microphone attenuation.
- At -20dB, Input from a microphone(s) connected to the XLR MIC IN jacks is cut by -20dB.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Mic Atten is displayed.
5. Push the ENTER button while Mic Atten is displayed.
   The Mic Atten choice (0dB or -20dB) is flashing.
6. Push the ◄◄ or ►► button to tab through the Mic Atten choices.
7. When correct push the ENTER button.
   Display returns to Mic Atten.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

SEQ 29/2021-2375

14. AutoPowOff

If the PMD660 is not used for 15 minutes during stop or play - pause, power can be automatically shut off to conserve battery life.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so AutoPowOff is displayed.
5. Push the ENTER button while AutoPowOff is displayed. The AutoPowOff choice (On or Off) is flashing.
6. Push the ◄◄ or ►► button to tab through the AutoPowOff choices.
7. When correct, push the ENTER button. Display returns to AutoPowOff.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to accept the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

15. Battery

The PMD660 operates on 4 standard AA size Alkaline, or NI-MH batteries.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button so Battery is displayed.
5. Push the ENTER button while Battery is displayed. The Battery choice (Alkaline or NIMH) is flashing.
6. Push the ◄◄ or ►► button to tab through the Battery choices.
7. When correct, push the ENTER button. Display returns to Battery.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to accept the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

SEQ 29/2021-2376

16. Beep

When battery charge is depleted and Beep is set to On, the PMD660 will beep.
If the PMD660 is not used for 15 minutes during stop or play - pause, power can be automatically shut off to conserve battery life. (See AutoPowOff page 53.)
If AutoPowOff and Beep are both set to On, the PMD660 will beep to alert you that the power is shutting off.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button until Beep is displayed.
5. Push the ENTER button while Beep is displayed. The Beep choice (On or Off) is flashing.
6. Push the ◄◄ or ►► button to tab through the Beep choices.
7. When correct, push the ENTER button. Display returns to Beep.
8. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
9. Display returns to stop mode.

17. Machine ID

An audio track (file) has Machine ID information.
This information is included in the file name.
For example, if the Machine ID is "aaaaa", the first file is numbered "aaaaa001.wav" or "aaaaa001.mp3".

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button until Machine ID is displayed.
5. Push the ENTER button while Machine ID is displayed. The first character of the Machine ID will be flashing.
6. Push the ◄◄ or ►► button to select the characters. To end the machine ID, select the space character (fully lit and flashing).
7. When correct, push the ENTER button. The next position will be flashing. Repeat steps 6 and 7 until all Machine ID characters are correct. When the space character is selected, the display returns to the Machine ID, so proceed to step 9.
8. After the last character, push the ENTER button. The display returns to the Machine ID.
9. Push the ◄◄ or ►► button to select other Menu choices for editing. When editing the Preset is complete, push the MENU/STORE/EDIT button to store the changes, or push the STOP/CANCEL button to exit Menu mode without making any changes.
10. Display returns to stop mode.

Note:
The Machine ID setting applies to all three presets.

SEQ 29/2021-2377

18. Default
The Default menu choice resets all Menu (not Edit menu) items in the Preset to their default values.
This is convenient if you are setting up a new Preset configuration because you do not have to check all the settings - you know they are at the default.

Note:
US defaults are used for illustration.
See page 42, 43 for a table of menu defaults.
Defaults are listed for each menu item.

1. From stop, push the MENU/STORE/EDIT button.
2. Push the ◄◄ or ►► button to select Preset 1, 2 or 3.
3. Push the ENTER button to accept the selected Preset.
4. Push the ◄◄ or ►► button until Default is displayed.
5. Push the ENTER button while Default is displayed.
   The OK? is flashing.
6. Push the ENTER button.
   Display returns to stop mode.

Troubleshooting

Should problems occur, it is often unnecessary to consult your dealer or technical service department. On the basis of the following checks, you may be able to rectify a number of conditions yourself without difficulty. If the condition cannot be remedied after the following check, please consult your dealer, contact our Sales Office or Tech Support Centre near you which are listed in D&M Professional website below.

AMERICA
- D&M Professional America
  http://www.d-mpro.com
  Service number : 866-405-2154 (Toll Free)

EUROPE
- D&M Professional Europe
  http://www.d-mpro.eu.com

ASIA/OTHERS
- Marantz Korea Co.,Ltd.
  http://www.marantz.co.kr
- DENON Asia Co.,Ltd.
  http://www.denon.com.hk
- D&M Electronics Singapore Pte. Ltd.
  http://www.denonsingapore.com

SEQ 29/2021-2378

The PMD660 does not turn on.
- Install fresh batteries.
- Check AC adapter connections.

The PMD660 turns on then turns itself off.
- Install fresh batteries.

The PMD660 seems to record, but there is no sound on playback.
- Check input settings.
  (For example, if LINE input is selected and no input is connected to the LINE IN jack, the PMD660 will record silence. The PMD660 will not playback.)
- Check output settings.
  (For example, if the output selected is LINE, no sound output is available in the speaker or headphones (SP/HP) or vice versa.)

There is no audio playback through headphones or internal speaker.
- Check HP/SPK VOL control setting.
- Check a different track or CF card.
- Check output setting.

The PMD660 will not record.
- Check that the maximum of 999 tracks have not been recorded.
- Check that the PMD660 acknowledges the CF card.

No signal from microphone input.
- Check input selection.
- Check REC level control settings.
- Check if microphone(s) require(s) Phantom power.

There is excessive noise on the PMD660.
- Check cable connections and/or replace cable.
- Check for proper gain levels.

Playback on a PC results in poor sound.
- Check quality of PC sound card and program.
- Check frequency conversion program.*

* The PMD660 records audio files with a sampling frequency of 48kHz. Some PC programs convert the files to 44.1kHz (using a sample rate converter). Only high quality sample rate converters should be used.

PC cannot read files
- Check the capability of the PC program. Some playback and editing programs do not support MP3 or Broadcast Wave (.wav) formats.

If the PMD660 exhibits erratic behavior, the microprocessor can be reset by powering off, disconnecting AC power and removing batteries.

Care and Maintenance
Use a soft cloth slightly moistened with mild detergent solution.
Media cards that are heavily used should be occasionally reformatted to avoid audio problems due to fragmentation.

SEQ 29/2021-2379

Error Message

Display	Description
CF Card	
No Card	No CF card inserted, or card is not detected.
Unformat	CF card is formatted other than FAT16 or FAT32.
Full Card	Remaining capacity of CF card is less than a few kbytes.
Full 999	The number of tracks on the CF card has reached the 999 maximum.
Full Mark	The number of EDL marks on the card has reached the 255 maximum.
No Track	Track file is not detected.
VBR	VBR file is forwarded or rewinded.
No Mark	Mark of track file is not detected.
Can not...	Invalid operation.
LowBattery	Battery voltage is low.
Need DC IN	AC adapter is not connected to PMD660.
Bad File	The menu setting of the file setting is not detected or file error.
Err FS	Version up file or file system error.
Full V99	Copy track (Virtual Track) file is 99 track.
No V.Track	Copy track (Virtual Track) file is not detected.
Limit 80m	Copy track (Virtual Track) time set to over 80 minutes.
Err Format	Not supported file format.
Others	
Err DSP	DSP processing error.
Err Card	Card or File error.
Err RTC	RTC processing error.
Err EEPROM	EEPROM error.
Err SRAM	SRAM error.
Err Flash	Flash ROM error.

SEQ 29/2021-2380

Specifications

Digital audio system
System ..... Solid State Recorder
Usable media ..... CF memory cards
Microdrive

Recording and media methods
mp3 ..... MPEG1 Layer III compression
PCM ..... 16 bit linear PCM

Recording bit rate
MP3 mono ..... 64 kbps
MP3 stereo ..... 128 kbps

Sampling frequency ..... 44.1, 48 kHz
Number of channels ..... 2 (stereo), 1 (mono)
Frequency response ..... 16,000 Hz (-0.5dB)

Signal-to-Noise Ratio
IEC-A weighted ..... LINE 80 dB
MIC 60 dB

Total harmonic distortion
at 0 VU (PCM) ..... LINE 0.06%
MIC 0.15%

Dynamic range ..... 80 dB

Inputs
MIC IN L/R
Type ..... XLR (1:GND, 2:HOT, 3:COLD)
Input sensitivity (MIC) ..... 1.2 mVrms/6.5 kohms

LINE IN
Type ..... mini jack
Input sensitivity ..... 300 mVrms/20 kohms

Outputs
LINE OUT
Type ..... mini jack
Standard level ..... 2 Vrms max./2 kohms

General
Headphone output power ..... 8 mW/ 16 ohms
Speaker output power..... 150 mW/ 8 ohms
Phantom power ..... +48V, 5mA

Power consumption
Recording/Playback ..... 4.0 W (DC)
Battery life (Alkaline) ..... 4 hours (typical)

Dimensions
Width ..... 113 mm (4.5")
Height ..... 46.5 mm (1.8")
Depth ..... 183.5 mm (7.2")
Weight ..... 0.5 kg (1.1 lbs.)

SEQ 29/2021-2381

Included accessories

CF card (64MB) (US only) 1
AC adapter 1
USB cable 1
Audio cable 1
Carry strap 1
Screws (ISO 3x10 mm) 2
Plastic pin and retainer 1
CD-ROM 1
User Guide 1

Optional accessories**

(See www.d-mpro.com for description and/or ordering information)

Wired remote RC600PMD

* Specifications subject to change without notice.

LIMITED WARRANTY

Your Marantz Professional product is warranted against manufacturer defects in material and workmanship for a period of one year parts and labor.

Except as specified below, this warranty covers defects in material and workmanship. The following are not covered under warranty:

1. Damage, deterioration, malfunction or failure to meet performance specifications resulting from:
   a) Accidents, acts of nature, misuse, abuse, neglect or unauthorized product modification.
   b) Improper installation, removal or maintenance, or failure to follow supplied instructions.
   c) Repair or attempted repair by a non-Marantz authorized agent.
   d) Any shipment (claims must be presented to the carrier).
   e) Any cause other than a defect of manufacturing.
2. Cleaning, check-ups with no fault found or changes incurred for installation, removal or reinstallation of the product.
3. Any serialized product on which the serial number has been defaced, modified or removed.
4. Batteries and battery chargers.
5. Accessories, including but not limited to: cables, mounting hardware and brackets, cleaning accessories, power cords and adapters, and carry cases.

SEQ 29/2021-2382

Non-transferable warranty
This Warranty may be enforced only by the original purchaser.

What We Will Pay For
We will pay for all labor and material expenses for items covered by the warranty.

How You Can Get Service (Americas only)

1. If your unit needs service in the USA, contact our service referral at the appropriate telephone number indicated below. We will advise you of the name and location of one or more authorized service centers from which service may be obtained. Please do not return the unit directly to us.
2. You must pay any shipping charges if it is necessary to ship the product for service. If the necessary repairs are covered by the warranty, we will pay return shipping charges to your location anywhere in the United States or its territories.
3. Whenever warranty service is required, you must present the original dated sales receipt or other proof of date purchased.

Limitation of Implied Warranties
All implied warranties, including warranties of merchantability and fitness for a particular purpose, are limited in duration to the length of this warranty.

Exclusion of Damages (Americas only)
Liability for any defective product is limited to repair or replacement of the product at manufacturer's option. Manufacturer shall not be liable for damage to other products caused by any defects in Marantz products, damages based on inconvenience or loss of use of the product, or any other damages, whether incidental, consequential, or otherwise.

Some States do not allow limitations on how long an implied warranty lasts and/or do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

How State Law Relates to the Warranty (Americas only)
This warranty gives you specific legal rights, and you may have other rights which may vary from State to State.

Marantz Professional Service Number (Americas only):
Marantz Professional Factory Service (630) 741-0330, toll free within the US (866) 405-2154.

Products purchased outside of the United States, its possessions or territories.

This warranty is enforceable only in the United States and its possessions or territories.

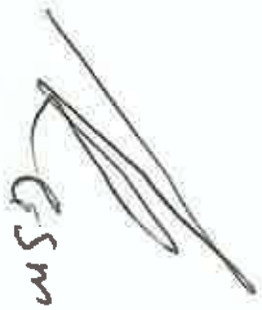
Marantz Professional products Sales Office Site:
For inquiries or information on repair service of Marantz Professional Products, please contact our Sales Office or Tech Support Centre near you which are listed in D&M Professional website below.

AMERICA
D&M Professional America http://www.d-mpro.com
Service number : 866-405-2154 (Toll Free)

EUROPE
D&M Professional Europe http://www.d-mpro.eu.com

ASIA / OTHERS
Marantz Korea Co.,Ltd. http://www.marantz.co.kr
DENON Asia Co.,Ltd. http://www.denon.com.hk
D&M Electronics Singapore Pte. Ltd.
http://www.denonsingapore.com

SEQ 29/2021-2383



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SEQ 29/2021-2384

SEQ 29/2021-2385

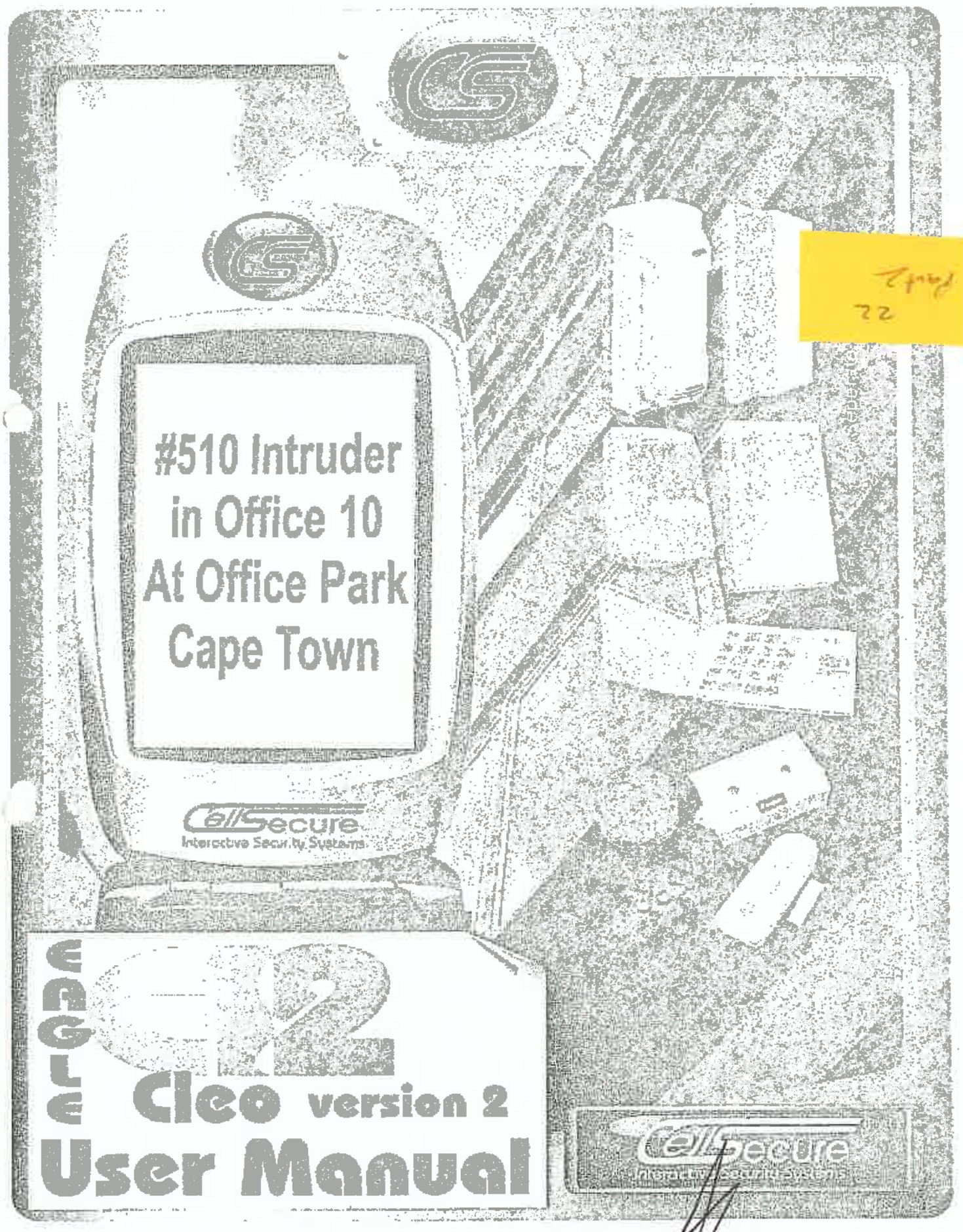


Table of Contents

1. Functions and Operating procedures of the E12 Cleo 1
   - *1.1. Modes of Operation*
     - 1.1.1 Away mode
     - 1.1.2. Stay mode 5
     - 1.1.3. Off Mode 6
     - 1.1.4. Monitor Mode 7
     - 1.1.5. Away Monitor Mode
     - 1.1.6. Silent Panic 8
     - 1.1.7. Panic
     - 1.1.8. Resetting the E12 9
     - 1.1.9. Keypad Duress
   - *1.2. Access Control and Security*
   - *1.3. Other functions*
     - 1.3.1. Auto Arm / Disarm Time
     - 1.3.2. GAS discharge activation option 10
     - 1.3.3. Supervision function
     - 1.3.4. "Power Supply Battery low" warning function
     - 1.3.5. "Sensor Low Battery" warning function
     - 1.3.6. Seismic detector for Panel Tamper 11
     - 1.3.7. 24-Hour Test Signal
     - 1.3.8. Signal Strength
     - 1.3.9. Mains Failed/Restored
     - 1.3.10. Restore Failure
     - 1.3.11. Entry and Exit delay
   - *1.4. Group Setup* 12
   - *1.5. Outputs*
   - *1.6. Keypad*

2. Description of system components
   - *2.1. Remote control*
   - *2.2. Types of Sensors* 13
     - 2.2.1. Outdoor Passive Infrared Beam Sensor
     - 2.2.2. Indoor Passive Infrared Wide Angle Sensors 14
     - 2.2.3. Mini Passive Infrared High Power Sensor 15
     - 2.2.4. Universal Transmitter (Door Guard)
     - 2.2.5. Seismic Transmitter 16
     - 2.2.6. Dual Tilt Sensor
   - *2.3. Battery Charger, Battery (Power supply unit (PSU)) and transformer*
   - *2.4. External and Internal sirens* 17

3. Programming the E12
   - *3.1. Learning in the Key Ring & Sensors*
     - 3.1.1. 3 Button Key Ring Remote
     - 3.1.2. Outdoor Passive Infrared Sensor Long Range 18
     - 3.1.3. Indoor Passive Infrared Sensor Long Range 19
     - 3.1.4 Mini Indoor Passive Infrared sensor 20
     - 3.1.5. Mini Door Guard
     - 3.1.6. High power door guard 21
     - 3.1.7. High power Seismic sensor 22
     - 3.1.8. High power Dual tilt sensor 23
   - 3.2. Associating Wireless Sensors with zones 24
   - 3.3. Removing Wireless Sensors from zones
   - 3.4. Associating Key rings with Users
   - 3.5. Removing Key rings 25
   - 3.6. Programming Active Zones

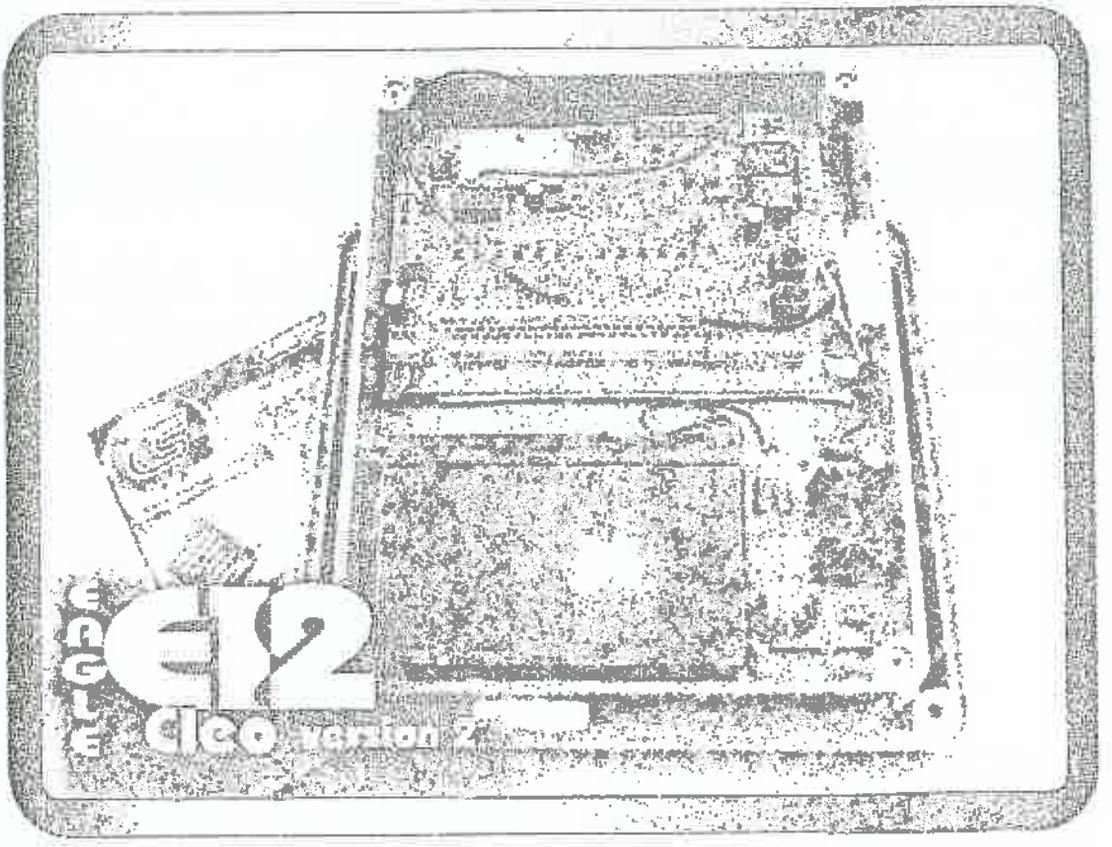
4. Summary of SMS Commands

Appendix A:
- *Wiring Diagram* A.1

Appendix B:
- *Reading sensors into the control panel* B.1

Appendix C:
- *Connecting multiple keypads to the E12* C.1

GSM



CellSecure E12 Cleo Security System – User Manual

The CellSecure E12 Cleo is a 12 Zone fully supervised wired and 12 Zone fully supervised wireless Alarm system with Keypad, Key Ring Transmitter and GSM SMS capability. All events (alarm activation, deactivation, panic, etc.) will be sent directly to up to 6 Cell phone numbers via SMS (4 user cell phones, 1 base number and 1 tracking base number). The users can also control functions of the Cleo from their cell phones via SMS.

The Cleo Panel Kit comes complete with a 3 Amp Power supply and charger, 7 Amp Battery, 3 Amp Plug in Transformer, GSM and 433 MHz Aerials.

The Cleo can be operated by Cell Phone, Keypad and remote key ring transmitter.

The Cleo can also be sub divided (Partitions) into 2 separate alarm systems each one controlled by its own user's cell phones, Keypads or Remote key ring Transmitters.

In addition the Cleo has 4 Programmable outputs that can be used to activate an Alarm transmitter to a reaction company or can be used to activate lights, air conditioners etc from a cell phone.

GSM

1. Functions and Operating procedures of the E12

The E12 can be operated in 4 different modes. Each mode activates different zones and reacts differently when the system is activated by a sensor. Zones are the areas that need protection. The active zones for each mode can be set up by the user.

The E12 can be controlled by 12 different key ring remote controls, 5 keypads and 12 user codes (same codes used for keypad and cell phone control). The 24 zones (12 wired, 12 wireless) are protected by a possible 12 wired sensors and 24 wireless sensors. A total of 36 sensors can be connected to the E12, distributed over 24 zones. 12 Zones can be monitored by the 24 wireless sensors and the other 12 zones are monitored by 12 wired sensors.
The 24 zones can also be divided into 2 different groups (Partitions). These 2 groups will function independently of each other, meaning that the E12 will function as 2 separate alarm systems. For Example, one partition can be in Off mode, while the other is in Away Mode.

NOTE: The Partition's are only programmable remotely via the CellSecure programming software.

1.1. Modes of Operation

The following modes of operation can be used:

- Away Mode
- Stay Mode
- Monitor Mode
- Away / Monitor Mode
- Off Mode

1.1.1. Away mode: (Normally activated when leaving the premises)

- When away mode is activated the E12 will respond with 1 beep on the internal siren, the away button on the keypad will light up and a "security system armed" SMS will be sent. An alarm armed telemetry signal will also be sent if connected to a standard alarm transmitter.
- The messages are fully programmable, but the default message is "Away mode Group A" or "Away Mode Group B". In the SMS the person's name that armed the unit as well as the address where the unit is located, will also be displayed.
- If By "System Timer" is displayed, then the alarm was activated by a timer.
- Any detection, in any 1 of the active zones in Away mode will result in the siren sounding for 4 minutes unless another sensor is activated, then the siren will continue for 4 minutes after the last detection. An alarm SMS will be sent and an 'Alarm Activated' Telemetry signal will be sent to the Armed Response Company if connected. Example of such an SMS is "Alarm Garage at Cellsecure 142 Botha ave Lyttelton".

GSM

- The siren will continue sounding and an ALARM SMS will be sent each time there is an activation of a sensor to indicate that various sensors in the premises are been activated and that the alarm is not from only 1 sensor.
- Gas will also be triggered if connected and the "gas enabled" option was selected (**$XXXXG1** – Gas enabled; **$XXXXG0** – Gas disabled). See section 1.3.2.
- After switch off the relevant zone numbers on the keypad will remain on to indicate which zone was activated. This indication serves as an additional memory of activation.

Activating Away mode:

- Away mode can be activated by a key ring remote, a base station, a cellular phone, keypad or timer.
- To activate the system by remote, the blue button must be pressed once.
- To activate the system by cellular phone or base station, **$XXXXA** must be sent to the E12 via SMS. In this message, **XXXX** is the user four digit, numeric pin code the same as the user would use on the keypad that can only be changed by the Master user.
- To activate by keypad: Type user password, press away button and press enter.
- The timer will activate the alarm at a pre-programmed time, if enabled. See section 1.3.1
- The E12 will respond with one beep on the internal siren and the necessary SMS and telemetry signal (Alarm Armed) will be sent.

Deactivating Away mode:

- Activate Off Mode. See section 1.1.3.

1.1.2. Stay mode: (Normally activated when retiring for the night.)

- When Stay mode is activated by the keypad or Key Ring, the E12 will respond with 1 beep on the internal buzzer.
- Any detection in any of the zones programmed to be active in Stay mode will cause the buzzer to beep for 1 minute and should the alarm not be switched off within this time, the siren will start to sound and the ALARM SMS messages will be sent and an 'Alarm Activated' Telemetry signal will be sent to the Alarm Response Company if connected. At this time the alarm also switches to Away mode.
- Any further activation will cause the siren to sound and an ALARM SMS to be sent and an 'Alarm Activated' Telemetry signal will be send to the Alarm Response Company if connected. The siren will sound for 4 minutes each time a sensor is activated.
- When Stay Mode is activated by SMS the E12 will respond with 1 beep on the internal buzzer and an Alarm Armed Stay Mode SMS will ONLY be sent to the Cell Numbers programmed into the E12 not to the Base number and also the telemetry outputs will not be activated.
- Any detection in any of the zones programmed to be active in Stay mode will cause the buzzer to beep for 1 minute and an SMS will be sent to the Cell

Numbers. Should the alarm not be switched off within this 1 minute buzzer time, the siren will start to sound and the ALARM SMS messages will be sent to the Base and cell numbers. An 'Alarm Activated' Telemetry signal will also be sent to the Alarm Response Company if connected. At this time the alarm also switches to Away mode.

Activating Stay mode:

- Stay mode can be activated by a key ring remote, SMS, or a keypad.
- To activate Stay mode by remote, the Yellow and Blue buttons must be pressed simultaneously.
- To activate Stay mode by cellular phone or base station, **$XXXXS** must be sent to the E12's control panel via SMS. In this message the **XXXX** is the user four digit, numeric pin code the same as the user would use on the keypad that can only be changed by the Master user.
- The system will respond as described above if activation was successful.

Deactivating Stay mode:

- Activate Off Mode. See section 1.1.3.

1.1.3. Off Mode: (Activated when at home)

- No zone is active when the E12 is in Off Mode.
- Selecting OFF Mode will result in different responses depending on the mode the system was in before activating OFF mode.
- If the E12 was in Away Mode, the E12 will respond by sounding twice on the internal siren, only if the system was not activated by a sensor while in Away mode, and a system Off ("Disarmed") SMS message will be sent. An 'Alarm disarmed' telemetry signal will also be sent.
- If the E12 was activated by a sensor while in Away mode, the system will respond by sounding four times on the internal siren and a system Off ("Disarmed") SMS message will be sent. This is an additional warning function to let the occupant know that the premises were entered.
- If the E12 was in panic mode with the siren sounding the siren will stop when Off mode is activated.
- The messages are fully programmable, but the default message is "System OFF Mode Group A/B". In the SMS the name of the person who disarmed the unit as well as the address where the unit is located, will also be displayed.
- If "By system Timer" is displayed, the system was deactivated by the timer.

Activating Off Mode:

- Off Mode can be activated by key ring remote, a base station, a cellular phone, keypad or timer.
- Press the yellow button on the key ring remote control once or send **$XXXXO** to the E12 via SMS.
- To disarm the system by keypad, enter user code and press enter.

Gsm

- The response given by the system is described above.

- ***Deactivating Off Mode:***
- Off mode is deactivated by switching to any other mode (see the other paragraphs for more detail).

1.1.4. Monitor Mode: (Used to monitor activity in zones without alarm activation)

- Like all other modes, the active zones can be defined by the user.
- If the E12 is switched to monitor mode by the Keypad or Key Ring then any activation of a sensor in one of the active zones will result in the buzzer sounding 6 times. The corresponding zone number on the keypad will light up and stay on.
- If the E12 is switched to monitor mode by SMS then any activation of a sensor in one of the active zones will result in the buzzer sounding 6 times and an SMS will be sent to the cell numbers only, No SMS will be sent to the Base number and the telemetry outputs will not activate.
- The corresponding zone number on the keypad will light up and stay on.
- Every active zone will only send a maximum of 4 trigger events by SMS.
- If the E12 is switched to monitor mode by SMS The E12 will send a 'Monitor mode activated' SMS.

Activating Monitor Mode:

- Monitor mode can be activated by SMS, key ring remote or keypad.
- To activate by SMS, send **$XXXXM** to the E12.
- To activate by Key ring remote, press the blue and red button simultaneously.
- To activate by keypad, enter user code, press the monitor button and press enter.
- The E12 will respond with 3 beeps on the internal buzzer.

Deactivating Monitor Mode:

- Switch the E12 to Off Mode.

1.1.5. Away Monitor Mode: This is an Alternative Away Mode with different functions for the zones that have been programmed to be on in Away and Monitor Modes.

- The Away Monitor Mode combines the functions of zones on in Away Mode and Zones on in Monitor Mode in the following Way.
- Zones that are only on in Away mode when activated will result in the Siren sounding for 4 minutes and an alarm SMS being sent to the Base number and cell numbers, The telemetry Alarm output will also be activated.
- Any further activation of these zones will result in the siren sounding again and the SMS's and telemetry signals being sent.
- Zones that have been selected to be on in the Away and Monitor modes will when activated result in the siren beeping 4 times and an alarm SMS ONLY

GSM

being sent to the Cell Numbers. No SMS will be sent to the base number and the telemetry outputs will not be activated.

Activating Away Monitor mode:

- Away mode can only be activated by a base station, a cellular phone, or keypad.
- To activate the system by cellular phone or base station, **$XXXXAM** must be sent to the E12 via SMS. In this message, **XXXX** is the user four digit, numeric pin code the same as the user would use on the keypad that can only be changed by the Master user.
- To activate by keypad: Type user password, press away button then the MON button and then press enter.

The E12 will respond with one beep on the internal siren and the necessary SMS to the cell numbers only will be sent.

The E12 can also send the following panic signals:

1.1.6. Silent Panic: (Activated when in immediate danger)

- When the E12 receives a Silent Panic signal a Silent Panic SMS will be sent.
- Also, a panic telemetry signal will be sent to the armed response company if connected.
- If the E12 receives multiple Silent panic signals it will re send the Silent Panic SMS and telemetry signal.
- The name of the person who activated Silent Panic will be included in the SMS.
- Example: "Silent Panic Mode activated By Jack at Eagle Wireless 142 Botha ave Lyttelton".

Activating Silent Panic:

- Silent panic can be activated by SMS, keypad, key ring remote control or panic button.
- To activate by cellular phone, send **$XXXXH** to the E12, where **XXXX** is the 4 digit numeric password.
- To activate by key ring remote, press the red button once.
- To activate by keypad, press the trouble button followed by enter.
- The panel will respond with a 10 second beep on the internal buzzer.
- If silent panic is activated by panic button, only the sms and telemetry signals will be sent, no 10 second long beep.

1.1.7. Panic: (Activated when in immediate danger)

- When the E12 receives a panic signal the internal buzzer and siren will start sounding for 4 minutes and a Panic SMS will be sent.
- Also, a panic telemetry signal will be sent to the armed response company if connected.
- The trouble (TRBL) button on the keypad will light up.

GSM

- Each time the E12 receives a panic signal; it will reset the siren timer and resend the Panic SMS.
- The name of the person who activated Panic will be included in the SMS.
- The siren can be stopped before the 4 minutes is up by switching to Off Mode.
- The default panic message is "Panic".

Activating Panic:

- Press the red and yellow button on the remote control simultaneously.
- Panic is activated via SMS by sending the E12 the following message: **$XXXXP**, Where **XXXX** is a four digit numeric pin code.
- Panic can also be activated by keypad. Press the trouble button, followed by 2nd function, followed by the enter button.

Deactivating Panic:

- Panic can be deactivated by switching to Off Mode. See section 1.1.3.

1.1.8. Resetting the E12:

This can only be done when the E12 is in Off Mode. After resetting, the E12's sensor tamper detectors will switch off for 1 hour. All the memory lights, if on, will switch off.

- Reset by key ring remote: Press all 3 buttons simultaneously.
- Reset by key pad: Press the Memory button (Mem) followed by enter.
- Reset by SMS: Send **$XXXXr** to the E12, where **XXXX** is one of the 4 digit, numeric user passwords.
- The E12 will respond with 6 beeps on the internal buzzer.
- Each time reset is activated the E12 Cleo will send a reset SMS.

1.1.9. Keypad Duress

A keypad duress signal can be sent if a user is forced to disarm the Alarm. It's a discreet way of letting the Armed Response Company and other users know of the situation.

This Duress signal is sent by entering the user password, but changing the last digit in the password to the next higher digit when disarming the alarm. E.g. 1234 would be changed to 1235 and 1450 to 1451.

1.2. Access Control and Security

The E12 can recognize 12 user passwords and 1 master password. Each user password is a 4 digit numeric password and the master password is a 6 digit numeric password. The same user passwords are used for keypad- as well as SMS commands and each user password can be assigned to a name.

The Master password is used for programming purposes.

Advanced RF encrypting technology is used for key ring remote control security.

1.3. Other functions

1.3.1. Auto Arm / Disarm Time:

GSM

The E12 can be programmed to switch to AWAY Mode at a specific time of day every day. This is very useful for Commercial applications where the E12 will arm at, for example, 18:00 every night. The E12 also has a built in calendar, enabling the timer to take into account weekends but NOT holidays. No activation or deactivation will take place on weekends by the system timer these will have to be manual.

Both partitions (See section 1.4) can be armed and disarmed separately by the system timer at different times.

When the E12 Armes, it will respond with 1 beep on the internal siren, the away button will light up and a security system armed SMS will be sent. In the SMS By "System Timer" is displayed when the E12 is armed by this timer.

1.3.2. GAS discharge activation option:
The GAS discharge will be triggered every time the alarm is activated by a sensor or by means of a remote control or cellular phone.
The activation of GAS is counted and timed and a low GAS warning will be sent when the GAS canister needs to be replaced.

GAS will be triggered Depending if the GAS is enabled or not. This is done with the following messages: **$XXXXG1** = GAS enabled, **$XXXXG0** = GAS disabled
GAS can be manually triggered by using **$XXXXG9** at any time.

When the gas is triggered, the E12 will deliver a 4 sec spray, which will fill a room of 200 square meters practically instantaneously. A total of 8 bursts of this length can be delivered per canister.
After the doors and windows have been opened, it will take approximately two and a half hours for the gas to dissipate out of the house.

Warning: The gas is hazardous to any living creature. Don't enable the gas discharge option if pets are left in the house while occupants are away from the premises.

1.3.3. Supervision function:
All sensors are supervised by the E12 and should a sensor fail to report to the E12, a supervision failure SMS will be sent.

1.3.4. "Power Supply Battery low" warning function:
A Battery low SMS message will be sent every time the power supply battery voltage drops below a 10.7V. When the battery is charged after the Battery low SMS was sent, a Battery OK SMS will be sent only when the battery voltage stays above 10.7V for 60 minutes.
On power up, a Battery OK message will be sent if the battery voltage is above the predetermined value.

1.3.5. "Sensor Low Battery" warning function:

G. smk

Although the batteries in the sensors can last up to 6 years for low power sensors and 2 years for Hi power sensors, the E12 will detect if a sensor has a battery that has only limited life left and will start to flash the relevant zone LED once per second and beep the buzzer twice. The sensor itself will indicate a low battery by flashing its LED when activated.
A Sensor Low battery SMS will also be sent.

Please note LOW Battery and Supervision Failure are very incessant sounds and should be attended to immediately.

1.3.6. Seismic detector for Panel Tamper:
The E12 also has a built in Seismic detector to detect any tampering with the panel. This detector can be configured for vibration intensity and duration by means of SMS commands.
The Seismic detector will always be on and will always only send an SMS. The siren will never be activated.
The Seismic detector can be disabled by sending **$XXXXq** to the E12.
The Seismic detector can be enabled by sending **$XXXXp** to the E12.

1.3.7. 24-Hour Test Signal:
The E12 will send a 24 hour test SMS at a specified time each day to indicate that the system is still in operation. This 24 hour test SMS can be disabled if necessary. The time of day when the SMS is sent can be specified by the user. This 24 hr test signal is in the form of a status report.

1.3.8. Signal Strength:
Network signal strength can be requested by sending **$XXXXT** to the E12. The E12 will reply with a number out of 31, where 31 is perfect signal strength.

1.3.9. Mains Failed/Restored
The E12 will send a mains failed SMS to all programmed cellular phones every time mains power is disconnected from the panel. The 'TRBL' button will light up as visual indication of mains failed. The trouble button can be switched off by resetting the panel. A 'mains restored' SMS will be sent only when mains power was restored and stable for 5 minutes.

1.3.10. Restore Failure
Every time a wired sensor is activated, the E12 will check the sensor after a certain time interval. If the sensor has not returned to its normal state, the E12 will send a restore failure SMS.

1.3.11. Entry and Exit delay
Zone 1, for group A, and zone 6, for group B, is programmed to have entry and exit delays. When arming the alarm, these zones will not trigger for 60 seconds (Default), allowing time to leave the premises.

GSM

When these zones are triggered, after the alarm has been armed and the first 60 seconds expired, the panel will buzz for 45 seconds (Default) before activating the alarm, allowing occupants to disarm the alarm via keypad. The exit delay time can be changed by the Cellsecure programming software. Entry delay will always be 15 seconds shorter than the programmed exit delay time.

1.4. Group Setup

The group setup is done by the Cellsecure programming software. The 24 zones can be divided into two groups, which can be controlled separately.

Users can be divided amongst these 2 groups. A User in group 1 can control the group one zones only and a user in group 2 can control only group 2 zones. The E12 will function as two separate security systems in this case.

For more information call the Cellsecure call center toll free at 0860 11 26 22.

1.5. Outputs

4 Outputs are available. These can be used to send telemetry signals (Alarm on/off, Panic, Mains on/off, etc) or operate any other electric equipment (Lights, electric locks etc) via SMS. The E12 can be set to use these outputs as telemetry outputs, meaning that a signal will be sent automatically every time the alarm is switched on/off, triggered etc. To set the outputs as telemetry outputs, send **$XXXX)** to the panel via SMS, where **XXXX** is a four digit numeric pin code. The outputs can also be controlled by SMS to switch on/off lights, open/close gates etc. See table 3 for SMS commands. In the table, the pulse command will switch the outputs on and off within a 1 sec interval. These commands will not function if the E12 is configured to use the outputs as telemetry outputs. To set the outputs as SMS outputs, send **$XXXX(** to the panel, where **XXXX** is a four digit numeric pin code.

1.6. Keypad

After installation of the panel, all keypads must be reset by sending the following command via SMS: **$XXXX%**. Buttons 1 and 2 will switch on and the enter button will start to flash. To associate a keypad with a partition, simply press the corresponding number on the keypad (1 for partition one or 2 for partition two). After the button is pressed, the keypad will return to its normal state and any commands entered on the keypad will control only the associated partition.

2. Description of system components

2.1. Remote control

The E12 uses a 3 button remote control. The remote control is used as described in table 2 below.

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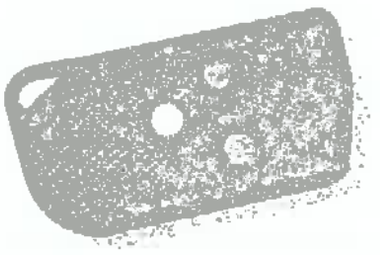

Figure 2.
Remote control.

Remote Buttons	Mode
Yellow	Off mode
Blue	Away mode
Red	Silent Panic
Yellow + Blue	Stay mode
Yellow + Red	Panic
Blue + Red	Monitor Mode
Yellow + Blue + Red	Reset

Table 2. Summary of remote control functions.

2.2. Types of Sensors.

NOTE: E12 Sensors should be used however E6 type of sensors can be used with limited signaling. See Appendix C.

Eight types of sensors can be connected to the E12.

1. Outdoor Passive Infrared Beam Sensors (Low or High power), E6 and E12.
2. Indoor Passive Infrared Sensors (High power), E12.
3. Mini Passive Infrared Medium power, E12.
4. Mini Passive Infrared Low power, E6.
5. Universal Transmitters Hi and Lo Power for doors, Gates etc. E6 and E12.
6. Seismic Transmitter, E6 and E12.
7. Dual Tilt Sensor, E6 and E12.
8. Outdoor OPTEX dual passive infra red sensors with a Universal Hi Power Transmitter, E6 and E12.

Note: there is a radio range difference between Low, Medium and Hi power devices.

Low Power up to 30 meters range.
Medium power up to 50 meters range.
Hi Power up to 150 meters range.

2.2.1. Outdoor Passive Infrared Beam Sensor (Low and High Power).

The Wireless Outdoor Infrared Sensors have been specially designed by Cellsecure to offer maximum performance with the minimum of false alarms in the harsh outdoor environment. The Sensor detects the movement of heat in the infrared spectrum of light. In other words a source of heat such as a human moving past the Sensor field of view (beam) will cause the Sensor to detect and a signal will be sent to the Control panel. The maximum distance that the Sensor will detect is safely 20 meters and at 20 meters the beam is approximately 3 meters wide, however in certain circumstances this could be more. It is recommended that the sensor is used as a proximity sensor and not as a perimeter sensor. Do not use this sensor open ended ALWAYS point towards a wall.

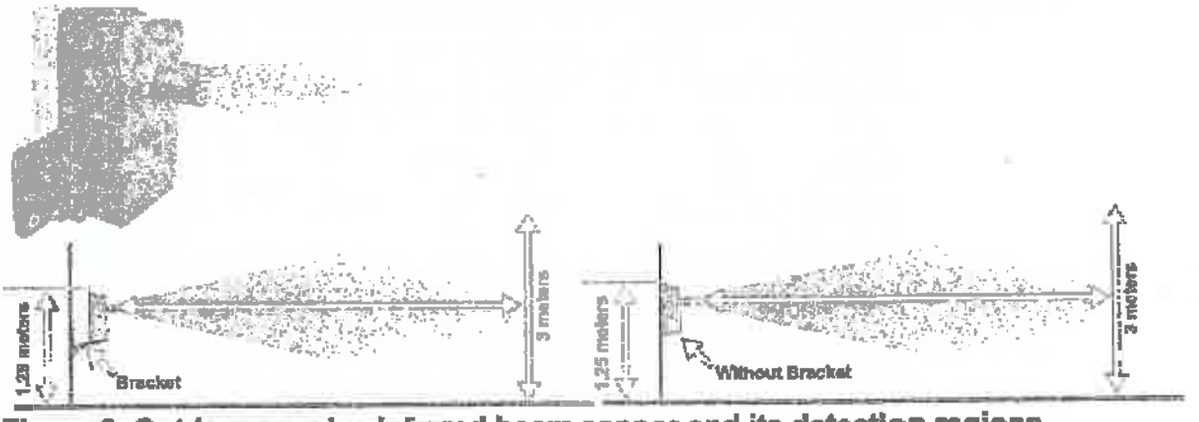

Figure 3. Outdoor passive infrared beam sensor and its detection regions.

2.2.2. Indoor Passive Infrared Wide Angle Sensors (High Power).

The Sensor detects the movement of heat in the infrared spectrum of light. In other words a source of heat such as a human moving past the Sensor field of view will cause the Sensor to detect and a signal will be sent to the Control Panel Control panel. The Sensor will detect movement up to 8-12 meters away from the device, at a hight of 1,8m, and up to 100 degrees wide.

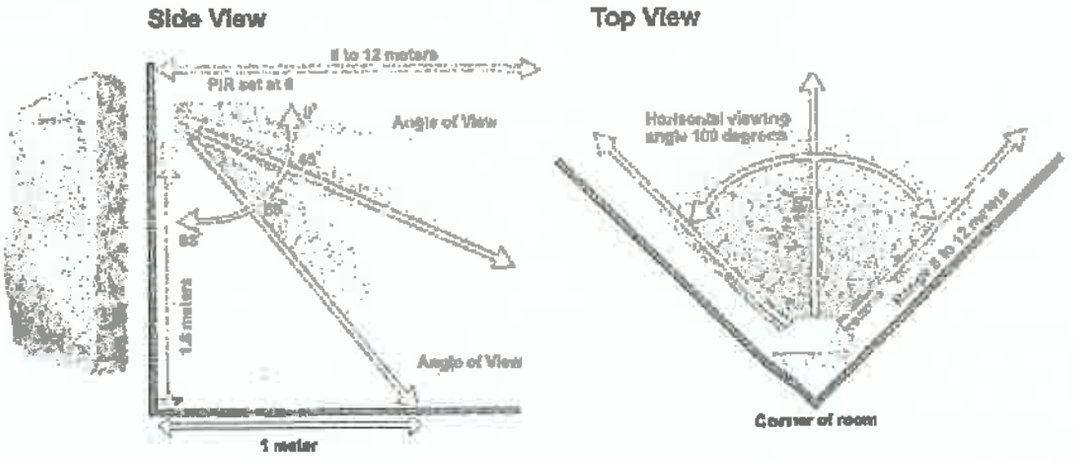

Figure 4.
Indoor Passive Infrared Wide Angle Sensor and its detection regions.

2.2.3. Mini Passive Infrared Low and Medium power

The Sensor detects the movement of heat in the infrared spectrum of light. In other words a source of heat such as a human moving past the Sensor field of view will cause the Sensor to detect and a signal will be sent to the Control Panel Control panel. The Sensor will detect movement up to 8-12 meters away from the device, at a hight of 1,8m, and up to 100 degrees wide.

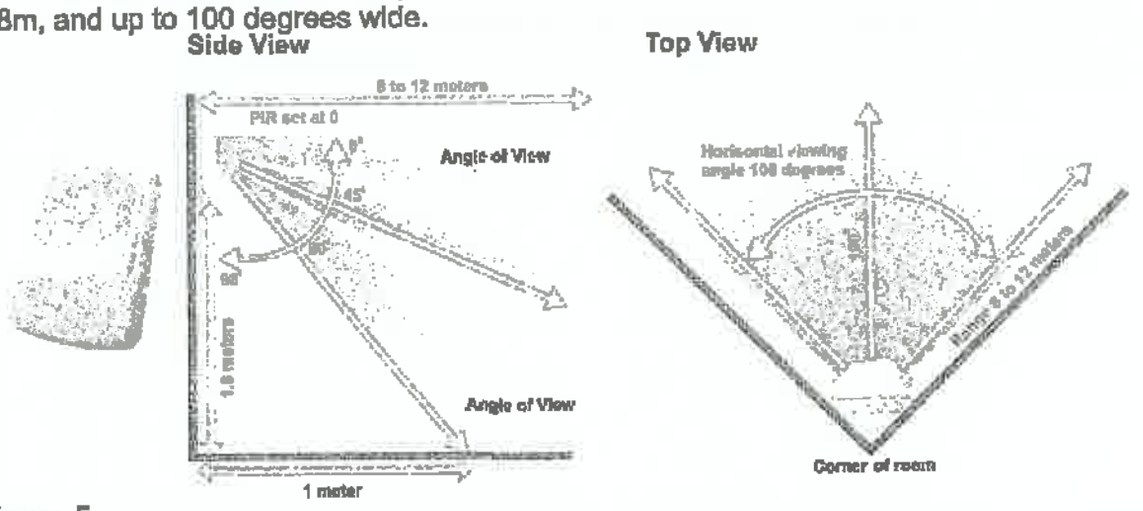

Figure 5.
Mini Passive Infrared Medium power sensor (same detection region as Indoor Passive Infrared Wide Angle Sensors).

2.2.4. Universal Transmitter (Door Guard). Low and High Power.

The Door guard, DG, is actually a universal transmitter with integral panic button and connections for a magnetic contact switch or similar device. The low power DG will send a signal to the control panel when the magnet moves away from the magnetic switch, for example, when a door or window is opened (N/C connector). The Low power DG is equipped with an internal blue strip connector for N/C connections. The high power DG is also equipped with an internal blue strip connector for N/O and N/C connections. The high power DG has a mercury tamper switch.

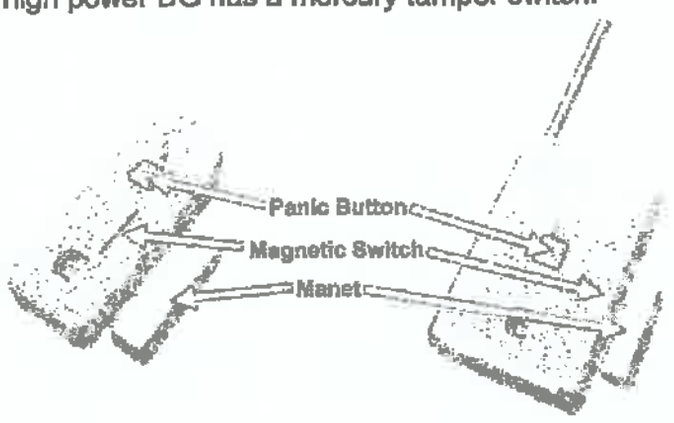

Figure 6.
Low power (left) and high power (right) Universal transmitter or Door-Guard.

G Smith

2.2.5. Seismic Transmitter High Power.
The seismic transmitter can be used to protect safes, vaults and movable assets. It will send a signal to the E12 every time it detects any vibration or movement. Every transmitter has a location and identity, enabling the E12 to recognize where tampering is taking place and communicate this information to the user.

Figure 7.
Seismic Transmitter.

2.2.6. Dual Tilt Sensor High Power.
The Dual tilt sensor will detect when a piece of equipment is tilted, ideal for computers. When the alarm is in away mode and the sensor is tilted a little bit, only an SMS will be sent. Tilting it more will result in an alarm condition. In any other mode only an SMS will be sent. This sensor is ideal for use on hi-fi or computer equipment.

Figure 8.
Dual Tilt Sensor.

2.3. Battery Charger, Battery (Power supply unit (PSU)) and transformer

The E12 Cleo uses a 3 amp PSU along with a 7Amp battery to supply power to the unit when mains power fails.
This battery will enable the E12 to operate without mains power for approximately 3 to 7 days depending on the amount of Wired Sensors. The charger will charge the battery

when connected to mains power. The battery will be fully charged within 24 hrs. The PSU also sends a Mains On/Off signal when the transformer is connected to - or disconnected from the Mains.

PLEASE NOTE: THE E12 CLEO CAN ONLY POWER 12 WIRED DEVICES OF BETWEEN 20 AND 100 MILLIAMPS EACH.

FOR ADDITIONAL DEVICES AN EXTRA POWER SUPPLY IS NEEDED.

2.4. External and Internal sirens

The sirens will sound when the alarm is activated, deactivated or triggered as described in the previous section.

Figure 9.
15Watt external siren (left), 40Watt external siren (middle) and indoor siren (right).

3. Programming the E12 Cleo

For new installations:

Press and hold the Learn button on the E12 Cleo until the LED switches off. (18 sec)

KEYRINGS AND DEVICES NEED TO BE READ INTO THE RECEIVER FIRST.

3.1. Learning in Key rings and Sensors

3.1.1. 3 Button Key Ring Remote

1. **Press the Learn Button on the Control Panel the Learn LED should switch on.**
2. **Press the Yellow Button on the 3 Button Remote Control and hold for 3 sec.**
3. **The Control Panel Learn LED may switch off.**
4. **The Control Panel Learn LED should flash and then stop.**
5. **To add more Remotes follow steps 1 – 4.**
6. **To program a remote to 1 of the 12 slots allocated follow the steps in section 3.2 of this document.**

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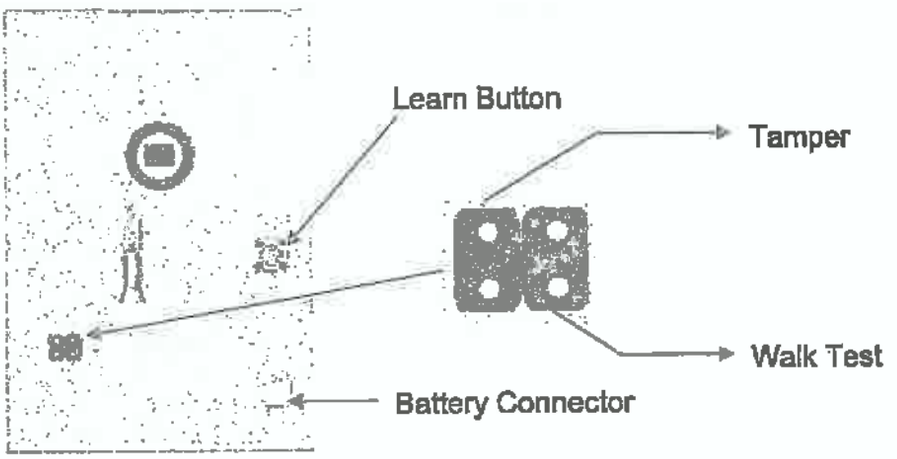
3.1.2. Outdoor Passive Infrared Sensor Long Range. (HP Outdoor sensor for and E12 Panels)



1. Loosen the 4 screws of the Outdoor sensor and carefully remove the back cover.
2. Mounted on the cover is the outdoor sensor electronic board.
3. Connect the Battery the connector can only go one way.
4. Identify the Learn button on the PIR.
5. Press the Learn Button and check that the LED of the sensor comes on and stay's on for 2 to 3 seconds after you release the button.
6. Now press the learn button on the Control Panel the learn LED should switch on.
7. Press the Learn button on the sensor and hold for 3 sec.
8. The Control Panel Learn LED may switch off.
9. The Control Panel Learn LED should flash and then stop.
10. To program this device to a zone follow the steps in section 3.2 of this document.

Connecting the 2 tamper pins will enable the tamper signal. When disconnected, no tamper signal will be generated by the sensor.

The walk test function is used for testing purposes. When the 2 walk test pins are connected, the sensor can send a triggered signal approximately every 10 seconds (opposed to the normal 3 minutes). To save battery power, these pins must be disconnected when testing is completed.

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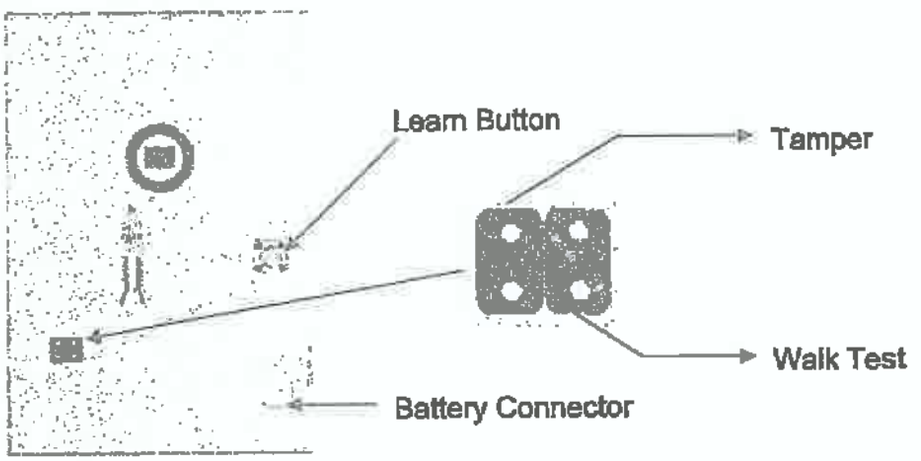
3.1.3. Indoor Passive Infrared Sensor Long Range. (HP Indoor Sensor for E12 Panels)



1. Open the Indoor Passive sensor.
2. Identify the Learn Button.
3. Connect the Battery the connector can only go one way.
4. Press the Learn Button and check that the LED of the sensor comes on and stay's on for 2 to 3 seconds after you release the button.
5. Now press the learn button on the Control Panel the learn LED should switch on.
6. Press the Learn button on the sensor and hold for 3 sec.
7. The Control Panel Learn LED may switch off.
8. The Control Panel Learn LED should flash and then stop.
9. To program this device to a zone follow the steps in section 3.2 of this document.

Connecting the 2 tamper pins will enable the tamper signal. When disconnected, no tamper signal will be generated by the sensor.

The walk test function is used for testing purposes. When the 2 walk test pins are connected, the sensor can send a triggered signal approximately every 10 seconds (opposed to the normal 3 minutes). To save battery power, these pins must be disconnected when testing is completed.

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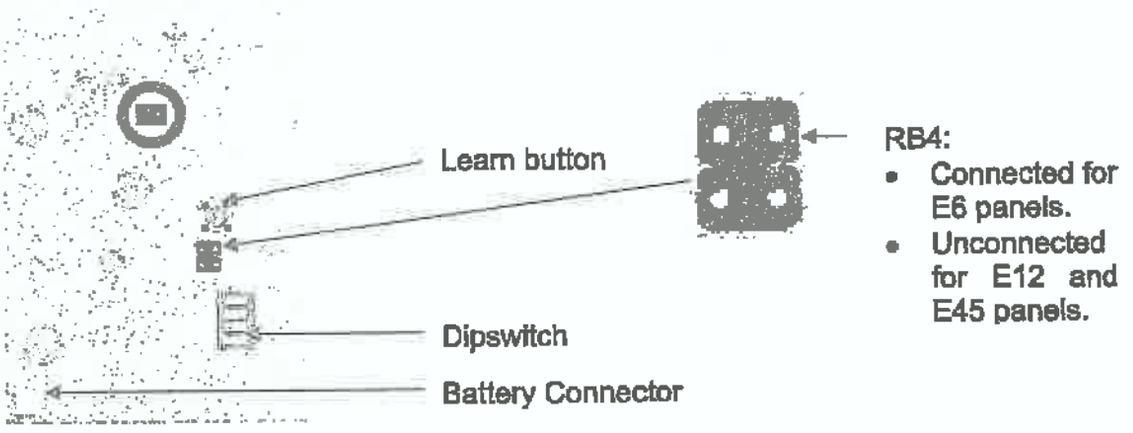
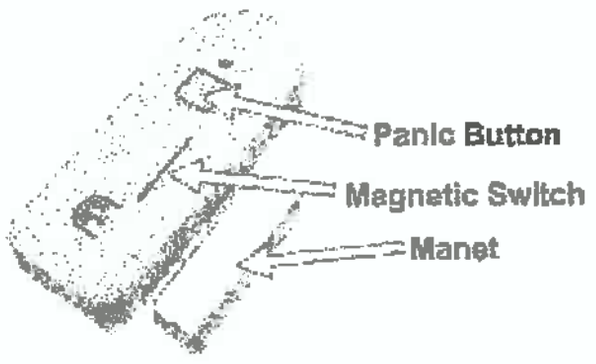
3.1.4. Mini Indoor Passive Infrared sensor



1. For E12 and E45 panels, make sure that there is no LINK connected to RB4. For E6 panels, make sure that the 2 RB4 Pins are connected.
2. Connect the battery. The Connector can only go one way.
3. Press the Learn Button and check that the LED of the sensor comes on and stay's on for 2 to 3 seconds after you release the button.
4. Press the learn button on the panel once and make sure the LED switches on and stays on.
5. Press the Learn button on the sensor and hold for 3 sec.
6. The Control Panel Learn LED may switch off.
7. The Control Panel Learn LED should flash and then stop.
8. To program this device to a zone follow the steps in section 3.2 of this document.

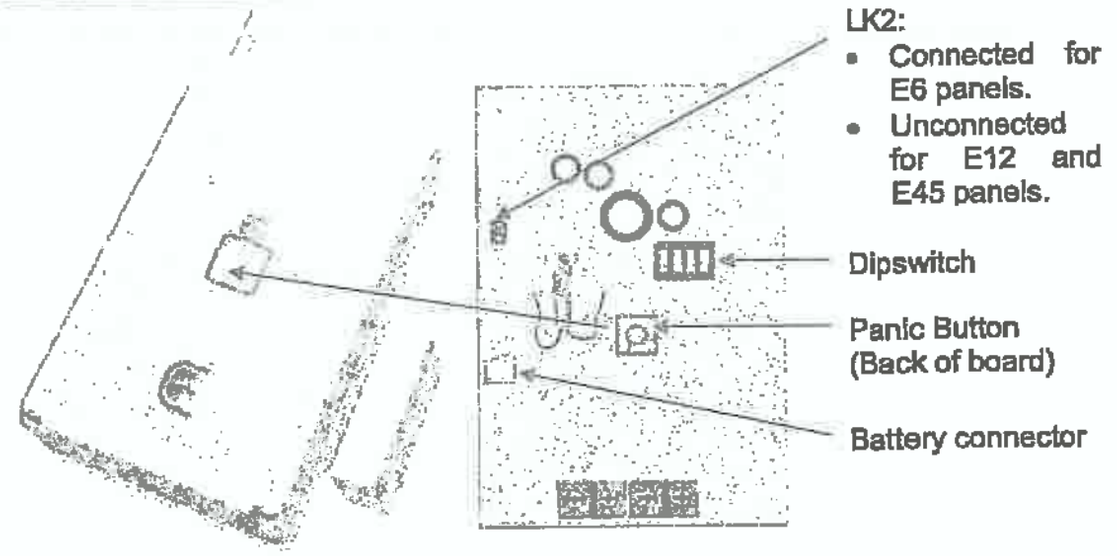
3.1.5. Mini Door Guard



1. Press the Panic Button and check that the LED of the sensor comes on and stay's on for 2 to 3 seconds after you release the button.
2. Press the learn button on the panel once and make sure the LED switches on and stays on.

3. Press the Panic button on the sensor and hold for 3 sec.
4. The Control Panel Learn LED may switch off.
5. The Control Panel Learn LED should flash and then stop.
6. To program this device to zone follow the steps in section 3.2 of this document.

3.1.6. High power door guard



1. Open up the device and check that LK2 is configured correctly.
Check that the battery is connected.
2. Reassemble the unit and Press the Panic Button. Check that the LED of the sensor comes on and stays on for 2 to 3 seconds after you release the button.
3. Press the learn button on the panel once and make sure the LED switches on and stays on.
4. Press the Panic button on the sensor and hold for 3 sec.
5. The Control Panel Learn LED may switch off.
6. The Control Panel Learn LED should flash and then stop.
7. To program this device to a zone follow the steps in section 3.2 of this document.

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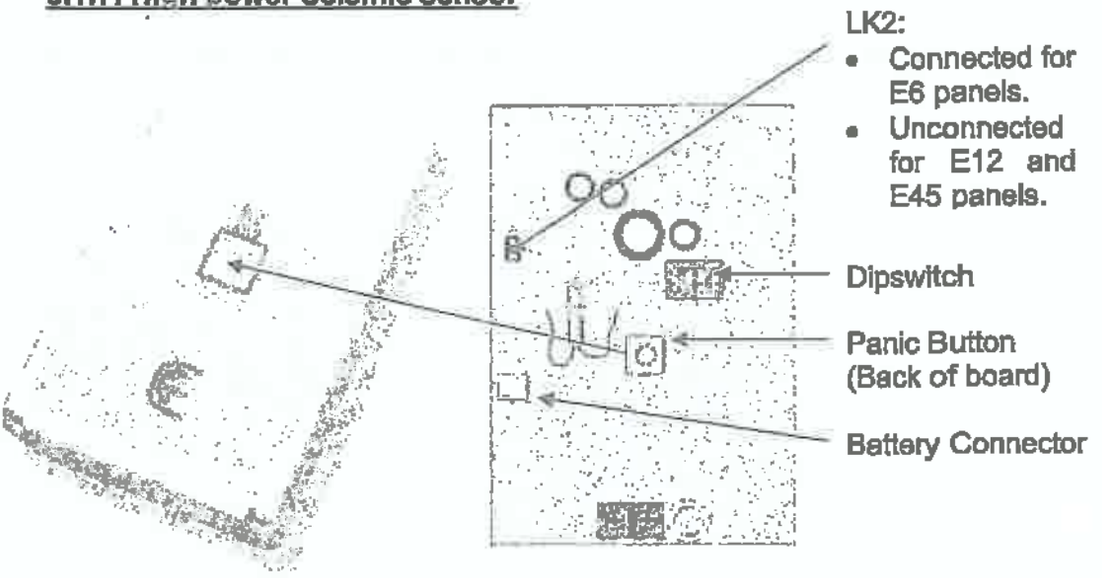
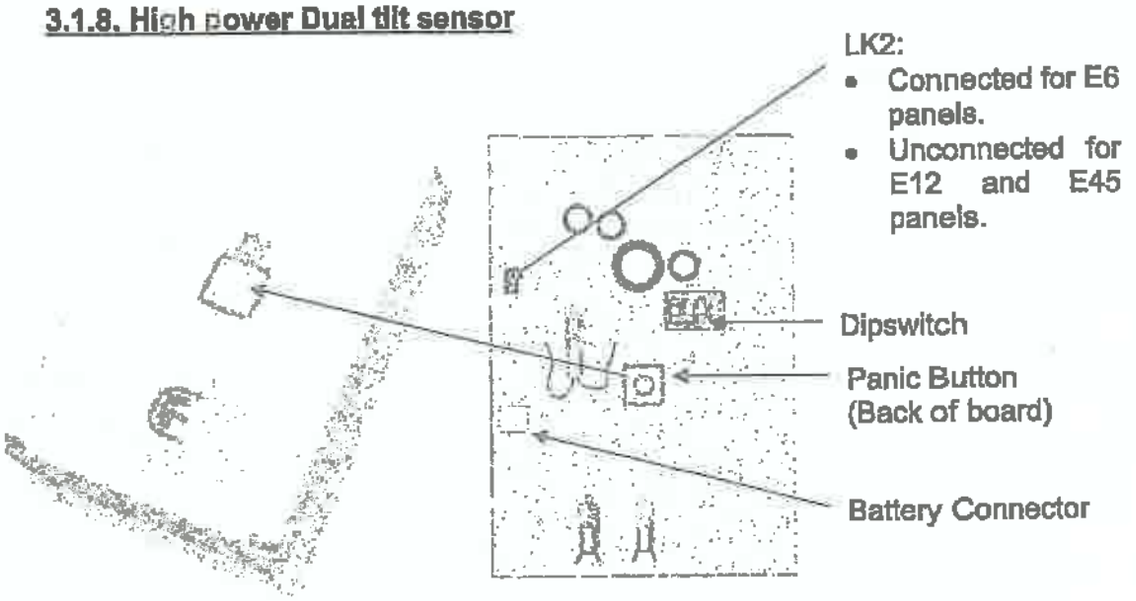
3.1.7. High power Seismic sensor



1. Open up the device and check that LK2 is configured correctly.
Check that the battery is connected.
2. Reassemble the unit and Press the Panic Button. Check that the LED of the sensor comes on and stays on for 2 to 3 seconds after you release the button.
3. Press the learn button on the panel once and make sure the LED switches on and stays on.
4. Press the Panic button on the sensor and hold for 3 sec.
5. The Control Panel Learn LED may switch off.
6. The Control Panel Learn LED should flash and then stop.
7. To program this device to a zone follow the steps in section 3.2 of this document.

3.1.8. High power Dual tilt sensor



1. Open up the device and check that LK2 is configured correctly. Check that the battery is connected.
2. Reassemble the unit and Press the Panic Button. Check that the LED of the sensor comes on and stays on for 2 to 3 seconds after you release the button.
3. Press the learn button on the panel once and make sure the LED switches on and stays on.
4. Press the Panic button on the sensor and hold for 3 sec.
5. The Control Panel Learn LED may switch off.
6. The Control Panel Learn LED should flash and then stop.
7. To program this device to a zone follow the steps in section 3.2 of this document.

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3.2. Associating Wireless Sensors with zones

Before installing a wireless sensor, the sensor should first be associated with the zone it must be installed in.

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
3. Press the trouble button, followed by 2nd function, followed by enter. The program button light and the trouble button light will switch on. All zone numbers which already has one or two sensors associated will also light up.
4. Press the Learn button on the sensor.
5. All zone numbers with less than 2 sensors programmed in will start to flash. If a button doesn't flash, that corresponding zone has 2 sensors programmed in already (Only 2 sensors per zone are allowed).
6. Press the required zone number button (Only flashing buttons). All buttons will stop flashing and the zone numbers with sensors programmed in will stay on. The sensor is now associated with that zone.
7. To program more sensors, start from step 4 above.
8. Press the enter button to exit program mode, when finished.

3.3. Removing Wireless Sensors from zones

Wireless sensors can be removed from a zone by following this procedure.

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
3. Press the trouble button, followed by 2nd function, followed by enter. The program button light and the trouble button light will switch on. All zone numbers which already has one or two sensors associated will also light up.
4. Press the zone number button that must be removed (Only switched on buttons). The button will switch off when it is pressed and the sensor is now removed from that zone. If there were 2 devices on that zone both will be removed.
5. To remove more sensors, repeat step 4 above.
6. Press the enter button to exit program mode, when finished.

3.4. Associating Key rings with Users

Each key ring remote must be programmed into the E12 before it can be used. Every remote must be programmed in on a different number, 1-12 (for user 1- 12). The keypad can be used to program in key ring remote controls by following this procedure:

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.

3. Press the trouble button followed by enter. The Program button light will switch off and the trouble button light will switch on. The numbers already associated with a remote will also switch on and can not be used again.
4. Press the yellow button on the key ring remote.
5. If it's the first remote to be programmed in, the '1' button will flash, indicating an available space. The flashing button indicates the next available number. Select the flashing number or any number with a button light which is off.
6. Press the selected button. The button light will switch on and stay on.
7. To program in more remotes, start from step 4 above.
8. When finished, press the enter button to exit program mode.

3.5. Removing Key rings

Key ring remotes can be removed from a zone by following this procedure.

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
3. Press the trouble button followed by enter. The Program button light will switch off and the trouble button light will switch on. The numbers already associated with a remote will also switch on.
4. Press the key ring number button that must be removed (Only switched on buttons). The button will switch off when it is pressed and the key ring is now removed from that user.
5. To remove more remotes, repeat step 4 above.
6. When finished, press the enter button to exit program mode.

3.6. Programming Active Zones

The keypad can be used to program active zones for all the different modes.

3.7. Programming Active Zones

The keypad can be used to program active zones for all the different modes. Programming by keypad will only work for the partition with which the keypad is associated.

3.7.1. Programming active zones for Away Mode:

Wired Zones:

- Switch the E12 to Off Mode.
- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wired zones, press the Away button, followed by enter. The Away button will light up and all the active zones will light up. If no zone buttons light up, no wired zones are active in Away Mode.

- To program a wired zone to be active in Away Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Away Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Away Mode.
- When all the zones have been programmed, simply press enter to return to program mode.

Wireless zones:

- Switch the E12 to Off Mode.
- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wireless zones, press the Away button, followed by 2nd function followed by enter. The Away and Prog button will light up and all the active wireless zones will light up. If no zone buttons light up, no wireless zones are active in Away Mode.
- To program a wireless zone to be active in Away Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Away Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Away Mode.
- When all the zones have been programmed, simply press enter to return to program mode.

3.7.2. Programming active zones for Stay Mode

Wired Zones:

- Switch the E12 to Off Mode.
- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wired zones, press the Stay button, followed by enter. The Stay button will light up and all the active zones will light up. If no zone buttons light up, no wired zones are active in Stay Mode.
- To program a wired zone to be active in Stay Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Stay Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Stay Mode.
- When all the zones have been programmed, simply press enter to return to program mode.

Wireless zones:

- Switch the E12 to Off Mode.

GSM

- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wireless zones, press the Stay button, followed by 2nd function followed by enter. The Stay and Prog button will light up and all the active wireless zones will light up. If no zone buttons light up, no wireless zones are active in Away Mode.
- To program a wireless zone to be active in Stay Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Stay Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Stay Mode.
- When all the zones have been programmed, simply press enter to return to program mode.

3.7.3. Programming active zones for Monitor Mode

Wired Zones:

- Switch the E12 to Off Mode.
- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wired zones, press the Monitor button, followed by enter. The Monitor button will light up and all the active zones will light up. If no zone buttons light up, no wired zones are active in Monitor Mode.
- To program a wired zone to be active in Monitor Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Monitor Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Monitor Mode.
- When all the zones have been programmed, simply press enter to return to program mode.

Wireless zones:

- Switch the E12 to Off Mode.
- Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
- To program wireless zones, press the Monitor button, followed by 2nd function followed by enter. The Monitor and Prog button will light up and all the active wireless zones will light up. If no zone buttons light up, no wireless zones are active in Monitor Mode.
- To program a wireless zone to be active in Monitor Mode, press the corresponding zone number button on the keypad. The button will light up, indicating that the zone will be active in Monitor Mode.
- To deactivate a zone, press the corresponding zone number button on the keypad. The button light will switch off, indicating that the zone will not be active in Monitor Mode.

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- When all the zones have been programmed, simply press enter to return to program mode.

3.6 Programming Passwords

The keypad can be used to program user passwords (Default: 1234) and the Master password (Default: 123456):

Programming User Passwords:

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
3. Press the MEM button followed by the user number (1-12). Pressing 2, for example, will mean that user password 2 must be programmed in. The selected number button will start to flash.
4. Enter the 4 digit numeric password and press enter.
5. To program the next password start from step 3 above. All 12 user passwords are programmed in the same way.

Programming the Master Password:

1. Switch the E12 to Off Mode.
2. Enter the 6 digit master code, press the program button followed by enter. The program button will light up, showing that the E12 is ready to be programmed.
3. Press the MEM button followed, by 2nd function, followed by enter. The MEM button will start to flash.
4. Enter the 6 digit numeric password and press enter.
5. Press enter a second time to exit program mode.

4. Summary of SMS Commands

In the table below, XXXX is a four digit user password.

Modes and Functions		
Description	**Command**	**Explanation or Default SMS**
Switch to Away Mode	$XXXXA	Away Mode Group A/Group B
Switch to Stay Mode	$XXXXS	Stay Mode Group A/Group B
Switch to Off Mode	$XXXXO	System Off Mode Group A/Group B
Switch to Monitor Mode	$XXXXM	Monitor Mode Group A/Group B
Silent Panic	$XXXXH	Silent Panic Group A/Group B
Panic	$XXXXP	Panic Group A/Group B
Reset E12	$XXXXr	Reset Group A/Group B
Trigger Gas discharge	$XXXXG9	Gas Triggered
Switch Output 1 On	$XXXXB1	Output 1 On
Switch Output 1 Off	$XXXXB0	Output 1 Off
Pulse Output 1	$XXXXB9	Output 1 pulse (Switch On and Off)
Switch Output 2 On	$XXXXC1	Output 1 On
Switch Output 2 Off	$XXXXC0	Output 1 Off
Pulse Output 2	$XXXXC9	Output 1 pulse (Switch On and Off)
Switch Output 3 On	$XXXXD1	Output 1 On
Switch Output 3 Off	$XXXXD0	Output 1 Off
Pulse Output 3	$XXXXD9	Output 1 pulse (Switch On and Off)
Switch Output 4 On	$XXXXE1	Output 1 On
Switch Output 4 Off	$XXXXE0	Output 1 Off
Pulse Output 4	$XXXXE9	Output 1 pulse (Switch On and Off)
Enable/Disable functions + information requests		
Enable Gas discharge	$XXXXG1	Auto Gas Enabled
Disable Gas discharge	$XXXXG0	Auto Gas Disabled
Disable 24 hr test signal	$XXXXV	Disable 24 H
Enable Seismic detector	$XXXXp	Seismic Detector On
Disable Seismic detector	$XXXXq	Seismic detector Off
Request signal strength	$XXXXT	/31 Signal Strength
Request alarm panel time	$XXXXt	Unit will reply with its current time and date setting
Request Timer Settings	$XXXX*	All timer settings will be sent to the requesting Cell phone
Request Base and SMSC numbers	$XXXXI	Base station and SMSC numbers will be given
Request Cell numbers	$XXXXJ	All 4 programmed cell numbers will be given
Status request	$XXXXL	Status of alarm/Mains power/Battery
Request zone setup	$XXXXs	Reports the zone setup for the different modes
Set Outputs as Telemetry outputs	$XXXX)	See Section 1.5
Set Outputs as SMS outputs	$XXXX(	See Section 1.5
Disable SMS sending in Monitor- + Stay mode	$XXXX>	No SMS's will be sent when panel is in monitor or stay mode
Enable SMS sending in Monitor- + Stay mode	$XXXX<	All SMS's will be sent when panel is in monitor or stay mode

Table 3.
Summary of SMS Commands.

Appendix A: Wiring Diagram

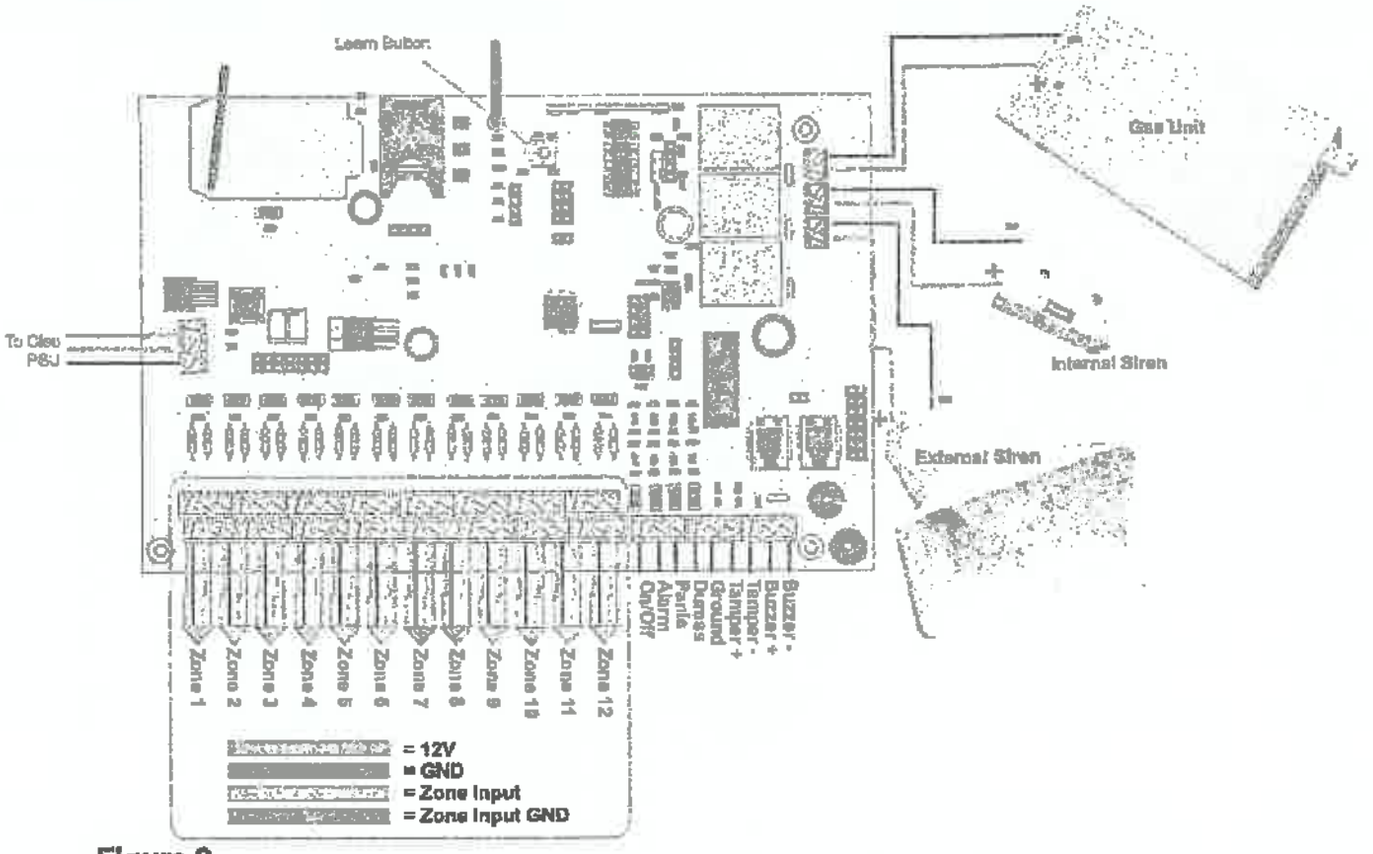

Figure 9.
Wiring diagram for the E12 Cleo.

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Appendix B: Connecting multiple keypads to the E12

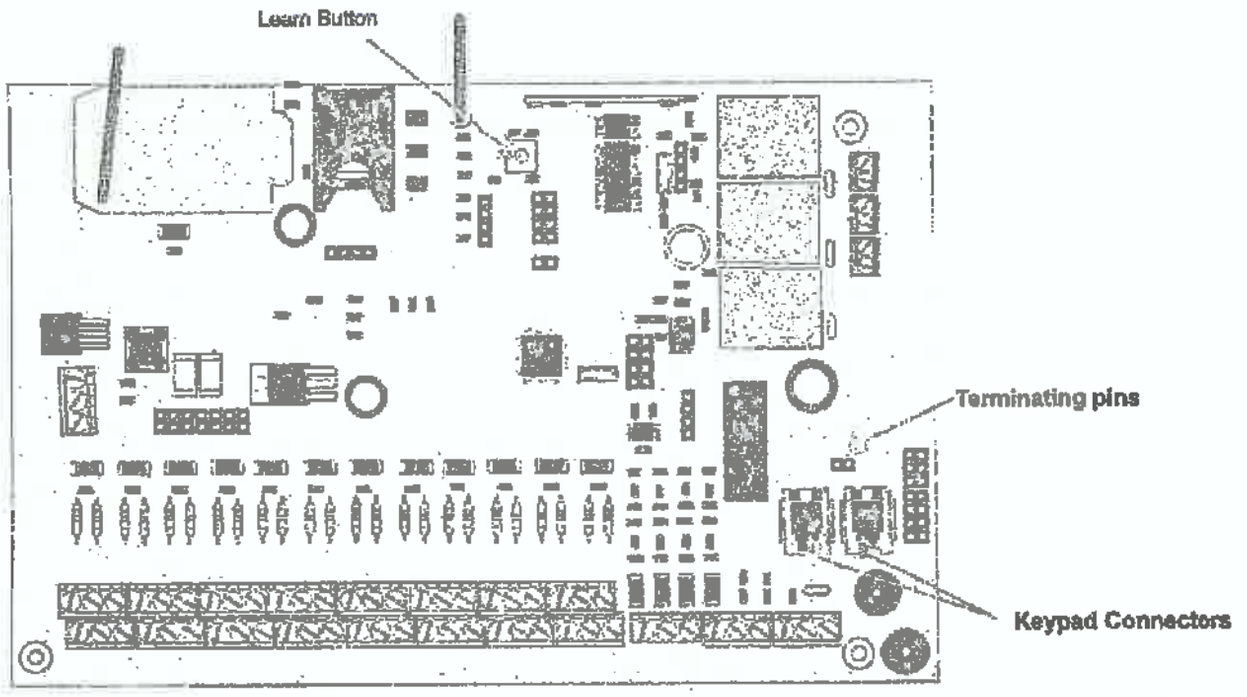

Figure B.1.
E12 Cleo PC board, showing the location of the keypad connectors and keypad terminating pins.

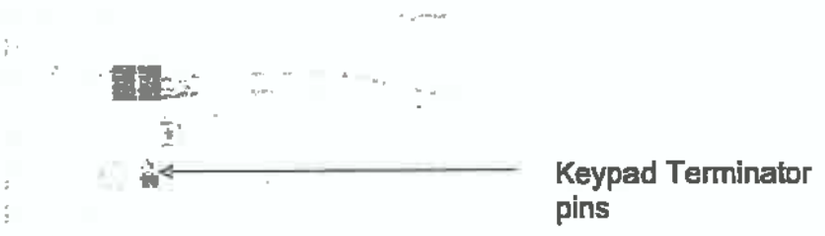

Figure B.2
E12 keypad PC board, showing the location of the keypad terminating pins.

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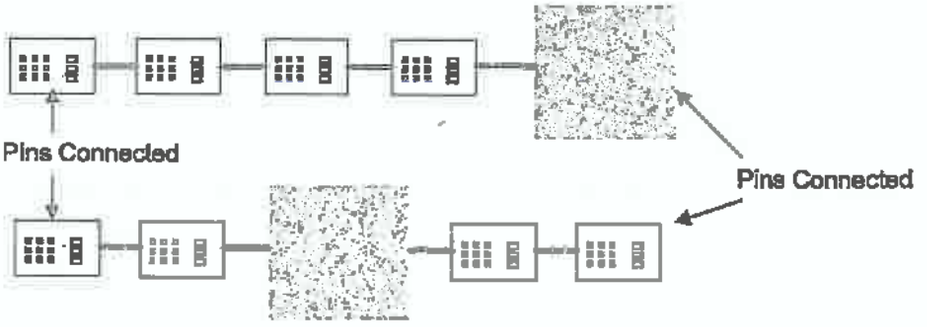

Figure B.3
Keypads connected to panel.

Two keypads can directly connect to the panel, using the connectors shown. To connect more than 2 keypads to the panel, the keypads must be wired in parallel. The keypad terminator pins must be connected for the two devices on the opposite edges of the connection and unconnected for the other devices. Figures B.1 and B.2 shows the location of the keypad terminating pins on the panel and keypad respectively. Figure B.3 shows 4 keypads connected to a panel in two different formats. The keypad terminating pins must be connected as shown in figure B.3.

Appendix C: Dipswitch settings for E6 devices

Settings used with E6 PIR

Function	Dipswitch setting 1 2 3 4
Learn	0 0 0 1
Trigger	1 0 0 1

Use the Learn function setting to learn the device into the panel. After successfully reading in the device, the dipswitch must be set to the trigger function.
Note: To Learn the device in, press the learn button or use TX shunt on older PIR's

Settings used with E6 Door Guard

Function	Dipswitch setting 1 2 3 4
Learn	1 0 0 1
Trigger in away mode	0 1 0 1
Silent in any mode	0 0 1 1

Use the Learn function setting to learn the device into the panel.
Trigger in away mode: Will cause an alarm condition if triggered while the panel is in away mode.
Silent in any mode: Trigger notification via telemetry outputs and keypad only.
Note: To Learn the device in use the NC or NO input, DO NOT USE THE PANIC BUTTON!!

WHEN USING E6 DEVICES, NO TAMPER AND PANIC FUNCTIONS ARE AVAILIBLE! IF THESE FUNCTIONS ARE REQUIRED, USE E12 / E45 DEVICES.

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Resistor Values
R1 = 1K8 Ohm
R2 = 470 Ohm
R3 = 7K5 Ohm

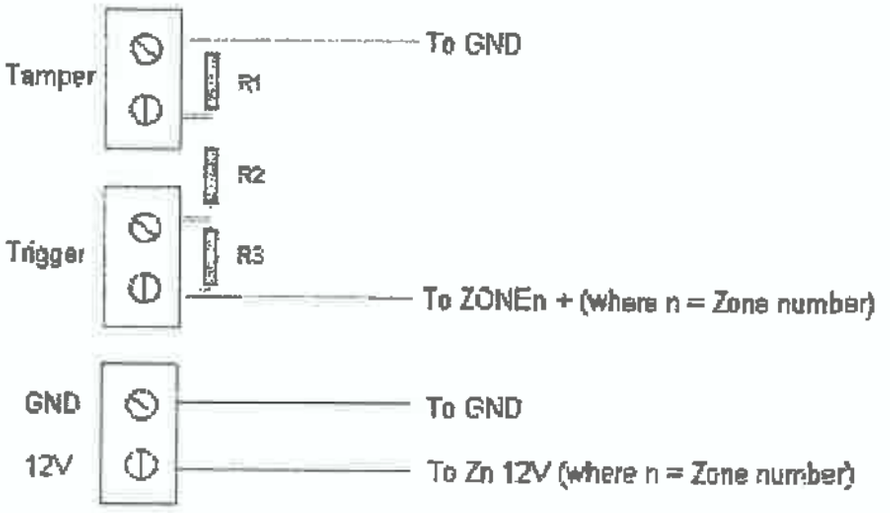

Figure 10. A.1
Connecting a passive infrared sensor to the E12. Also see figure 9 for wiring on the panel's side.

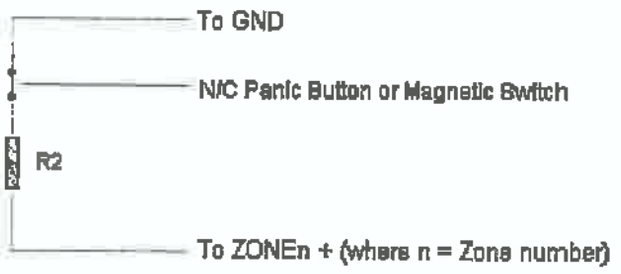

Figure 11.
Connecting a Normally Closed panic button or magnetic switch to the E12 for 24 hour monitoring (Opening the switch will result in a notification message only, no alarm condition). Zone n must be active in Away mode. Also see figure 9 for wiring on the panel's side.

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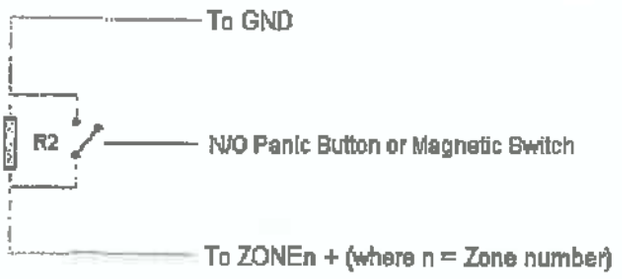

Figure 12.
Connecting a Normally Open panic button or magnetic switch to the E12 for 24 hour monitoring (Closing the switch will result in a notification message only, no alarm condition). Zone n must be active in Away mode. Also see figure 9 for wiring on the panel's side.

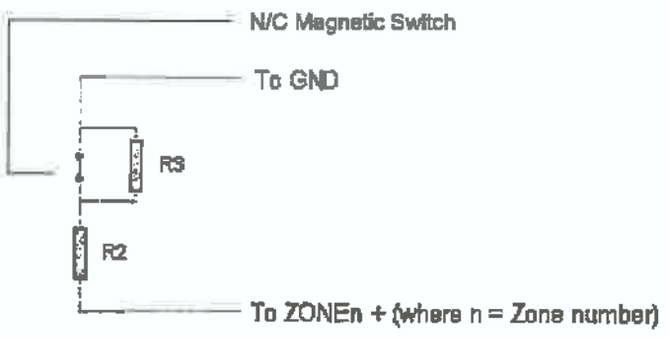

Figure 13.
Connecting a Magnetic Switch to the E12 for normally closed operation (Opening the switch will cause the alarm to trigger, only if the alarm is armed). Also see figure 9 for wiring on the panel's side.

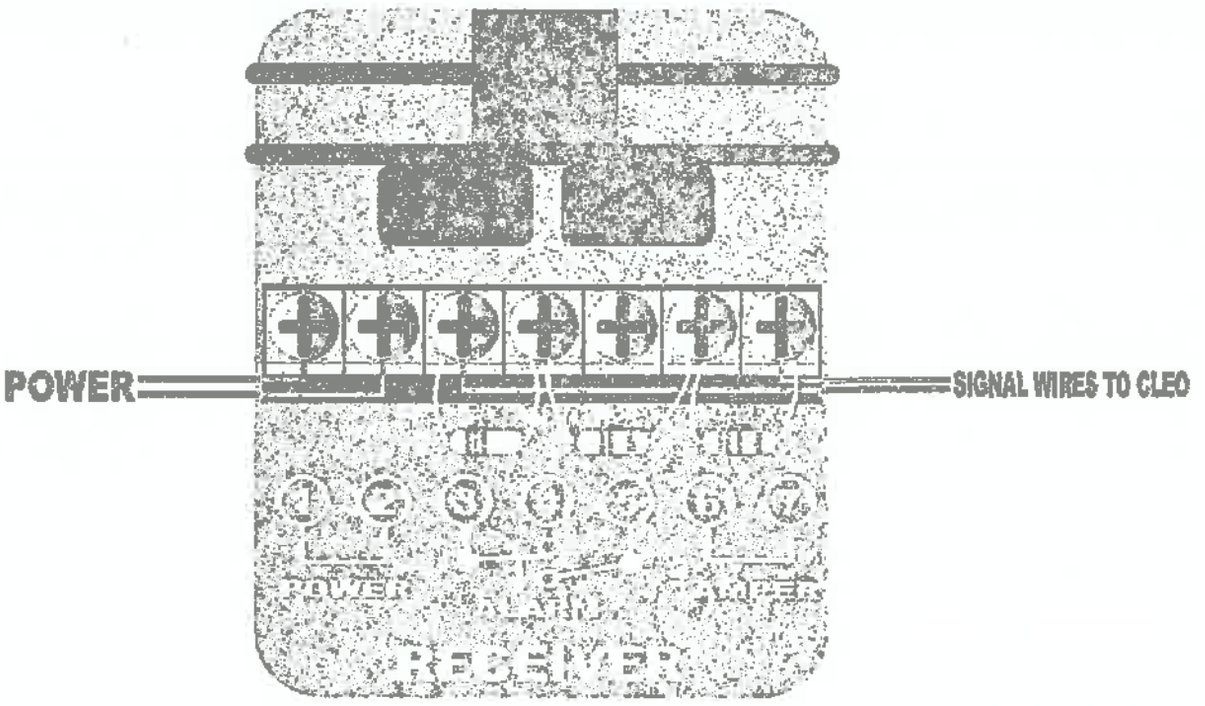

Figure C.4
Garrison Beam connection to the E12 Cleo.

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SEQ 29/2021-2421

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Security Warnings

- Only calls/text messages which are communicated with GOLD LOCK are secure, normal calls/text messages on the device are not secure.
- Prevent access to the secure phone device to people that you don't trust.
- Prevent installation of untrusted software on the secure phone.
- For maximum security - it is recommended to switch off infra red and Bluetooth connections on the secure phone.

Pre Requisites

- Both SIM cards participating in the call must be "data calls" (CSD) enabled
- Phone must be on GSM Network Mode – Go to Menu, Tools, Settings, Network, Network Mode – Choose GSM (Not Dual). The phone must be online with a SIM card inserted prior to changing this setting.

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Installation / Un-installation

IMPORTANT NOTE: Please make sure the phone is in GSM mode (See Pre Requisites section for details)

To install the application using a data cable:

- Install the Nokia PC suite (from the CD inside the box)
- Attach the data cable to the USB port of the PC.
- Connect the data cable to the Nokia device.
- Make sure the phone is identified by the PC.
- Double click the SIS Installation file on the PC.
- Follow the on screen instructions to complete the installation.
- From the installed applications menu, click on Gold Lock to activate.
- Confirm service note.
- Wait for 3 minutes while system is initialized (in the background once per phone restart).
- Select Options, Settings, Disable bill warnings, Confirm.
- Select Options, Settings, Enable auto start
- Go to Options, Register.
- Insert your registration code.

To remove the application:

- Open the phone's Application Manager.
- Mark the GOLD LOCK application, choose Options, Remove.
- Confirm the following messages by the uninstaller.

To upgrade – install a newer version

- Perform the steps to remove the old version.
- Perform the steps to install the new version.

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Usage Instructions

- **Wait for 3 minutes after installation or phone boot, to enable the encryption software to fully load.**

- **To initiate a call:**

  - Press the "C" button until the GOLD LOCK application appears. You can also call the GOLD LOCK application by pressing the menu button and choosing the GOLD LOCK icon.
  - Type the phone number you wish to call.
  - If you want to choose a number from your contacts list, go to Options => Contacts and choose a contact name from there.
  - To start dialing, press one time on the joystick button, or the green dialing button.
  - You can begin the conversation after the message "Secure Call Started". You may verbally confirm with the recipient side that both red verification codes on screen are identical, as an extra measure of security.

- **To receive a call:**

  - When your phone receives a secure call, the encryption software automatically detects it.
  - Choose "Answer" or "Reject".

- **To send a secure text message during a call:**

  - While in a secure call, choose "Messages", then press on "Create Message".
  - Type the text you wish to send (you can switch between languages and numbers using the PEN key).
  - Press once on the joystick to send the message.

- **Volume control: you can easily raise or lower the hearing volume with the joystick button (to raise push button up, to lower push button down).**

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Tel:
+972 8935 2335

URL:
www.gold-lock.com

Email:
info@gold-lock.com

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The New IDU-5

- South African designed & manufactured – components imported
- Stand-alone (no host required)
- Carries text related data locally e.g. name, surname & employee number
- Ethernet (TCP/IP) – configurable (full LAN/WAN abilities)
- Unique MAC Address
- Fingerprint quantity scaleable
- Local identification & verification
- Online identification & verification
- 6-12V DC power
- RS232
- RS485
- Wiegand 26/44 bit send and receive
- Access Control Software
- Time & Attendance Software Compatible
- Application Programming Interface e.g. interface into existing systems
- 12 Month carry-in warranty
- Embedded biometric firmware
- Firmware driven – no moving parts
- GSM-GPRS capabilities
- Platform independent
- Upgrade device firmware via network
- Configure each device separately as per requirement
- On board real-time clock – last approximately 10 years
- Interface capabilities
- • Smart cards
  - • Proximity card readers (Wiegand)
  - • DVR, Cameras, Video
  - • Electronic doors
  - • Car ignition system
  - • Etc.
- Polycarbonate casing
- Changeable faceplate e.g. branding

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HIGH RISK AND PORTABLE ASSET LIST

User name	User personnel number	Asset number (SAP number)	Asset bar code	Asset description	Serial number	Room bar code	Building code	Cost centre code	Responsible Asset coordinator
HELGARD LOMBARD	00007990								
	00007990			Acer travelmate Notebook	LXTEH060366510CDC42500				
	00007990			Fujitsu PC MCIA [illegible]	[illegible]				
	00007990			Logitech PC Webcam 9.7mm Minimice	[illegible]				
	00007990			Logitech PC Webcam Minimice	[illegible]				
	00007990			[illegible] Monitor Caber	[illegible]				
	00007990			[illegible] Radio [illegible]	[illegible]				
	00007990			Seagate Free Agent [illegible] Device [illegible]	[illegible]				
	00007990			Epson [illegible]	[illegible]				
JOHAN DE WAAL	0035								
			2061M	Epson C4200 Printer	GMYZ111740			502031	
			7008K	Acer Notebook	LXTEH060366510CDC42500			502031	
				Kenwood Radio	30808917				
				Kenwood Radio	30808911				
				Two Kenwood Radio Chargers					
				External 100Gig hard drive				502031	
				Telsip Phone					
				Fast Link Data Card	E81AE106B1704137			502031	

SEQ 29/2021-2427

Item	Description	Serial Number	Owner	Registration no
1	Marantz PMD660 Solid State Recorder	20030722011268	Adv Gerrie Nel	
2	Marantz PMD660 Solid State Recorder	20030722011289	Adv Vusi P. Pikoli	
3	Marantz PMD660 Solid State Recorder	20030722011270	Andrew G. Leask	
4	Marantz PMD660 Solid State Recorder	20030722011266	Adv Thanda Mngwengwe	
5	Diasonic DDR5100 Voice Recorder		Kalyani Pillay	
6	TeleEye RX504	VTC28947	Adv Thanda Mngwengwe	
7	TeleEye RX504	VTC28954	Andrew G. Leask	341e089513
8	HSDPA Router	IMEI:354114010063189	Andrew G. Leask	
9	Ethernet Switch	A330167303013	Andrew G. Leask	
10	TeleEye RX504	VTC28926	Adv Gerrie Nel	89b4ecf12f
11	TeleEye RX504	VTC28928	Ops Support - Jenade	8786127b3d
12	TeleEye RX504	VTC28955	Adv Vusi P. Pikoli	243f0968e4
13	HSDPA Router	354114010063148	Adv John Welch	
14	TeleEye RX504	VTC28952	Adv John Welch	145c0af3b5
15	Diasonic DDR5100 Voice Recorder		Adv John Welch	
16	HSDPA Router	IMEI:354114010063304	Spare - Earmarked for L.F. McCarthy	(192.168.1.10)
17	HSDPA Router	IMEI:354114010066257	Adv Gerrie Nel	

SEQ 29/2021-2428

Memorandum of understanding

Between the

SOUTH AFRICAN POLICE SERVICE

CRIME INTELLIGENCE GATHERING DIVISION

(Herein after referred to as SAPS:CIG)

Herein represented by J. Selebi in his capacity as the National Commissioner of Police

And

THE SOUTH AFRICAN REVENUE SERVICE

(Herein after referred to as SARS)

Herein represented by P.J. Gordhan in his capacity as the Commissioner of the South African Revenue Service

Concerning

Mutual co-operation between the SARS and SAPS:CIG aimed at enhancing the South African state's capacity to address criminal activity and to collect state revenue.

PREAMBLE

1.

Noting the low levels of tax morality in our society, the strong link between serious crime, trans-national crime and tax evasion, the increase in revenue related crimes committed on an organised basis as well as the State's capacity constraints to address organised crime within the Republic of South Africa;

Believing that the deepening of democracy and the promotion of basic human rights amongst other requires an enhancement of the South African state's capacity to address organised criminal activity and to collect state revenue;

Further believing that the strategic collaboration, within the framework of law, between SARS and the SAPS:CIG can assist both institutions in the execution of their respective statutory mandates;

Accordingly a memorandum of understanding is hereby entered into between SARS and the SAPS:CIG as represented by the Commissioner of the South African Revenue Service and he National Commissioner of the SAPS

PURPOSE

2.

This memorandum of understanding:

2.1 Sets out those matters agreed upon by the SARS and the SAPS:CIG (the parties) with regard to the co-operation between them;

2.2 Will serve to strengthen and formalise the existing relationship between the parties in the fields of information sharing, joint enforcement actions and in general mutual co-operation and assistance;

2.3 The purpose of this agreement must provide tends to provide for a suitable mechanism to enable SARS to act in support of SAPS:CIG in matters pertaining to

GSM

common focus areas concerning tax and customs related organised crime in South Africa. To this end SARS has created a dedicated unit of staff who are tasked to collect and analyse departmental intelligence as described in the National Strategic Intelligence Act. In order to ensure that maximum benefit is obtained by SARS in the utilisation of this unit, operational support will be provided by SAPS:CIG. This support will be two-fold:

2.3.1 SAPS:CIG will provide a mechanism to support personnel requirements for identified SARS personnel; and

2.3.2 SAPS:CIG will provide a mechanism whereby operational costs can be managed (SARS will provide all funding relevant to this unit via SAPS:CIG

PRINCIPLES

3.

The parties agree:

3.1 In pursuit of SARS's request to develop a departmental intelligence capability with the mandate to focus on organised tax and customs crimes SAPS:CIG will support SARS;

3.2 Any mechanism or system provided for in terms of this agreement must conform to procedures and policies of both parties and the PMFA;

3.3 To seek synergies and areas of collaboration between both parties on an ongoing basis;

3.4 The SARS departmental intelligence capability will not exceed the functions as described in the National Strategic Intelligence Act and will restrict it's functioning to that of SARS related departmental intelligence

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PERSONNEL REQUIREMENTS

4

4.1 All staff deployed within the SARS unit is fulltime employees of SARS. All rights and consequences flowing from this fact fall within the ambit of SARS as the employer and the identified personnel as employees.

4.2 SAPS: CIG undertakes to manage the payroll for the identified staff in the following manner:

4.2.1 SARS will provide an annual cost to company breakdown for all staff, including salary, allowances, bonuses and other personnel costs.

4.2.2 SAPS: CIG will create a legal entity for the purposes of this agreement,

4.2.3 SAPS: CIG will make funds available to the legal entity that will in turn pay the exact monthly remuneration to the employees. PAYE will be deducted and paid to SARS in the normal sense. The legal entity will in turn, issue annual IRP5's to all employees.

4.2.4 An Individual contract will be entered into between employees and the created legal entity to maintain the status of SARS employees.

4.3 SAPS: CIG will recoup the total cost to company costs from SARS on a quarterly basis.

4.4 Specific aspects pertaining to personnel requirements are elaborated as in the attached annexure being:

4.4.1 Employee / employer relationships

4.4.2 Remuneration

4.4.3 Increases

4.4.4 Tax

4.4.5 Medical aid

4.4.6 Pension fund contributions

4.4.7 Bonuses

4.4.8 Any other salary aspects

4.4.9 Recruitment and selection

4.4.10 Promotion

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4.4.11 Disciplinary and grievance procedures

4.4.12 Unemployment Insurance fund contributions

4.4.13 Workmanship compensation

4.4.14 Injury on duty

4.4.15 Danger allowance

4.4.16 Overtime

4.4.17 Leave

OPERATIONAL FUNDING

5

5.1 The SARS unit will, as any other business unit in SARS, have to conform to the annual and MTEF budgeting cycle. The unit will be required to submit an annual budget, associated to an annual business plan. The budget subject to approval and allocation of the SARS finance division will set out operational and capital expenditure in the format as attached. Subject to SARS executive approval SAPS: CIG will finance the activities of the unit through SAPS finance systems in respect of:

5.1.1 Acquisition of equipment and resources

5.1.2 Travel and subsistence

5.1.3 Payment of informants

5.1.4 Entertainment of sources and clients

5.2 Approval requirements for expenses are set out in more detail as per annexure

JOINT LAW ENFORCEMENT ACTIONS

6.

Joint enforcement action is defined as those investigations where the Commissioner of SARS and the SAPS:CIG or their representatives agree that a pooling of resources between the SAPS:CIG and the SARS is required to successfully engage a criminal syndicate, enterprise or individual. Such pooling of resources may take the form of

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legal information sharing, secondments and resource sharing. It is expected that once a request for such joint action has been made and agreed upon, the investigation will be undertaken as a project with the requestor acting as project manager.

OVERSIGHT MECHANISMS

7

7.1 PFMA

7.2 SARS annual budgeting & MTEF cycle.

7.3 SAPS: CIG secret document on auditing requirements

7.4 Coordinating committee annual and quarterly report meeting on reviewing and approval. The report need to elaborate on:

7.4.1 Costing

7.4.2 Expenditure vs. Cost reconciliation

7.4.3 Operational progress and successes

7.4.4 Expense forecast for next quarter

7.5 All cost subject to approval of formal operational projects by the General Manager: Enforcement & Risk

REVIEW

8.

8.1 This agreement will be reviewed regularly to determine any adjustments, which may be necessary. An amendment is subject to written approval of both parties herein.

8.2 This is a founding general agreement between the parties. Further details with regard to matters agreed to in terms of this agreement will be dealt with between the specific business units of SARS and the SAPS:CIG. Such other specific additional agreements will be in writing and from annexure to this agreement, and

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will only come into effect after being signed by duly authorized representatives of both parties.

ANNEXURES

9.

9.1 Personnel Support
9.2 Budget Format
9.3 Operational Funding
9.4 Request for expenditure
9.5

SIGNED AND AGREED TO on this ___ day of _____ 2007 at _____

_____

For and on behalf of SAPS: CIG

National Commissioner for SAPS

SIGNED AND AGREED TO on this ___ day of _____ 2007 at _____

_____

For and on behalf of SARS

Commissioner for SARS

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N

Short report – Meeting with S 23 July 2018-07-23

CF, JdW and HL met with S as requested. The meeting took place at Centurion Mall at 08h00. During this meeting the CF, JdW, told him that they did not answer his call as the team decided to break contact with him. We were just respecting this decision. HL told him that he took his calls as was not really part of the team the past few months.

HL started to tell S that should he be placed in an uncomfortable position due to the work he did for S he will seek personally put in a civil claim against him as S told him that the tasking came directly from the president and he later learned it did not. He also told S that he is unhappy about the continuous lies that S told whilst he was in charge of the team. CF explained that he was upset about S allegations that the team broke into his house and stole his computer. He explained that there was a breached of trust between S and the 3 members that would not recover easily. He confirmed that he was also upset about S's deceitful behaviour. He could also not understand why S send a MXit message to him indicating that he is going to "blow the team out of the water" and that he is "going to see GN" about operation "Sunday evenings".

Johan told S that he was upset because S tried to discourage SF (his fiancé) to apply at SARS because and that he requested CF to assist him in persuading her. He was especially upset after S tried to organize a job for his own wife at SARS.

S replied that he has in his possession a letter signed by PG that they authorized and will carry the legal costs should there be any problems due to operation "Sunday evenings". HL asked for a faxed copy, S said that the letter was with his lawyer and that he will get it from him.

We did not confront him on more issues as we tried to keep the conversation as friendly as possible. JdW and CF left and HL continued to have a meeting with S. S told HL that his insurance does not want to settle his claim because they accuse him of burglar his own house and that the claim is a sham.

Secondly, he asked HL what is going on with the Sonel case. He say-ask me whether HL was the manager of Sonel HL told him that Chief Courier Intelligence was the manager of Sonel and that they employed him as clerk to manager or financial manager or where ever they needed him. He then asked whether he have read the article in Beeld of Sonel.

Comments: It is interesting that he mentioned Sonel and the Beeld. A further interesting point is that Erika Gibson wrote the article in the Beeld

After the meeting we met up with JvL, he again explained the importance of us telling him that IP knows about the things he did wrong, after a lot of persuasion from JvL, JdW form now on called "JdW the brave" called S and told him that he told IP about the profile FvN did for BN via SN and the file he wanted us to hand to the press (S still believes the file was handed to the press).

The end.

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0

GESPREK

MNR S. JANSE VAN RENSBURG

&

MNR H. LOMBARD

28 APRIL 2009

ALPHA TRANSCRIPTION SERVICES CC
REG. NO. CK96/09848/23
TEL: (012) 997-3414

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SEQ 29/2021-2438

GESPREK

MNR S. JANSE VAN RENSBURG & MNR H. LOMBARD: 28 APRIL 2009

MNR LOMBARD: Hoe lyk dit?

MNR VAN RENSBURG: Nee oraait en jy?

MNR LOMBARD: Okay.

MNR VAN RENSBURG: Jy raak nog wit.

MNR LOMBARD: Ja en jy raak nie bruin nie, jy is veronderstel om bruin te wees.

MNR VAN RENSBURG: Hoor my, ek dra 'n hoed.

10 MNR LOMBARD: Dit moet 'n groot hoed wees.

MNR VAN RENSBURG: Nee ek dra 'n hoed en ek smeer salfies. Nee, nee, die son is nie jou maat as jy nie hare het nie.

MNR LOMBARD: Ek glo dit goed.

MNR VAN RENSBURG: Ek het 'n groot hoed wat ek dra, ek smeer my elke dag faktor – hierdie 30 of wat ook al plus – faktor 50. As ek nie smeer nie brand ek moer toe en as jou kop eers gebrand het dan – jy kan nie eers jou gesig trek nie dan is dit seer.

MNR LOMBARD: Jy kan nie 'n hoed op sit dan nie.

20 MNR VAN RENSBURG: Ja jy kan nie jou hare was nie, dis 'n bietjie sensitief, ek is mos baie lig. So verder?

MNR LOMBARD: Net hel baie werk, maar verder gaan dit goed. Daar by jou? Dit moet goed gaan met die boerdery.

MNR VAN RENSBURG: Ja dit gaan aan.

MNR LOMBARD: 'n Pel van my bel my gister, hy is in Tanzanië, hy is daar by 'n goud myn, sekuriteit bestuurder. Hy werk daar want hy kry 'n helse goeie pakket.

MNR VAN RENSBURG: Ek het so 'n paar jaar terug in Tanzanië mos ook gewerk, Dar Es Salaam, op tot bo teen die berg.

30 MNR LOMBARD: Hulle is daar somewhere 80 kilos van die

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SEQ 29/2021-2439

naaste dorp af, 70, 80.

MNR VAN RENSBURG: (Onduidelik)

MNR LOMBARD: Maar hy het ook 'n paar beeste hierso en sy beeste het goed aan gekom. Hy het daar by Wepener 'n plaas. Sy pa is nou oorlede, nou het hy nog 'n plasie geëerf en by Henneman het hy ook 'n plaas. En hy bly self in Virginia, so dis 'n kwessie van so 250 kilos van sy naaste plaas af, of die plase uitmekaar. Hulle het goed - amper sê ek gebroei.

10 MNR VAN RENSBURG: Ja-nee wat, ek het nou Vrydag laat dragtigheid doen, so dan bly jy op hoogte van hoeveel kallers jy kry en die wat nie gevat het nie, dan sê hy vir jou hulle is jonk genoeg, sit nou weer later 'n bul by hulle en die wat jy sien is miskien 'n bietjie ouerig en so, die slag jy uit dan bly jou trop heeltyd in produksie. So jy hou nie 'n dier aan wat oorslaan nie. As hy oorslaan dan kos hy jou geld, jy kry niks terug daar nie. So jy slag uit en dan bly jou kudde so dat as jy 300 koeie het moet jy 300 kaller hê, anders werk dit nie uit nie. Jy kan nie fokken
20 50 daar laat loop nie.

MNR LOMBARD: Hoe lank is hulle dragtig?

MNR VAN RENSBURG: Kyk na sy gekalf het 56 dae daarna dan is haar baarmoeder weer herstel.

MNR LOMBARD: En dan?

MNR VAN RENSBURG: Dan moet ek werk op - ...(onduidelik) vir 270 dae daarna.

MNR LOMBARD: Dan is daar weer 'n kalf. So hulle kan so twee kalwers 'n jaar gee.

MNR VAN RENSBURG: Eintlik net een 'n jaar, want kyk hy
30 skuif aan. Onthou as sy kalf dan is dit plus 56 dae. So

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SEQ 29/2021-2440

die ouens praat van ...(onduidelik) dan klink dit moerse fokken slim. Want as sy September kalf né, 56 dae daarna is sy eers reg vir die bul.

MNR LOMBARD: So jy moet druk vir 'n klomp koeie.

MNR VAN RENSBURG: Ja. Ek hardloop wat ek het wat kallers kry moet ek 450 kallers kry. Dis sonder my skape en varke en sulke goed.

MNR LOMBARD: Jy moet van die varke ontslae raak, jy sien wat gebeur in Mexico.

10 MNR VAN RENSBURG: Ja maar myne toets ek. Die staatsveearts kom doen toetse.

MNR LOMBARD: Maar hulle sê daai vark griep wat hulle van praat in Mexico is nie varke nie, dit het niks te doen met varke nie.

MNR VAN RENSBURG: Dis 'n strain van 'n vark virus wat die mense kry.

MNR LOMBARD: Hulle sê dis meer mens en voël as wat dit engisins met varke te doen het. Dit het niks met vark te doen.

20 MNR VAN RENSBURG: Die staatsveearts kom verniet een keer in ses maande dan kom toets hulle my varke daar.

MNR LOMBARD: Hoe so?

MNR VAN RENSBURG: Vir vark griep.

MNR LOMBARD: Nou maar hoe kom hy nou verniet, is dit nou deel van die staat se - (pouse)

MNR VAN RENSBURG: Die staatsveaarts moet 'n sekere kwota diere 'n jaar toets, onder andere varke en ek is een van die min ouens wat varke het. So nou kom, dan val dit binne, dan sê nou hulle moet 2 000 varke 'n jaar toets, dan kry hulle

30 nie ander boere nie, so hulle kom gratis na my toe - net om

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SEQ 29/2021-2441

hulle kwotas van 2 000 op te maak dan kom hulle elke ses maande na my toe en dan toets hulle die varke - dan trek hulle die bloed.

MNR LOMBARD: So daar is nie juis varke in die land nie. Voer ons in?

MNR VAN RENSBURG: Ja ons voer baie in, maar jy sien dit is goed as 'n verbod op hulle geplaas word dan stoot dit my vark pryse op. Jy kan nou 'n vark geslag - verlede Donderdag toe slag ek 259 kilogram, swaarder as 'n bees.

10 MNR LOMBARD: Jis, 259?

MNR VAN RENSBURG: Ja sweer, 259 hang hy aan die yster daarso.

MNR LOMBARD: Uitgeslag?

MNR VAN RENSBURG: Uitgeslag, swaarder as 'n bees geslag.

MNR LOMBARD: Dan is hy vet. Hoe de hel kry jy daai gewig?

MNR VAN RENSBURG: Nee dis 'n beer. Jou beer - jy sien hy raak te swaar vir my sôe want hy kan hulle nie dek nie. As hy hulle dek dan lê hy hulle in die grond in, dan slag ek

20 hom uit. Maar my gemiddelde op die haak wat ek kry is so 160, 120 kilogram op die oomblik. Ek verkoop hulle nie onder dit nie, want jy kan hulle uitslag so 50 kilogram, dan maak jy jou geld. Maar as jy hom 'n bietjie langer vat, daar is 'n kurwe - hy groei in daai eerste drie maande so, dan begin daai kurwe so maak, dan word hy al hoe platter. Dan eet hy minder maar hy sit meer gewig aan, dan kry jy meer geld - daai laaste kilogram oor 50.

MNR LOMBARD: En die boere in die omgewing, het jy al pelle gemaak?

30 MNR VAN RENSBURG: Daar is 'n boereverenigingmaar 'n ou is

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SEQ 29/2021-2442

te besig, ek hang nie rond daar by hulle nie.

MNR LOMBARD: Ja hulle is mos maar so.

MNR VAN RENSBURG: En in Limpopo(?) – jy het gelees van daai goed in die koerant van die tapes wat gegee is – daai tapes wat ek ...(onduidelik).

MNR LOMBARD: Maar ek moet jou sê – ek gee nie eintlik om nie, dit het eintlik – jy weet daar is nie meer tyd vir speletjies nie, ek het nie tyd vir daai goed nie. So daar kan op wees net wat daar op wil wees. Ek meen in die verlede was ek al so baie mislei dat ek het nou nie meer tyd vir sulke goed nie. Jis ek het baie werk. Ek is more nie hier nie, ek is oormore nie hier nie, nee ek het baie werk, glo jy my maar. So ek kyk nie eers meer na daai goed nie.

MNR VAN RENSBURG: Maar daar het niks teruggekom daarvan na jou toe nie in die afgelope jaar wat ek – (pouse)

MNR LOMBARD: Nee maar daai tapes het ek nou zero mee uit te waai. Net soos ek sê ek is so baie mislei dat daai goed – ek steur my nie aan daai nie. Ek hanteer nie meer daarmee nie, ek doen my werk and that's it. Daai goed is iets van die verlede. 'n Ou moet wegbreek van enige goed af. Soos jy self weet jou baas was verantwoordelik gewees, aanspreeklik gewees vir enige iets. So dit pla my nie juis wat in daai tapes is nie, to be quite honest, want daai speletjies is verby.

MNR VAN RENSBURG: Wat sê ek vir NIA?

MNR LOMBARD: Met wie praat jy by NIA?

MNR VAN RENSBURG: Daar is twee wat op pad is na my toe. Waaroor weet ek nie, want dis al wat dit kan wees is daai.

MNR LOMBARD: Nee, miskien vir jou 'n job aanbied. Nee, soos ek sê Skolla daai tyd is verby en ek het al vir

GSM

SEQ 29/2021-2443

jou gesê, jy weet, wat ek in die Weermag gedoen het en wat ek vir SASS gedoen en vir die DSO gedoen het, dit is iets van die verlede. As iemand my mislei het moet hulle maar die dingès vat, die rap vat. So daai tyd van daai speletjies is verby. Die verkiesing is verby, ek dink dis tyd dat 'n ou skouer aan die wiel sit en begin werk en los daai goed. Kry dit van jou rug af, kry dit verby. Konsentreer op jou boerdery, laat hulle hulle job doen. Dis soos ek dink dit moet werk.

10 MNR VAN RENSBURG: Sê gou vir my en Johan en Charl en daai ouens, hoe gaan dit met hulle?

MNR LOMBARD: Weet jy ek kry nie tyd om met daai ouens te praat nie. Wat ek gehoor het is hulle goed is in plek, as hulle opdragte ontvang skryf hulle nou 'n konsep plan en dit word goedgekeur. Dan werk hulle volgens 'n projek plan en hulle het 'n dashboard waarteen hulle gemeet word. So ek hoor al hulle goed is nou in plek.

MNR VAN RENSBURG: En Charl, is hy nie op pad al Australië toe nie?

20 MNR LOMBARD: O nee ek het nie 'n clue nie hoor.

MNR VAN RENSBURG: Isit?

MNR LOMBARD: Nee ek het nie 'n clue nie. Ek sal jou wys - April afsprake, al die rooi kolletjies, Maart afsprake - ons kan terug gaan - Februarie. So ek het nie tyd vir sulke goed nie. Ek 157 sites wat moet klaar kom waarvan ek dink 39 is ek amper klaar - tot my e-mail om skoon te kom. So daar is net nie ander tyd nie.

MNR VAN RENSBURG: En by die huis hoe gaan dit daarso - die kinders?

30 MNR LOMBARD: Ja ek het so 'n bietjie - Johan is

GSM

SEQ 29/2021-2444

geopereer nou so 'n rukkie terug, maar dit gaan nou goed met hom. En daar by joune?

MNR VAN RENSBURG: Nee goed.

MNR LOMBARD: Cecily, is sy al afgetree?

MNR VAN RENSBURG: Ag ons sal kyk, ons sal nog 'n besigheid gekoop het, so ek sal hier by Julie besluit wat van haar word en die tweeling, want Misha is klaar met skool.

MNR LOMBARD: Hoekom, het jy beeste verkoop?

MNR VAN RENSBURG: Nee ons sal nou kyk, 1 Julie sal ons besluit wat gaan van haar word.

MNR LOMBARD: 1 Julie. En die kinders, Misha?

MNR VAN RENSBURG: Hy is in matriek, hy gaan goed aan. Ons wag nou, hy het nou aansoek gedoen, hy soek mediese keuring. So as hy dit kry dan is hy uit my huis uit, dan gaan hy die pad vat.

MNR LOMBARD: Hy sal dit kry, hy is 'n skerp seun.

MNR VAN RENSBURG: Hy wil deur die Weermag gaan swot.

MNR LOMBARD: Slim.

MNR VAN RENSBURG: Ons het daar 'n brief vir hom ingesit, so ons wag nou maar daar ...(onduidelik). More is die afsny datum ...(onduidelik) maar hulle gaan goed aan.

MNR LOMBARD: Die tweeling ook?

MNR VAN RENSBURG: Die tweeling, ja hulle doen goed. Kyk hulle is nou in Afrikaans Seuns en Meisieskool, maar ek het nou hulle rapporte gekyk in Engels alweer, Afrikaans - hulle het so 'n gemiddeld van 75.

MNR LOMBARD: Dis goed.

MNR VAN RENSBURG: Ja kyk hulle moet die taal leer, hulle het niks in Afrikaans gedoen op laerskool nie, nou moet alles weer in Afrikaans gedoen word.

GRM

SEQ 29/2021-2445

MNR LOMBARD: Ja jy weet dis goed, daai fondasie is gelê vir ewig. Die Engels, hulle sal 100% tweetalig wees vir die res van hulle lewe.

MNR LOMBARD: Jammer ek is so ongeskik, maar soos jy sien dit gaan wild boeta.

MNR VAN RENSBURG: Ja-nee.

MNR LOMBARD: Wat gaan jy more doen?

MNR VAN RENSBURG: Ek moet more in die hof wees op Randburg.

10 MNR LOMBARD: Gaan dit oor daai onderverdeling van daai Thumi ou of wat?

MNR VAN RENSBURG: Nee dis 'n ander stuk grond wat ek gekoop het waar 'n kerk op gesit het, maar hulle wil - wat noem 'n mens dit, die ou het gedink dis sy grond, so hy sit ...,(onduidelik) so nou moet ons in die hof wees daaroor, want hy - (pouse)

MNR LOMBARD: Is dit die ou wat jy geskiet het?

MNR VAN RENSBURG: Nee ek het nie op hom geskiet, ek het op die diere geskiet. So sy moer man, ek bedoel ek kon nie 'n

20 plaas koop en dan kan ek nie self diere daar aanhou nie, toe span ek hom uit. So ons sal nou more in die hof hoor wat sê die regter. Ek was nou al twee keer in die hof gewees en dan daag hulle nie op nie. So more moet ons daar wees en dan word dit soos 'n skikkingsverhoor - dis nie 'n hof sitting hoor ek. So die regter sit voor en hy sal nou as arbiter optree en as daar enige iets uitkom dan sal hy dit sommer 'n hofbevel maak. Jy sien want daai gebou wat hulle daar het is R80 000,00 werd en van 1 Junie af betaal ons grondbelasting, so ek betaal die belasting en hulle sit

30 daarso, dis my grond, dis my gebou.

GSM

SEQ 29/2021-2446

MNR LOMBARD: Jy betaal grondbelasting van 1 Julie af?

MNR VAN RENSBURG: Ja.

MNR LOMBARD: Nou hoeveel is dit, het hulle jou al gesê?

MNR VAN RENSBURG: Ja maar jy kry 'n klomp korting. Kyk die munisipaliteit gee niks vir jou nie. Hulle gee nie vir jou riool nie, hulle gee nie water, krag, hulle gee niks nie, so dis net op die grond. Dan kry jy vir die volgende vyf jaar korting. So die eerste jaar is 100%, 75, 50, 25, so jy betaal in elk geval niks vir die jaar nie. Maar dit gaan nou oor die waardasies, want jy betaal 'n sekere persentasie op die waardasie van die grond.

MNR LOMBARD: Dit gaan die vleis pryse – dit gaan al die kos pryse die lug in jaag, want ek meen hoe moet jy dit herwin?

MNR VAN RENSBURG: Jy kan dit weer teen die belasting afskryf as jy iets maak. Die ouens het nie – die voerkrale self sukkel, want dis nie hulle wat die pryse op sit nie, dis die supermarkte. Want ek bedoel voer kostes is net so duur soos 'n melkery, ek meen jou kos is baie duur om vir 'n dier in 'n hok te gee, so hulle ...(onduidelik) iets soos 30% van die verskillende voerkrale het toegemaak.

MNR LOMBARD: 30% - dis 'n helse lot.

MNR VAN RENSBURG: Onthou 'n ou wat 100 beeste melk 'n maand het 'n voer rekening op die oomblik van so R45 000,00 'n maand, dis voor winter né, dis nog nie winter nie, waarvaan hy 50 000 in kry uit sy melk rekening uit. So hy maak R5 000,00. Uit daai R5 000,00 moet hy die krag, die lone en die seep en goed nog betaal, so hy maak geen wins nie. Dis hoe die melkerye maak deesdae en dieselfde met die

G SM

SEQ 29/2021-2447

voerkrale. Ja ons kyk maar, ons kry ons - as ons kyk alles wat ek nou gekoop het, ek kry nog R14,01 'n kilo. (Agtergrond gesprek) Jy kan maar gaan as jy wil, ek gaan gou klaar rook, dan sal ek ry as jy haastig is.

MNR LOMBARD: Nee ek wag laat jy klaar gerook het. Ek kan maar so vyf minute wag. Nou toe ek pad hiernatoe is begin daai briek van my skreeu. So wat ek nou moet doen is, nou moet ek nog eers weer na dinges toe gaan, wat noem jy hierdie simpel plekke, Hi-Q of een van daai goed en sê sit gou vir my remblokke voor aan.

MNR VAN RENSBURG: Kyk as jy die blokkie self gaan koop dan vra hulle R120,00 om dit gou in te sit.

MNR LOMBARD: Jis ek kan onthou laas keer het hulle my gelooi, sommer 500 en iets.

MNR VAN RENSBURG: Ja maar dan het jy dit by hulle gekoop - Midas, as jy by hulle koop en jy vat die part na hulle toe, dan kos dit jou R120,00 as hulle dit gou in sit. Ek doen dit met ...(onduidelik) daai Peugeot, hy het 'n klomp strond wat jy moet losmaak - hy sit hier bo - jy kan doen.

MNR LOMBARD: Nee ek gaan nie eers daaraan dink om te doen nie.

MNR VAN RENSBURG: Dan koop ek dit dan kos dit my 'n paar honderd Rand by Midas en dan vat ek hulle, dan sê hulle vir my hulle vra vir my 125, dan is dit klaar. Ek het nou vanoggend my kar laat diens, 7-uur, hulle het 'n express service deesdae.

MNR LOMBARD: Ek het gehoor van die express service.

MNR VAN RENSBURG: Ek sit hom 7-uur by hulle op die vloer, 10 oor 8 gee hulle hom vir my.

MNR LOMBARD: Maar jy maak 'n afspraak dan of so iets.

GSM

SEQ 29/2021-2448

MNR VAN RENSBURG: Ek vra vir hulle – hulle vra vir jou: express of the works. Dan sê ek nee, gee vir my express. Ek het hom op die kop 7-uur ingegee en 10 oor 8 toe kry hom. Toe het hulle daai ding se 50 000 diens gedoen – remme vervang, al sy olies, al sy filters en twee belde – twee belde wat op 50 vervang moet word. Dis vervang, die rekenaar is ingestel, alles, en ek kry hom 10 oor 8. Hy is nou nie gewas nie, maar dit is mos nou – hoekom wil jy hom langer hou. Vat ek hom, daar ry ek.

MNR LOMBARD: As ek hom wil laat was dan gaan ek na 'n wassery toe en ek stop en ek laat die ding daar doen.

MNR VAN RENSBURG: Nee maar dit is baie vininger en geriefliker as wat jy nou – al die Mitsubishi garages is mos nou toe hierso, hulle het almal Midrand toe geskuif, dis net in die stad wat jy nou kry. So dan hang jy daar rond, Cecily kan my nie optel nie. Dis vir my moer gerieflik. Teen die tyd wat jy 'n koffie vat dan kry jy jou kar.

MNR LOMBARD: So baie plekke het toegemaak.

MNR VAN RENSBURG: Ja.

MNR LOMBARD: Okay thanks, as jy weer hier kom, gee 'n skree, dan drink ons 'n koffie.

MNR VAN RENSBURG: Nee gaaf.

MNR LOMBARD: Enjoy daai boerdery, ek wens dit was ek.

MNR VAN RENSBURG: Dit het maar sy eie frustrasies en goed.

MNR LOMBARD: As jy opstaan elke oggend oggend met vars lug.

MNR VAN RENSBURG: Nee toegegee, maar soos ek sê hy het ook maar sy eie frustrasies. Dis selde of ooit jy werklik 'n beplanning kan uitsit vir langer as 'n week, want as jy opstaan die oggend dan sê die plaas vir jou wat om te doen,

CSM

SEQ 29/2021-2449

want dan is daar 'n krisis.

MNR LOMBARD: Nee ek het gedog dis darem nou al verby.

MNR VAN RENSBURG: Nee, wat nou gebeur is, sê nou maar soos vanoggend toe bel hulle my, sê hulle nee daar het 'n bees weggeraak deur die nag, nou moet hulle hom gaan soek – hy spring oor 'n draad. SMS terug, nee hulle het haar gekry. Die ander plaas wat ek het is weerskante van 'n teerpad. Vanoggend 5-uur dan bel Jaco, sê hy nee daar het 'n kar deur die draad gery.

10 MNR LOMBARD: 'n Kar?

MNR VAN RENSBURG: H'm hulle rol deur die draad – in die afgelope twee weke nou in hierdie – die vakansie dag, fok almal deur my draad. Daar was nou al twee taxis wat sommer van die pad af ry, moer toe. Dis nie sy probleem nie. Nou moet jy wag dat hulle hom uit sleep, dan maak jy die drade reg, anders loop jou diere uit – sulke goed. 5-uur vanoggend, 'n kar deur die draad. Nouja, wag vir die polisie en wie ook al dat hulle hom wegsleep.

MNR LOMBARD: Dan moet jy draad toemaak.

20 MNR VAN RENSBURG: Dan moet ek nou weer die fokken draad ... (tussenbei)

MNR LOMBARD: Maar kan jy nie daai geld terugeis van sy versekering of iets nie?

MNR VAN RENSBURG: Ag wat, dit help nie.

MNR LOMBARD: Dis nie soveel nie.

MNR VAN RENSBURG: Dis almal hierdie nuwe pikkewyne, jy weet hulle het nie eers versekering nie. Jy weet en draad is duur, jy weet 'n rol draad van 800 meter betaal ons R1 400,00 voor.

30 MNR LOMBARD: Jy weet dis staal.

GSM

SEQ 29/2021-2450

MNR VAN RENSBURG: Dis sonder - dis net draad. Soos ek sê dan het jy nou 'n mooi dag vir jouself beplan.

MNR LOMBARD: Okay dan is jy reg, dan kan jy nou gaan.

MNR VAN RENSBURG: En as jy nou opstaan die oggend dan span jy drade tot 10-uur, soek 'n bees of dinges, dan is die hele dag in sy moer in.

MNR LOMBARD: Ai.

MNR VAN RENSBURG: Want ons ent nou, as jy ent dan vat dit jou so twee dae vir die winter ente. Dan begin jy vroeg in die oggend. Jy weet jy kan nie nou hier 10-uur, 11-uur begin nie. So dit staan weer oor na more toe.

MNR LOMBARD: Dit is winter. Ek sê vir jou ek ry met my kar, as jy nou gaan kyk is die heater vol aan.

MNR VAN RENSBURG: Okay Helgard.

MNR LOMBARD: Okay boeta, goed gaan, as jy weer hierso is, soos ek sê gee 'n skree, dan drink ons koffie. Dalk het ek 'n bietjie meer tyd.

MNR VAN RENSBURG: Dis doodreg, dankie.

MNR LOMBARD: Sien vir jou.

EINDE VAN GESPREK

ESM

TRANSKRIBEERDER SERTIFIKAAT

Ek, die ondergetekende, sertifiseer hiermee dat die voorafgaande 'n ware en juiste transkripsie is van die verrigtinge, insover dit hoorbaar is, wat deur middel van 'n meganiese opnemer opgeneem is in die aangeleentheid van:

GESPREK

MNR S. JANSE VAN RENSBURG & MNR H. LOMBARD: 28 APRIL 2009

TRANSKRIBEERDER: M. VAN WYNGAARD

ALPHA TRANSCRIPTION SERVICES CC

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SEQ 29/2021-2452

SARS Office of the Commissioner

INTEROFFICE MEMORANDUM

P

TO	Commissioner T. Moyane	CC	Acting COO: Jonas Makwakwa
FROM	Helgard Lombard	REFERENCE	Report: DSO
TEL NUMBER	082-746-2124	DATE	20 March 2015
PRIORITY	High		
SUBJECT	REPORT ON MONTORING OPERATION DURING 2007		

Installation of Security Equipment at the Offices of the Directorate Special Operations (DSO) during 2007

Forwarded to you for:

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Comments:

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Installation of Security Equipment at the Offices of the Directorate Special Operations (DSO) during 2007

BACKGROUND

My meeting with SARS Commissioner T. Monyane and Acting COO, Jonas Makwakwa, on 19 March 2015 at Hilton House refers.

I was appointed at SARS on 01 March 2007 by Andries Janse van Rensburg also known as Skollie and Charl Fourie, who represented SARS at that time. I formed part of the surveillance capability that SARS introduced to conduct surveillance and special operations on tax evaders.

During April or May 2007, Skollie asked me whether it will be possible to plant eavesdropping equipment in one of the DSO's offices. I told him that it would be difficult but possible providing that he obtains the necessary approval in accordance to RICA Act, Act 70 of 2002. The conversation ended on this note.

ENQUIRY

Skollie called me one day in June or July 2007 and told me that the DSO contacted him out of the blue for a quotation to install security systems in their offices. They needed to install ten or eleven of these systems because they were sure that the SA Police Service (SAPS) got into their offices to gain access to sensitive documents. Skollie made an appointment for us to meet with Adv. Gerrie Nel and Andrew Leask, Head of the Special Investigation unit at the DSO.

They told us that the following security equipment needed to be installed in order to detect intrusions in time, to remotely view it and to have record of it should it be necessary:

<u>Initial request</u>

a. CCTV cameras, overt and concealed cameras complete with digital video recorders and microphones.
b. Equipment to monitor these CCTV cameras remotely, i.e. GSM 3G-routers and remote viewing software to be used with cellular telephones. The cellular telephones were to be included.
c. Audio recorders, headphones and switches to remotely activate the microphone and recorder. This was to be used during interviews and or meetings as required.

GSM

d. Wireless alarm systems that would report to their cellular telephones to alert them of an intrusion. The alarm system consists of the alarm panel in a tamper box, Passive Infrared (PIR) detectors, door contacts, key pads, remote control keyrings and sirens. It also included the SIM-cards that were installed in the alarm panels to send out SMS-messages relating to responses from the alarm panel, i.e. intrusion signal, arm or disarm signals, time messages, low battery information, etc.

Follow-up requests

e. A "White Noise Generator", complete with audio spectrum analysis software, that will prevent eavesdropping equipment to work properly when they were in sensitive meetings (the "Generator" creates noise that eliminates the capability of a microphone to capture voice or sound).

f. At the end of the initial project (October 2007) I was also requested to provide the DSO with cellular telephones with high-end encryption functionality on it to enable them to communicate without being intercepted.

g. In November / December 2007 I also arranged that a biometric access system be installed on one of the floors (offices).

I prepared a quotation and I think I handed it to Skollie to present to the DSO. It might also be that I have sent them quotations in this process as I cannot remember.

ACCEPTANCE

The DSO accepted the quotation and informed Skollie about it. Skollie made it clear that the installation cannot be discussed in the group as it was a sensitive installation and that the information cannot be leaked at any stage.

I made contact with the DSO and they arranged that the money, approximately R900, 000.00 (nine hundred thousand) was paid in cash to me. A second amount of R250,000.00 was paid to me to procure and deliver the follow-up equipment requirements.

INSTALLATION PROCESS

I started with the security systems installation process sometime in July 2007. Initially Skollie accompanied me to assist me with the installations, which mainly took place after hours. The reason for this was so as not to expose the installation to the rest of the DSO personnel who might have had links with the SAPS. After about two or three weeks Skollie one evening told Adv. Gerrie Nel and Andrew Leask that he has to leave for Germany for business and will most probably not see them for quite a while. This was a lie because Skollie never left the RSA but was just looking for an excuse not to assist any further with the installations.

GSM

I am not a hundred percent sure but I think that I have concluded about seven or eight of the installations by the end of August or beginning of September 2007 (the installation was concluded in December 2007). Due to poor signal in the area, as well as a bug in the 3G-routers, it often happened that the routers hung up and that one could not remotely monitor the CCTV systems. I have asked Andrew Leask if they would mind if I connect remotely with these systems to make sure that the routers did not hung up because it needs a "hard reset" when this happens. A "hard reset" is when you remove power from the router and then restart it.

Both Adv. Gerrie Nel and Andrew Leask ask me during this time whether Skollie was in Germany and I had to lie by admitting that he left for Germany whilst carrying on with the installation.

REQUEST FOR MONITORING OF MEETINGS

About a week or two in September 2007, Skollie ask me to monitor meetings of the DSO. I told Skollie that I cannot adhere to his request unless he (SARS) has an Act 70 approval to conduct eavesdropping and that is the only way that we could do that. It was during this time that it also became known that Commissioner Jackie Selebi could be arrested on corruption charges regarding his relationship with Glenn Agliotti. It was also during this time that Adv. Vusi Pikole, Head of the NPA, was suspended.

About a week to ten days after Skollie's initial request to monitor meetings of the DSO, he called me late one night (it was after 21:00) and said that he just had a meeting with Mr. Ivan Pillay who came from a meeting with President Mbeki. He said that we got the "go-ahead to monitor the DSO meetings". I have asked him how did they (him and Mr. Pillay) got the Act 127 approval and Skollie said that "how do you think the Judge will refuse a request from the President?" I have asked Skollie what the scope of the Act 127 approval was because it could not have been a blanket approval to do what we want. Skollie's answer was that the President wants to know exactly what the DSO had against Commissioner Selebi and secondly, whether there is anyone else of the President's high ranked officials, e.g. Ministers, Director Generals, etc, that would be arrested. He said that the President said could not afford another scandal like this and that the DSO did not inform him about their plans to arrest Commissioner Selebi. The President did not want to be caught off-guard again.

I have asked Skollie who knew about the Act 127 approval and he said that it was only six people; President Thabo Mbeki, Min. Trevor Manual, Comm. Pravin Gordhan, Mr. Ivan Pillay, him (Skollie van Rensburg) and I. I believed Skollie because of the following various reasons:

a. Need-to-know principle. When the unit started, Skollie made it clear to everyone that the unit runs on the need-to-know principle and nothing that he discussed with anyone needs

GSM

to be discussed with any other member in the group. He told us that he will incorporate a member in a group if it was necessary and that if he found out that we discussed operations with each other, we would have been in trouble. The need-to-now principle is an excepted principle in enforcement and intelligence units; it was therefore acceptable for most of the units' members as most of us had intelligence and or law enforcement backgrounds.

b. We could only discussed operations with him or Mr. Ivan Pillay. We never had an opportunity to meet with Mr. Ivan Pillay and Skollie conveyed everything that Mr. Pillay said to the group. Skollie could call Mr. Pillay at any time but kept all team members away from him. The only other person that I knew that had direct access to Mr. Pillay was Charl Fourie, one of the founder members, or more senior members, in the group.

c. I was told by various people that Mr. Pillay was a very senior ANC member and that he could pick up the telephone and make an appointment with the President any time he wants. Skollie also told me, or us, on more than one occasion, that Mr. Pillay and he meet the Minister of Finance every now and but that he meets the Deputy Minister every two weeks to discuss progress and receive instructions.

d. I was told by Charl Fourie that when he and his wife were invited to dinner one night at Mr. Pillay's house, Ms. Jesse Duarte and her husband also arrived at Mr. Pillay's house and he confirmed that Mr. Pillay is a very senior person in the ANC.

e. I was also told that the President Zuma was one of the people that joined Mr. Pillay's surprise 55th birthday day party held in Durban. I was not sure though that this party was in 2007.

f. Skollie did not tell me to start monitoring the meetings of the DSO immediately but only gave me the instruction between a week and or a week-and-a-half later, i.e. adequate time to obtain approval for an Act 127 approval. Moreover, he called me in the evening "after Mr. Pillay came back from a meeting with President Mbeki".

I also did not asked him for the Act 127 approval as Skollie was senior SARS official and the reports would have been forwarded to Mr. Ivan Pillay (Deputy Commissioner of SARS) in any way. I also need to mention that I previously did an Act 127 installation for the DSO, which also did not show me the approved Act 127. I also accepted the instruction in this case because the DSO explained that the evidence would most probably have to be used in court.

MONITORING OF MEETINGS

I started to monitor the meetings as requested and gave Skollie verbal feedback on what I found. Skollie called me, or told me in person, that Mr. Pillay said that he wanted the conversations and or evidence on CD. Skollie would then produce the report and CD to Mr. Pillay to confirm the reports' information on the CD if necessary.

GSM

As far as I can remember I only monitored and gave information regarding the case of Commissioner Jackie Selebi through to Skollie and ignored other non-related discussions.

One night, I would guess it was mid-November 2007, Andrew Leask said that he needed a flash drive for a document he needs to complete at home. He did not have his flash drive with him as he borrowed it to his child for some reason. I offered him a flash drive I had with me.

Andrew returned the flash drive to me a day or two later. I am not sure of the date but I think I opened the flash disk that night or a day or two later. I discovered that there was still a document on the flash disk and when I opened it, it contained information about Commissioner Jackie Selebi, amongst others, money he received in respect of the corruption charges against him. I took the flash drive to Skollie and told him I think that they now have everything that the President was looking for and that it was not necessary to continue with the monitoring.

I am not hundred percent sure but I think it was that same day that Skollie arranged with Mr. Pillay that I meet with him and Skollie to discuss the information that was on the flash disk. Skollie pre-warned me that when I greet Mr. Pillay I must not give him a firm handshake because he has an illness that affects his bones and that I could hurt him by a firm handshake. I must also call him "sir" or "mister Pillay" as he likes it.

I met Mr. Pillay and assured him that I did not download the information from Andrew Leask's laptop. As far as I can remember I asked him whether I must still carry on with the monitoring of the meetings regarding Commissioner Selebi's case. He confirmed that I must carry on unless it is unsafe to do so. Skollie said that I will continue with the monitoring and will cease monitoring when it is not safe to do so. I felt uncomfortable with the task and told Skollie so when we left. I also went back one night thereafter (after 21:00) and asked Skollie to terminate the operation but he insisted that I do my work.

I guess I made one further recording relating to Commissioner Selebi's case end November beginning December 2007 (I am not sure) and hand it to Skollie. I then unexpected and without an appointment, went to Skollie's house (it might have been the day after I handed him the CD). I wanted to discuss the situation again with him.

When I got to Skollie's house he opened the gate for me and I went in. I asked him what he was doing and he said he was writing the report on the CD information I gave him regarding Commissioner Selebi's case. I started reading what he was writing and became extremely upset because he was manipulating the information that was on the CD and added fictitious information that was never said or took place. I am under correction if I said that he wrote something about more arrests that the DSO was going to make and that they are not doing what they are suppose to do (also see his "coup" theory below). I confronted him with the nonsense

GSM

he wrote and he said that I am so "f...g" upset about the way he writes reports he will delete it. He then deleted the report and confessed that Johan de Waal wrote all the other reports in anyway. I confronted him with the fact that Johan de Waal also knew about the operation as he originally said only six people are aware of the operation. I think at this stage he also confessed that Charl Fourie also knew about the operation right from the start.

What happened after this is not clear as I was extremely upset about the situation (It is now quite a while since it took place). I know however, that I managed to make an appointment with Mr. Ivan Pillay through Charl Fourie (not sure) and that he accompanied me to Mr. Pillay's house. I am also not sure whether Johann van Loggerenberg joined us that night or on a follow-up meeting but he was also informed by Mr. Pillay about the situation (Mr. Pillay said that he needed Johann to assist him with the situation). I told Mr. Pillay what happened and that he cannot trust any of the information he received from Skollie because Skollie distorted the truth. Mr. Pillay said that I must leave it in his hands and that he will deal with it.

Thereafter many meetings took place to discuss the operation and Skollie. On one of the meetings (I think it was the second meeting) Mr. Pillay said that if I ever was confronted with this operation he would say that he gave the instruction. I then asked him if the President did not task him and about the existence of the Act 127 approval. Mr. Pillay then denied that the President ever gave the instruction and or arranged the Act 127 approval but said that he will take responsibility for it. Mr. Pillay said that he and Johann van Loggerenberg will deal with the Skollie-matter (it is not clear but if I recall correctly either Charl Fourie or Johan de Waal attended these meetings with me).

Mr. Pillay told us to carry on with our work and still have interaction with Skollie whilst they will proceed with a plan to take action against Skollie.

CONTINUATION WITH WORK AFTER THE EXPOSURE OF SKOLLIE VAN RENSBURG

After my fallout with Skollie, Charl Fourie or Johan de Waal called me to Skollie's house to assist with a virus that Skollie had on his laptop. He visited pornographic sites and picked up a virus that at any time connected to a pornographic site. Skollie said that his son borrowed his laptop to do research for a task and thereafter his laptop reacted funny and connected to these sites. I have formatted the laptop's hard drive with a program called DBAN and re-loaded a Window OS on the laptop.

This must have happened in mid-December 2007 and everyone in the unit (don't know what it was called then) went on leave.

GSM

In 2008 I started communicated with the rest of the team to find out whether they also found Skollie to be controversial at times. Quite a lot of controversial facts came to the fore amongst others:

a. That my first appointment letter in SARS was falsified on instruction from Skollie because I decided to join the SSA rather than SARS. SARS gave me a better offer than the SSA and this was contained in the letter. I later received an original and official SARS offer to sign again.
b. Skollie falsified Johann van Loggerenberg's signature on claim forms but with the "approval" of Johann van Loggerenberg.
c. Skollie told Charl Fourie that they must "knock" the Chinese and stole their money. He will get SAPS to arrest the Chinese for running illegal businesses.
d. There was an incident regarding a file that Skollie wanted to hand over to the Mail and Guardian. It allegedly contained an incident between HR and Johann van Loggerenberg. Skollie travelled to Cape Town to see Mr. Pillay and on return said that Mr. Pillay said that I stole the file out of his office during a TSCM inspection.
e. Skollie told Johan de Waal to phone the papers and say that that he is from the FAG (Frustreerde Afrikaanse Groep). They are going to commit sabotage to encourage violence in South Africa.
f. Skollie manipulated team members to steal items out of shops. These members stole amongst others a cricket bat as well as dog food out of the shops "as a test that they can successfully operate under pressure". Afterwards he just laughed at them and said that he needed these items. The members went back to these shops and paid for the goods out of their own pockets.
g. Skollie bribed someone at the Surveyor General's office to purchase a second or third farm in Standerton. This piece of farm could not be sub-divided but Skollie bribed the person to do it.
h. Skollie told us that "we" have the power to decide who will next govern South Africa. He said the "we" could execute a "coup" by deciding to whom the group ("we") are going to give the "evidence" we got from the DSO monitoring operation. This would have divided the country and he could decided who have to take over.
i. Skollie also tried to setup a confrontation between now President Zuma and a person called "Snyders" somewhere in KZN. This also did not work out for him.

Approximately in April \ May 2008, I was seconded to SARS (Anti Corruption and Security) to assist with the planning and installation of security at SARS sites nationally. I distanced myself from Skollie and the team and concentrated on the work at ACAS. In April 2009 I was permanently transferred to ACAS.

We have had several meetings in 2008 where we also had the opportunity to take a severance package and leave SARS. I decided to stay.

I was also present when Johan de Waal and Charl Fourie confronted Skollie over a cell phone telling him that they disclosed all his misrepresentations, lies and dealings to Mr. Pillay and that they are finished with him. I also told him during this conversation that I am now aware that he lied to me and mislead me whilst he was in a position of trust and authority. He just said "dankie vir dit" (thank you for that) and nothing else that I can remember. Johann van Loggerenberg was also present during this conversation.

I heard that Skollie chose to take a severance package and part with SARS. I later heard that his remaining contract salary was paid out to him.

We also had a meeting with Skollie after he left. I could initially not remember this meeting in 2008 but Johan de Waal showed me minutes that were taken during this meeting and I could recall the conversation. I still cannot remember where at Centurion Mall it took place but do remember the conversation.

After I have read the minutes on 19 March 2015, I told Johan de Waal that we have to discuss this immediately with Commissioner Tom Moyane as I am no longer going to keep it secret because it will damage the image of SARS should it leak out. We then drove to the Commissioner's Office and told the Commissioner that we need a critically urgent meeting with him. Commissioner Moyane immediately put time aside for us, invited the Acting COO, Mr. Jonas Makwakwa to the meeting and listened to what we had to tell.

If I do remember any additional facts regarding this operation and or important information relating to the years 2007/2008, I will immediately inform Commissioner T. Moyane and Acting COO Jonas Makwakwa.

HELGARD LOMBARD

DATE: 20 MARCH 2015

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TELEFOONGESPREK

MNR C. FOURIE

&

MNR H. LOMBARD

6 MEI 2015

ALPHA TRANSCRIPTION SERVICES CC
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SEQ 29/2021-2462

TELEFOONGESPREK

MNR C. FOURIE & MNR H. LOMBARD: 6 MEI 2015

MNR LOMBARD: Charl, kan jy my hoor?

MNR FOURIE: Yes ek hoor jou Helgard.

MNR LOMBARD: Wat sê hy?

MNR FOURIE: Kan jy gesels?

MNR LOMBARD: Ja, ja ek het nou spesiaal uitgekom om te gesels.

MNR FOURIE: Ag ek is jammer man, ek het nie - hy het netnou vir my gesê hy gaan my - daai storietjie né, dis uit in die media.

MNR LOMBARD: Hallo?

MNR FOURIE: Daai storietjie né van wat julle my vertel het van wat gebeur het is uit in die media.

MNR LOMBARD: Dis uit die media?

MNR FOURIE: Die media weet dit, die media weet van daai storie, iemand het dit vir die media vertel Helgard.

MNR LOMBARD: H'm en wie sal dit wees?

MNR FOURIE: Nee ek weet nie wie dit gedoen het nie. Ek is gebel, ek het nou net 'n oproep gehad van - wat is sy naam - Adrian Lackay af.

MNR LOMBARD: Ja?

MNR FOURIE: Toe vra hy vir my of jy en Johan geswaai het, hy sit by Sam Sole. Hy het my gevra het julle geflip. Sy woorde was: het Johan en Helgard ...(onduidelik). Toe sê ek vir hom: ek verstaan nie. Toe sê hy vir my - toe sê hy vir my hy sit by Sam Sole en hulle twee het gepraat oor moeilikheid en hy wil hê ek moet met Sam Sole praat.

MNR LOMBARD: Wie is Sam Sole?

MNR FOURIE: Hy is 'n verslaggewer vir die Mail &

GSM

SEQ 29/2021-2463

Guardian Helgard.

MNR LOMBARD: Is hy 'n verslaggewer van die Mail & Guardian?

MNR FOURIE: Yes Helgard.

MNR LOMBARD: So?

MNR FOURIE: So ek het vir hom gesê: luister hier laat ek – jy weet ek gee nie om as – jy weet om vir die media te vertel wat ons nie gedoen het nie, maar wanneer 'n mens begin praat oor wat 'n mens gedoen het as ons die dag ...(onduidelik) jy weet dan kan daar potensiële – 'n storietjie daaraan wees. Nou ek bedoel hierdie storie is moeilik en ek wil rêrig nie deel daarvan wees nie, maar jy weet ek was deel van dit – ek was deel van dit en ek was deel van julle span, so – julle moet maar net vir my sê – ek het gedink miskien moet ek dalk vir SARS bel hieroor.

MNR LOMBARD: Ja weet jy die belangrikste ding vir my is om te weet – daai ou, die ou wat dit gegee het, wie het almal ...(onduidelik) jy gesê nou-nou daai – die polisie het dit gebruik, wat noem hulle daai operasie?

MNR FOURIE: Wat ek het, ek het gevra, ek het op een of ander stadium in die gesprek gevra en my memory sê vir my dit was Johan van Loggerenberg gewees, oor hierdie operasie of dit nie 'n kak spul is nie. My memory is, wat ek het is, dis vreemd in my memory want ek onthou ...(onduidelik) van – jy weet – hierdie gesig van Johan wat sê: nee man, dis alles uitge-sort. Nou kan ek nie onthou of hy vir my gesê het dis uitge-sort met daai Lalla ou en of ek in my kop die sommetjie gemaak het want Lalla was die heeltyd daar by Ivan in die kantoor – of nou nie die heeltyd nie, maar ek het hom gereeld daar gesien.

G Sm

SEQ 29/2021-2464

MNR LOMBARD: Okay so jy het vir Lalla daar gesien.

MNR FOURIE: Ja Relala het in die kantoor gesit, so ek het gewonder, jy weet of dit rerig goedgekeur is of nie. Maar hy het nie vir my 'n fokken dokument gegee of wat ook al nie, so ek kan nie vir jou sê daai ding was goedgekeur nie, daar is 'n kans dat dit nie was nie. En dan obviously dan is daar - moet daai mense obviously verduidelik. Verstaan, dit meen nie jy of Johan moet daai rap vat nie. Wat is vir julle gesê, dis die vraag obviously, op watter voorwendsel het jy dit gedoen? Jy het ook 'n brein jy weet, so hulle gaan vir jou vra - jy weet mos hierdie is - jy is mos nou al lankal in die game, jy weet mos hierdie is nie reg nie.

MNR LOMBARD: Die een wat vir my gesê het dit moet gedoen word, soos daai voël wat sê: dis hy en twee siele. Toe sê hy daar is. Toe sê ek maak seker.

MNR FOURIE: Jy sien dan het jy dieselfde - nee dan het hulle vir jou gesê. Ek het nie so direk gevra nie want ek kan nie onthou wat is die naam van die wet nie, maar ek het verstaan dan is hierdie 'n wettige operasie miskien gewees, ek weet nie. Maar die ding is dis maar net jy weet - (pouse)

MNR LOMBARD: Hy bel my toe 'n week en 'n half later een aand hier na 9-uur, na 10-uur, toe sê hy - hy kom nou net van Ivan af en Ivan was by Mbeki gewees en ... (tussenbei)

MNR FOURIE: By Mbeki?

MNR LOMBARD: Ja want hy het vir my gesê Ivan gaan sien Mbeki wanneer hy kan en hy en Ivan ontmoet die deputy commissioner elke tweede week. So hoe vêr die planne is

GSM

SEQ 29/2021-2465

weet ek nie.

MNR FOURIE: Nee maar Ivan sal nie met Thabo Mbeki gaan praat.

MNR LOMBARD: Sal hy nie met hom praat nie?

MNR FOURIE: Nee man hy was mos nou nooit 'n fan van Thabo Mbeki nie, ek dink nie hy sou nie. Wel ek weet nou nie, ek is nou hierdie moerse ANC ingeligte nie, maar ek bedoel ons het geweet dat hy - sy sentiment was definitief nie in daai rigting - ek weet nie - maar ek bedoel dit beteken nie dat hy nie met hom daaroor sou gepraat het nie.

MNR LOMBARD: Okay, okay.

MNR FOURIE: Maar dude, so wat ek net wil sê is die - ek weet nie ... (tussenbei)

MNR LOMBARD: Maar hoe het Adrian Lackay aan die vis gekom?

MNR FOURIE: Adrian Lackay het vir my - hy het vir my omtrent seker 20 minute voor ek jou gebel het, of 10 minute gebel en vir my gesê hy sit by Sam Sole en Sam Sole wil met my praat. En hy vir my gevra of julle ge-flip het.

MNR LOMBARD: Serious?

MNR FOURIE: Die ding is wat jy moet - dis iemand, iemand binne-in 'n baie klein sirkeltjie moes met die media gepraat het en dit sou - ek weet nie wie weet dat die gesprek met - wie die gesprek met die dinges gehad het nie, maar dit moet iemand wees wat - ek weet nie of julle dit bespreek het met Johan of iemand nie, maar ... (tussenbei)

MNR LOMBARD: Johan wie?

MNR FOURIE: Johan van Loggerenberg.

MNR LOMBARD: Johan van Loggerenberg was dan die dag saam daar by toe ons by die kiddies daar by die hospitaal

was.

MNR FOURIE: Nee, nee ek praat van - ek praat van hoe - oor die feit dat hierdie storie uitgekom het - hoe weet Adrian Lackay?

MNR LOMBARD: Ja-nee ek weet nie.

MNR FOURIE: Oor die media.

MNR LOMBARD: Ek weet nie.

MNR FOURIE: Johan in elk geval - jy weet solank julle die waarheid praat is ek saam met julle Helgard, jy moet bel as ek kan help. Ek wil rêrig probeer om nie enige pressure nou op my te sit nie, maar ek bedoel ek sal my verantwoordelikheid nakom. As julle my hulp nodig het sê net vir ...(onduidelik) as hy met my kan praat met respek - né, as Johan 'n opdrag het om nie met te praat nie, ek respect dit. Maar hy moet my net sê, jy weet ek hou nie daarvan as hy my ignoreer nie.

MNR LOMBARD: Nee, hy kon nie want hy was by ander mense wat hy nie kon praat nie.

MNR FOURIE: Nee maar ek het hom gister al geteks, ek wil net hê hy moet weet hy moet my respekteer.

MNR LOMBARD: Nee, ek gaan vir hom sê hoor in any way.

MNR FOURIE: En ja ek sal in geval met hom ook - hom ook net praat oor wat gebeur. So ek het maar my responses - ek het nou al nie net van - dis nie net 'n ding van Sam Sole wat my wil praat, voorheen het die Beeld my ook gebel. Wel ek sê nou die Beeld, maar ek ken vir Adriaan Basson en Adriaan het vir my gevra en ek sê maar vir hulle ek kan nie met hulle oor die goed praat nie. Ek was happy om vir hulle te sê dat daai is 'n klomp kak, ek bedoel dit is - jy weet as hulle oor hierdie tipe goed begin praat dan weet ek nie,

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jy weet ek – (pouse)

MNR LOMBARD: Okay. Hallo?

MNR FOURIE: Adrian – ek sal net vir hom sê. (ONDERBREKING)

MNR LOMBARD: Hallo?

MNR FOURIE: Ja ek wou net gesê het as dit nie verder nodig is om daaroor te praat nie dan is dit cool, ek sal graag wil uit dit uit bly, maar as ek 'n responsibility het en ek moet back wat julle sê en julle het backup nodig, want ek weet julle gaan die waarheid praat, dan sal ek saam met julle staan.

MNR LOMBARD: Okay, thanks hoor, ek waardeer.

MNR FOURIE: Okay Helgard.

MNR LOMBARD: Goed gaan eers.

MNR FOURIE: Okay bye.

MNR LOMBARD: Right bye.

EINDE VAN EERSTE GESPREK

MNR FOURIE: Hallo.

MNR LOMBARD: Yes.

MNR FOURIE: Jirre jy is hard om in die hande te kry man ...(onduidelik).

MNR LOMBARD: Ja ek was so deurmekaar wees, ek het eers gedink jy het op my ou SMS gereageer, toe nou op die nuwe een.

MNR FOURIE: Was jy al by die commissioner?

MNR LOMBARD: Nee nog nie.

MNR FOURIE: Okay. As jy gaan né, maar dit gaan ten to one te laat wees, want as jy te laat gaan dan gaan – jy weet, kyk as ek toestemming kan kry dan kan ek dit wat die Beeld wil sê – ek het nie met jou heeltmaal gepraat oor wat

G Sm

SEQ 29/2021-2468

die Beeld gesê het nie en ek het net vir jou vertel van dinges en ek het net vir jou gesê Adrian het my gebel.

MNR LOMBARD: Ja.

MNR FOURIE: Die Beeld se girl het vir my gesê, dis nou die Pauley girl, het basies vir my gebel en vir my gevra of die volgende versions waar is. Sy weet net dis 'n groot ding en sy moet dit met iemand check. Ek kon vir haar niks sê nie want ek het vir haar gesê ek kan nie met haar praat nie. Maar wat hulle basies - die storie wat sy basies gekry het van haar kant af is die hele storie soos wat julle dit vir my vertel het. Maar die storie sê dat wat gebeur het is dat Skollie is ge-fire oor hierdie breuk en dat hy dit basies op sy eie gedoen het en vir ons gesê het daar is magtiging en toe Johan en Ivan nou daarvan uitvind het hulle hom ge-fire.

MNR LOMBARD: Okay.

MNR FOURIE: Nou ek kon nie met haar praat nie, verstaan, want ek kan nie, ek het toe laat sy vir my tik en ek het vir haar terug getik en gesê ek kan nie met haar praat nie, dat ek dit net op rekord het. Jy weet ek bedoel as julle dit wil hê dan kan ek dit met hulle reg maak, maar ek kan dit nie reg maak, jy weet want dis nou wat daar gaan staan dink ek.

MNR LOMBARD: Ja maar dis 'n - jy weet ons kan nie - ek kan jou nie sê wat die waarheid is nie.

MNR FOURIE: Nee, nee, nee maar - sê gou vir my wat - wat my indruk was né dat daar was duidelik - Ivan en Johan van Loggerenberg het duidelik daai ding volgens my ge-sanction. Ek het nie die idee gekry hulle weet nie wat daar gebeur nie, of is dit moontlik gewees, of dink jy dis

'n moontlike ...(onduidelik) daai?

MNR LOMBARD: Nee hulle het ... (tussenbei)

MNR FOURIE: In jou kop dink jy?

MNR LOMBARD: Kyk ek weet ... (tussenbei)

MNR FOURIE: Het hulle hom ge-fire oor hy daai gedoen het? Het hulle vir hom gesê: wat de fok is jy mee besig, hou op daarmee - hy het nie opgehou nie en toe fire hulle hom.

MNR LOMBARD: Nee, nee ek was een aand saam met hom daar toe het Ivan vir my gesê gaan aan met die storie. Maar as jy ongemaklik voel hou op. En toe het ek seker ...(onduidelik) almal stuur nou net Whatsapps - twee dae later het ek na hom toe gery, toe sê ek vir Skollie - laat nag - ek voel glad nie tevrede hiermee nie, jy het vir my nog nie die dokumente gegee wat jy belowe het jy gaan vir my gee nie, ek wil nie hiermee aan gaan nie. Toe sê hy maar hy sal vir my die dokumente bring. Toe net die volgende oggend of die week, of die oggend daarna, toe ry ek soontoe, toe vang ek hom waar hy besig is met - om - daai goed te tik - maar hy lieg.

MNR FOURIE: O hy tik dit verkeerd, ja.

MNR LOMBARD: Ja hy maak asof hierdie ouens geen werk doen nie, asof hulle sit en hulle jaag net aan en hulle is net polities georiënteerd. Toe sê ek vir hom: watse gemors is dit? En dis toe waar die hengse fight ontstaan het. Toe sê hy: man, moenie worry in elk geval oor die ander nie, Johan het dit gedoen. Toe daarna het ek eers uitgevind dat Jan ook weet, maar ek dink ek was saam met Jan na Ivan toe, want ek kon - ek weet nie wie die afspraak gekry het by Ivan nie, toe het Ivan gesê: man as hierdie ding sou uit kom sal

GSM

SEQ 29/2021-2470

ek sê ek het die opdrag gegee. Maar ek weet nie wie was saam met daai aand, dit was of jy of Johan.

MNR FOURIE: Ja ek kan nie dit onthou nie, maar jy weet ek kom agter ek onthou baie swak. Kyk ek het definitief daarvan geweet obviously en ek het die indruk gehad dat hierdie goed is goedgekeur. Maar op die oomblik die storie wat Johan van Loggerenberg vir die Beeld vertel het is dat – dis wat die Beeld my vertel het. Beeld het vir my gevra wat was die maatskappy se naam. Hulle wil weet wat is die privaat maatskappy se naam. Hulle het jou naam genoem, hulle het Johan se naam genoem, hulle het gesê julle twee het daai operasie gedoen onder die wanindruk wat Skollie julle gebring het dat dit goedgekeur is. En toe sê hulle vir my ... (tussenbei)

MNR LOMBARD: Nee dis nie 'n wanindruk nie.

MNR FOURIE: Ivan en Johan het daarvan uitgevind en daarom is Skollie ge-fire.

MNR LOMBARD: Skollie is ge-fire oor baie goed. Hy is ge-fire oor ...(onduidelik).

MNR FOURIE: Die indruk wat vir my geskep word is dat die ding op Skollie afgeskuif word.

MNR LOMBARD: Okay.

MNR FOURIE: Maar jy weet wat ook nie heeltemal reg is nie. Jy weet ek het hoë agting vir Ivan, jy weet ek hou nie so baie van Johan nie, maar jy weet – ek bedoel dis nie die waarheid nie en ek het net gedink as hulle wou gehad het ek moet met magtiging met hulle praat en vir hulle sê daai is nie die waarheid nie, sodat daar nie 'n klomp kak – maar jy sien hierdie goed gaan in die koerant, dan gaan dit 'n heen en weer fokken storie wees.

G S M

SEQ 29/2021-2471

MNR LOMBARD: Ek sal net graag wil hê dit moet – die waarheid moet nou uit kom.

MNR FOURIE: Ja, so die Beeld gaan nou weer een of ander halwe waarheid skryf en ek bedoel ek kan dit reg maak, maar die ding is ek weet nie – ek het nou glad nie die oproepe gevat nie. Dinges het my weer gebel, Adrian Lackay, ek het nie die oproep gevat – ek het nie die oproep gevat nie en toe ek jou probeer bel toe bel daar onmiddelik 'n ander nommer terug en toe antwoord ek, toe is dit Adrian. Toe sê ek vir hom: nee, nee, nee ek maak vir Rynard aan die slaap, ek kan nie praat nie. Toe sit ek net die foon neer.

MNR LOMBARD: Nee, ek het eers later die vermoede gekry dat dit nie die waarheid was nie, toe hy nie vir my die goed wou gee nie en hy dit vir niemand wou gee nie. En op 'n stadium het Ivan ook vir my gesê hy het nie opdrag gegee nie, maar ek en Ivan was toe alleen en dis nou jare na die tyd and that's it. So –

MNR FOURIE: Het Ivan gesê jare na die tyd hy het nie opdrag gegee nie?

MNR LOMBARD: Ja nou seker laas jaar of so. So ek is gevang wat dit betref.

MNR FOURIE: So Ivan het toe basies ontken dat hy daai – dat hy dit gemagtig het?

MNR LOMBARD: Ja maar hy het altyd die goed ontvang van die begin af en lyk my baie mense het daarvan geweet.

MNR FOURIE: Ja, ja, ja, Cliffie het daarvan geweet, ek weet hy het my daaroor gepraat dink ek.

MNR LOMBARD: Cliffie, hoe weet hy daarvan?

MNR FOURIE: Cliffie – ek weet nie, ek dink dinges het met hom gepraat, seker maar Ivan of iemand. Ek weet

GSM

SEQ 29/2021-2472

nie, hy het op 'n stadium het hy – ek dink Peter het daarvan geweet, ek weet nie.

MNR LOMBARD: Sjoe, all right, so ek is maar – in die hele ding voel ek soos die – (pouse)

MNR FOURIE: Ja, misbruik né.

MNR LOMBARD: Ja, ek sal nie die woord noem nie. Maar dankie dat jy my gebel het en laat weet het.

MNR FOURIE: Yes soos ek sê ek is – vir my is dit obviously soos wat jy enige ou sal – nie wil deel wees hiervan nie, maar ek kon nie julle nie dit sê nie, ek was gefok(?) in die opsig dat ek daai oproepe kry, dat ek nie dit vir julle moet sê nie. En as ek kan op 'n manier help, sê maar vir die commissioner – gaan jy hom nog sien, ek verstaan jy gaan hom sien?

MNR LOMBARD: Ja, ja ek het gevra vir 'n afspraak.

MNR FOURIE: So jy sal – ek het jou nou in die hande gekry, ek het gedog jy sit by hom.

MNR LOMBARD: H'n-h'n.

MNR FOURIE: So sê maar net dat ek is happy om as hy my toestemming gee, as die commissioner my toestemming gee, is ek happy om met die koerant te praat en die deel – jy weet die gedeelte reg te maak.

MNR LOMBARD: Ja.

MNR FOURIE: Maar jy moet ook vir hom sê jy weet, Ivan – ek het Ivan in daai opsig geken, Ivan het nie ...(onduidelik).

MNR LOMBARD: Hy het wat?

MNR FOURIE: Hy moet daai ding uit sy kop uit kry. Hierdie is 'n Pearl Harbour, hulle vat vir Ivan aan oor iets wat hulle gedink het hy het gedoen wat hy nie gedoen het

GSM

SEQ 29/2021-2473

nie, en nou word al hierdie kak daardeur veroorsaak.

MNR LOMBARD: So jy dink nie Ivan het geweet nie?

MNR FOURIE: Nee, nee ek het geen twyfel daaroor gehad in my hart dat hy het - (pouse)

MNR LOMBARD: Hy geweet.

MNR FOURIE: Ek het geen twyfel in my hart daaroor dat hy - jy weet dat hy daai ding ge-sanction het nie. In my kop was hy okay daarmee, hy het jou nie gestop nie, verstaan jy?

10 MNR LOMBARD: Ja presies.

MNR FOURIE: Want ek bedoel soos ek dit het, het hy vir 'n hele tyd het hy daai goed ontvang sonder dat hy gesê het: ek soek nie hierdie goed nie, stop hierdie goed - of wat ook al.

MNR LOMBARD: Ja.

MNR FOURIE: So as Johan en Ivan nou probeer maak asof Skollie dit gedoen het en hulle het hom probeer stop, dis nie hoe ek dit gehad het nie. Jy weet ek het ook nie alles geweet nie, rondom daardie ding het ek gedink jy weet

20 maar meer as ek.

MNR LOMBARD: Nee ons het mos ... (tussenbei)

MNR FOURIE: Ek het ook nie geweet - (pouse)

MNR LOMBARD: Nee ons het mos in selle gewerk, so wie weet wat doen die ander een.

MNR FOURIE: Ja so ek het nooit geweet wat gesê is in daai tapes nie. Ek dink ek het een keer een keer ietsie gesien toe ek daar was en ek onthou, ek dink ek onthou vir Pierre of iets wat praat en dit is dit. Ek het net een keer ietsie gesien, ek het geen idee wat ooit in daai gestaan het

30 rêrig behalwe vir een gesprek.

G Sm

MNR LOMBARD: Ek kan nie een onthou nie. Dit was net oor sekere aangeleenthede, want ek het vir Skollie gevra wat is die scope van die goed.

MNR FOURIE: Jy sien julle goeters is kompleks oor hoe dit gedoen is.

MNR LOMBARD: Maar moenie dink Skollie het nie geglieg nie hoor, want hy het gesê daai goed het direk van die president af gekom. Toe sê ek: Skollie, ek doen die goed nie sonder 'n 127 nie. Toe 'n week en 'n half later het hy my gebel toe sê hy die goed is nou in plek. Hy bel my laatnag en hy sê Ivan het hom nou gebel en gesê hy kom nou net van Mbeki af, daai goed is - hy het die goed gekry, dis in plek.

MNR FOURIE: Ja jy sien as hy eers begin sulke name noem dan weet jy hy praat kak.

MNR LOMBARD: Hy het vir my gesê hy en Ivan sien die dinges elke tweede week as hy beskikbaar is, die adjunk minister - tonne goed.

MNR FOURIE: But anyway, so ek hoop maar - jy weet ek hoop dat hierdie watsenaam, Tom - hulle ook hulle agendas kan bietjie suiwer. Ek dink hierdie is maar 'n klomp strond van twee kante af Helgard.

MNR LOMBARD: Ons sal sien, maar ek sal graag die waarheid wil weet.

MNR FOURIE: Ja.

MNR LOMBARD: Wie, waar, wanneer, hoekom.

MNR FOURIE: Die tipe van verweer wat Johan van Loggerenberg nou - en ek bedoel tussen my en Johan het ons uitge-figure dit was hy wat met die Beeld gepraat het - die verweer wat hy gooi is duidelik 'n verweer wat my laat dink

RSM

SEQ 29/2021-2475

dat daar nie magtiging was vir hierdie operasie nie. Want hoekom sal hulle dit probeer afskuif op Skollie.

MNR LOMBARD: Presies, ja.

MNR FOURIE: So my versoek is net as hy nodig het, as daai Tom dude nodig het dat ek met die media praat, dat as hy vir my kan toestemming gee binne die frameworks van SARS wetgewing, sal ek dit met hulle reg maak en vir hulle sê wat het gebeur.

MNR LOMBARD: Okay dis reg.

10 MNR FOURIE: Maar anyway.

MNR LOMBARD: Maar dankie baie. Ons praat weer.

MNR FOURIE: Okay Helgard.

MNR LOMBARD: Thanks Charl, lekker slaap.

MNR FOURIE: Okay Helgard bye.

MNR LOMBARD: Bye.

EINDE VAN GESPREK

GSM

TRANSKRIBEERDER SERTIFIKAAT

Ek, die ondergetekende, sertifiseer hiermee dat die voorafgaande 'n ware en juiste transkripsie is van die verrigtinge, insover dit hoorbaar is, wat deur middel van 'n meganiese opnemer opgeneem is in die aangeleentheid van:

TELEFOONGESPREK

MNR C. FOURIE & MNR H. LOMBARD: 6 MEI 2015

TRANSKRIBEERDER: M. VAN WYNGAARD

ALPHA TRANSCRIPTION SERVICES CC

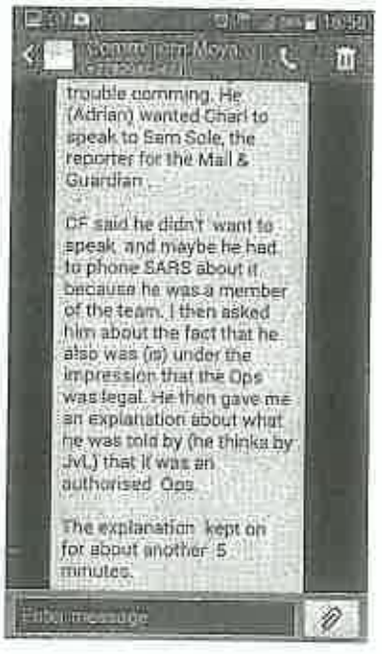
GSM

R

Comm, can I call. I think it is urgent. Helgard.

Commissioner - I received a call today (5 May 2015) at 11:06 from Charl Fourie in Australia stating that he just received a call from Adrian Lacky to find out whether Johan de Waal or I had "flip flop" (spoke out). Charl said that Adrian sat with Sam Sole and they said that there is big trouble comming. He (Adrian) wanted Charl to speak to Sam Sole, the reporter for the Mail & Guardian.

CF said he didn't want to



trouble comming. He (Adrian) wanted Charl to speak to Sam Sole, the reporter for the Mail & Guardian.

CF said he didn't want to speak, and maybe he had to phone SARS about it because he was a member of the team. I then asked him about the fact that he also was (is) under the impression that the Ops was legal. He then gave me an explanation about what he was told by (he thinks by JvL) that it was an authorised Ops.

The explanation kept on for about another 5 minutes.

GSM

18:58

Hennie/KamMoyal...

+27831024...

him about the fact that he also was (is) under the impression that the Ops was legal. He then gave me an explanation about what he was told by (he thinks by JvL) that it was an authorised Ops.

The explanation kept on for about another 5 minutes.

Regards. Helgard.

MMS 21:31

Thank you very much and sincerely appreciated. I will call you in the morning or call me at 07:30. Good night and regards Commissioner

21:37

Enter message

GSM

S

SARS

EFFECTIVE DATE: 07/06/2007

Participating in rough or dangerous play / practical jokes	Written Warning	Final Written Warning	Dismissal	
Behaviour in any form that is damaging to the image of the company	Written Warning	Final Written Warning	Dismissal	
Divulging confidential information to unauthorised persons	Dismissal			
Divulging confidential information without permission/authority	Dismissal			
Divulging confidential and/or unauthorised information to the media	Dismissal			
Misuse and/or allowing the misuse of company property or company leased/ rented property	Final Written Warning	Dismissal		
Transgression of or non-compliance with any company rules, policies and procedures	Final Written Warning	Dismissal		
Wilful damage to company property and/or company leased/rented property	Dismissal			
Sabotage	Dismissal			
Unauthorised transporting of persons in a company vehicle or company leased/rented vehicle not employed by SARS	Dismissal			
F: DISHONESTY				
Theft or unauthorized possession/ borrowing of company property, property of visitors, fellow employees, clients	Dismissal			
Fraud	Dismissal			
Forgery or falsification of official documents	Dismissal			
Deliberately providing false information on claim forms, application forms and/or other official documents of any nature	Dismissal			
Unjustifiable enrichment for personal gain at the expense of the company	Dismissal			
Bribery or receiving of goods as a bribe	Dismissal			
Failure to disclose crucial or relevant information on request	Dismissal			
Direct or indirect involvement in work outside of SARS which constitutes a conflict of interest	Final Written Warning	Dismissal		
Failure to report an accident involving damage to company property or resulting in injuries to other/s	Written Warning	Final Written Warning	Dismissal	
G: ALCOHOL/DRUGS				

G Sm

SARS Office of the Commissioner

INTEROFFICE MEMORANDUM

TO	Commissioner Tom Moyane	CC	Acting COO Jonas Makwakwa Johan de Waal
FROM	Helgard Lombard	REFERENCE	
TEL NUMBER	082-746-2124	DATE	14 May 2015
PRIORITY	High		
SUBJECT	DPCI (HAWKS) Enquiry		

Insert Heading

Forwarded to you for:

- ☐ Approval
- ☐ For Your Records
- ☒ Action as required
- ☐ Verification
- ☒ Information
- ☐ Proof Reading

On completion, please forward to:

- ☐ Sender
- ☐ Other

Comments:

G5m

BACKGROUND

Meeting between Commissioner Tom Moyane, Acting COO Jonas Makwakwa, Johan de Waal and Helgard Lombard on 13 May 2015 at 17:00 refers.

INSTRUCTION

As per your instruction, the two employees Johan de Waal and Helgard Lombard met with members of the DPCI (HAWKS) on 13 and 14 May 2015. The DPCI will now:

a. Register an enquiry.
b. Refer it to their legal department for a decision to register a formal charge.
c. Should a formal charge be registered to investigate the charges; then
d. Refer the matter to the NPA for a decision to prosecute or not.

FOLLOW-UP

The designated police officer will be in direct contact with Commissioner Tom Moyane's office in the near future in this regards.

HELGARD LOMBARD

GSm

4

09 November 2007

Received the amount of one thousand eight hundred rand (R 1,800.00) only.

2007/11/09

65m

4

Helgard Lombard

From: Johan De Waal [jdewaal@gmail.com] R 2,418-00
Sent: 20 November 2007 08:24
To: helgard
Subject: geld

Mnr H. Kan jy asseblief die volgende geld trek. Ek het met Skol gepraat en hy se dit is reg.
R684-00 vir Danie vir vorige opleiding by Fonteinedal.
R684-00 vir volgende week se fiksheidsevaluering.
R50-00 x 21 lede vir skietopleiding = R1050-00. (R40-00 per persoon vir skietbaan. R8-00 per persoon vir teikens en R2-00 vir plakkers.)
Ons het kwitansies vir alles.
Dankie

ABSA
ABSA Bank Limited/Beperk. Reg No 1986/004794/06
S/N: R000.000,000.00
BARCLAYS

CLIENT TRANSACTION RECORD
KLIENT-TRANSAKSIEREKORD

20 NOV 2007 09:28:56 90-6219-8036 039782
TRND **********2,418.00 -
BAL **********361,714.29 +
AVL/BAL **********361,664.29 +

0014 400000392
R500: R000,000,000.00
R200: R000,000,000.00
R100: R000,002,400.00
R 50: R000,000,000.00
R 20: R000,000,000.00
R 10: R000,000,010.00
R 5: R000,000,005.00
R 2: R000,000,002.00

5010111196799069
R1: R000,000,001.00
50c: R000,000,000.00
20c: R000,000,000.00
10c: R000,000,000.00
5c: R000,000,000.00
2c: R000,000,000.00
1c: R000,000,000.00
Trf: R000,000,000.00

07/11/20

G Smit

Date : 13/12/07

I, ERIC received the amount of R 5000 -00

(in words) FIVE THOUSAND from Helgard Lombard.

The payment was approved by A. JANSE VAN RENSBURG / J. DE WAAL

(Signature)

ABSA

BARCLAYS

CLIENT TRANSACTION RECORD

CLIENT TRANSACTION RECORD

62 62 45

Helgard Lombard

From: Skol [skol@mweb.co.za]
Sent: 18 January 2008 14:11
To: Helgard Lombard
Subject: Re: FW: CCTV Camera Selection

Helgard Lombard wrote:

>Skollie,
>
>Our telephone conversation refers.
>
>After consulting with SCW the better option is to send them to the
>"Introduction to CCTV" course before introducing them to the more
>advanced "Mastering CCTV" course. The cost of the "Introduction to
>CCTV" course will amounts to R 2,052.00 (VAT Inclusive).
>
>Your written approval will be appreciated.
>
>Helgard.
>
>-----Original Message-----
>From: Skol [mailto:skol@mweb.co.za]
>Sent: 18 January 2008 08:20
>To: Helgard Lombard; Johan De Waal
>Subject: Re: FW: CCTV Camera Selection
>
>Helgard Lombard wrote:
>
>
>
>>----------
>>--
>>
>>*From:* Helgard Lombard [mailto:helgard.lombard@telkomsa.net]
>>*Sent:* 15 January 2008 13:33
>>*To:* 'Skol'
>>*Subject:* FW: CCTV Camera Selection
>>
>>Skollie,
>>
>>*REQUEST*
>>
>>Herewith the training schedule for CCTV training courses at Security

SEQ 29/2021-2485

>>Warehouse. It is requested to send two employees on the course 23 – 26
>>January 2008.
>>
>>*FINANCE*
>>
>>The cost for the course, for two students, is R 5,130.00 (VAT inclusive).
>>
>>Your approval will be appreciated.
>>
>>Belgard.
>>
>>----------
>>--
>>
>>*From:* Michéll [mailto:mdpt@securitywarehouse.co.za]
>>*Sent:* 14 January 2008 14:32
>>*To:* mdpt@securitywarehouse.co.za
>>*Subject:* CCTV Camera Selection
>>
>>*CCTV Camera Selection*
>>
>>* *
>>
>>*Our CCTV Philosophy & Methodology*
>>
>>Since CCTV systems are actually 'human substitutes' we believe they
>>need to simulate accordingly. In turn, these are the 4 pillars of our
>>philosophy in surveillance systems, and underpin our quest for
>>best-of-breed solutions and products in each:
>>
>>*Human Function*
>>
>>
>>
>>* Product Substitute*
>>
>>The Eye with its retina
>>
>>
>>
>>Cameras & Lenses
>>
>>/Professional, IR, High Speed Dome/
>>
>>The Optic Nerve
>>
>>
>>

SEQ 29/2021-2486

Reconciliation of Funds for the period 19 Dec 2008 to 11 August 2009

Debit				Credit																
												DID					Other			
Date	Description	Reference	Amount	Date	Description	Reference	Amount	H. Lombard	Alarm	Alarm	CCTV	Radio	Caller	Access	Int Nos	Commission	Agent	Other	Bank Fees
19-Dec-08	Balance B/F		R 115,336.24	14-Jul-09	Bank Fees Dec '08 till 14 Jul '09	F/Statements	R 188.00												R 188.00
14-Jul-09	Interest from Dec '08 to 14 Jul '09	F/Statements	R 19.41	8-Jun-09	Transfer: H. Lombard	See Inv File	R 1,477.89										R 1,477.89		
				7-Mar-09	SARS - Tax on "Profit" declared	See Inv File	R 45,096.00											R 45,096.00	
				7-Mar-09	Transfer: H. Lombard	See Inv File	R 10,412.40				R 10,412.40					R 8,000.00			
				28-May-09	Transfer: H. Lombard	See Inv File	R 8,576.69						R 3,571.69			R 4,205.00	R 500.00		
				14-Jul-09	Transfer: H. Lombard	See Inv File	R 22,000.00	R 9,140.91					R 12,859.09			R 700.00			
			R 111,355.25				R 88,259.98												
				14-Jul-09	Balance B/D		R 26,795.77												
			R 115,355.25				R 115,355.25												
14-Jul-09	Balance B/F		R 26,795.77	11-Aug-09	Transfer: H. Lombard	See Inv File	R 11,802.00	R 1,372.00			R 4,930.00					R 4,930.00	R 600.00		
					Close down balance to H. Lombard (including bank fees)	See Inv File	R 4,991.77	R 4,995.77											
			R 26,795.77				R 26,795.77												
	Balance B/F		R -																
					No receipts - H. Lombard			R 16,508.68											

SEQ 29/2021-2487

Reconciliation of Funds for the period 05 May 2008 to 15 December 2008

Debit							Credit																			
Date	Description	Reference	Amount	Affiliate	Fees	Interest	Date	Description	Reference	Amount	Commission	Fees	GETU	Audio	Eligible	Accom.	Ad Hoc	Commission	Accom.	Ad Hoc	Stock Fees
6-May-08	Balance B/F	Recon 05 May '08	R 384,058.46				19-Dec-08	Bank fees 05 May - 15 Dec '08	Statements	R 574.15											R 574.15
15-Dec-08	Interest 6 May - 15 Dec '08	Statements	R 188.72			R 188.72	4-Aug-08	Cell SMS, Equip CPT, Print correction	See Inv File	R 6,831.80					R [illegible]				R [illegible]	R [illegible]	
30-May-08	Deposit (Wrong Acc)	Refund made 04 Aug '08	R 980.00	R [illegible]			5-Sep-08	Refund 000 C-Funds - Work cancelled	Acc: 011591579	R 256,542.59							R [illegible]				
9-Sep-08	Payment - Call Data	[illegible]	R 26,285.00		R 29,165.00		23-Oct-08	H. Jute - Interim payment source	See Inv File	R 10,000.00										R 10,000.00	
							15-Dec-08	Transfer, H. Lombard	See Inv File	R 3,840.71	R 1,280.24				R [illegible]			R [illegible]		R 3,200.00	
								Transfer, H. Lombard (F/card)	See Inv File	R 4,900.80											
			R 411,148.58							R 391,807.34											
								Balance B/D		R 315,338.34											
			R 411,143.34							R 411,345.58											
15-Dec-08	Balance B/F		R 315,338.34																		

SEQ 29/2021-2488

Reconciliation of Funds as on 06 May 2008

Debit							Credit															
Date	Description	Reference	Amount	A/Fees	Date	Interest	Date	Description	Reference	Amount	Commission	Vat	S.T.T	Audit	Cellular	Assets	Commission	Assets	Ad Hoc	Bank Fees
11-Jul-07	Balance bf		R 133.00				30-Jul-07	Bank Charges - Cellphone		R 49,141.00		R 49,783.00								
12-Jul-07	Deposit	DSD	R 300,000.00		R 300,000.00			Cash - Tape Management Systems		R 11,016.00				R 11,620.00						
31-Jul-07	Deposit	DSD	R 600,735.66		R 600,735.66		31-Jul-07	Bank Fees 11 Jul '07 - 31 Jul '07		R 2,416.40										
31-Jul-07	Interest - July 2007		R			R	01-Aug-07	Bank Charges - Visual Verification Technologies		R 213,263.43			R 213,263.43							
31-Aug-07	Interest - August 2007		R 107.13			R 107.13		Bank Charges - Tape Management Systems		R 24,553.36				R 24,553.62						
28-Sep-07	Interest - September 2007		R 227.14			R 227.14		Bank Charges - Mobile Interactive		R 10,072.36				R 10,072.36						
15-Oct-07	Interest - October 2007		R 209.13			R 209.13		Transfer - H Lombard Cl Card	(See Inv Fee)	R 9,620.03	R 2,011.31	R 2,452.10	R 2,210.13							
31-Nov-07	Interest - November 2007		R 125.00				28-Aug-07	Transfer - Mobile Interactive - Sms payment	Inv10102007	R 1,500.00				R 1,500.00						
07-Dec-07	Deposit	Inv417	R 247,500.00		R 247,500.00			Bank Charges - SDCM Service	Inv1103	R 10,127.40				R 10,127.40						
31-Dec-07	Interest - December 2007		R 84.00			R 84.00		Transfer - H Lombard Cl Card	(See Inv Fee)	R 14,712.93	R 3,340.43		R 3,340.43	R 1,300.00						
31-Jan-08	Interest - January 2008		R 120.00			R 120.00		Bank Charges - Visual Verification Technologies	Inv3151	R 5,666.37			R 5,666.37							R 231.40
29-Feb-08	Interest - February 2008		R 104.67			R 104.67	31-Aug-07	Bank Fees - 01 Aug '07 - 31 Aug '07		R 251.16										
							04-Sep-07	Bank Charges - Cell Network OC	Inv08312006	R 20,995.12					R 20,995.12					R 52.20
							30-Sep-07	Bank Fees - 01 Sep '07 - 30 Sep '07		R 52.20										
							01-Oct-07	Bank Charges - Tape Management Systems	Inv5898	R 1,841.00			R 1,841.00							
								Bank Charges - Unique Products	Inv5148	R 1,294.00	R 1,294.00									
								Transfer - H Lombard Cl Card	(See Inv Fee)	R 11,767.00	R 2,231.45		R 2,910.45	R 2,710.00						
								Transfer - H Lombard Cl Card	(See Inv Fee)	R 20,611.41	R 3,932.16		R 3,194.16		R 10,837.34					
							19-Oct-07	Transfer - H Lombard Cl Card	(See Inv Fee)	R 7,287.20	R 2,291.20		R 4,996.00					R 495.00		
								Bank Charges - Visual Verification Technologies	Inv3247	R 20,231.33								R 23,721.53		
							24-Oct-07	Transfer - H Lombard Cl Card	(See Inv Fee)	R 12,236.16								R 12,236.00		
							31-Oct-07	Bank Fees - 01 Oct '07 - 31 Oct '07		R 195.23										R 195.23
							09-Nov-07	Transfer - H Lombard Cl Card	(See Inv Fee)	R 19,271.72					R 19,271.72					
								Transfer - H Lombard Cl Card	(See Inv Fee)	R 10,035.33	R 4,358.43	R 795.43						R 3,187.00	R 1,000.00	
							12-Nov-07	Bank Charges - FNA Electronics	Inv101488	R 10,015.50						R 10,015.50				
							13-Nov-07	Bank Transfer - Nova Gold Lease	TR/2007/2007/11/13	R 24,701.88					R 24,701.88					
							23-Nov-07	Cash - E. In Kind		R 2,218.00									R 2,218.00	
							26-Nov-07	Bank Charges - FNA Electronics	Inv101500	R 2,014.00						R 2,014.00				
							30-Nov-07	Bank Charges - Unique Products	Inv5152	R 61,757.58					R 61,757.58					
							30-Nov-07	Bank Fees - 01 Nov '07 - 30 Nov '07		R 109.20										R 109.20
							04-Dec-07	Bank Charges - Cell Network OC	Inv08312006	R 24,114.65					R 24,114.65					
							06-Dec-07	Bank Charges - SDCM Service	Inv1113	R 3,240.30				R 3,240.30						
								Transfer - H Lombard Current Acc	(See Inv Fee)	R 13,779.80					R 13,779.80					
								Transfer - H Lombard Cl Card	(See Inv Fee)	R 3,170.38	R 3,000.38					R 431.52		R 938.00		
							07-Dec-07	Cash - E. In Kind	(See Inv Fee)	R 5,000.00									R 1,000.00	
							31-Dec-07	Bank Fees - 01 Dec '07 - 31 Dec '07		R 2,774.55										
							02-Jan-08	Transfer - H Lombard Cl Card	(See Inv Fee)	R 3,200.00								R 3,200.00		
								Bank Charges - Tape Management Systems	Inv5900	R 3,676.00								R 3,676.00		
								Bank Charges - Unique Products	Inv5152	R 13,074.88								R 13,074.88		
							24-Jan-08	Transfer - H Lombard Cl Card	(See Inv Fee)	R 21,464.53				R 3,041.82		R 173.33	R 1,000.00	R 16,450.87	R 1,000.00	R 135.50
							31-Jan-08	Bank Fees - 01 Jan '08 - 31 Jan '08		R 135.50									R 21,000.00	
							06-Feb-08	Bank Charges - Mobile Interactive	Inv20080106	R 21,000.00										
								Transfer - H Lombard Cl Card	(See Inv Fee)	R 1,257.00	R 1,200.00						R 4,000.00	R 3,000.00	R 4,200.00	
							20-Feb-08	Transfer - H Lombard Cl Card	(See Inv Fee)	R 0,835.73										R 46.36
							29-Feb-08	Bank Fees - 01 Feb '08 - 29 Feb '08		R 46.36										
			R 1,148,204.15							R 232,173.00										
								Balance b/d		R 915,931.15										
			R 1,140,709.15							R 1,148,204.15										
03-Mar-08	Balance bf		R 915,931.15				18-Mar-08	Bank Fees - 01 Mar '08 - 18 Mar '08		R 17.50										R 17.50
03-Mar-08	Interest March 2008		R 94.28			R 94.28				R 17.50										
			R 916,025.43					Balance b/d		R 300,037.44										
										R 300,054.94										
			R 916,025.43																	
28-Mar-08	Balance bf		R 300,037.44				31-Mar-08	Bank Fees - 19 Mar '08 - 31 Mar '08		R 17.50										R 17.50
								Balance b/d		R 299,919.94										
			R 300,037.44							R 300,037.44										
01-Apr-08	Balance bf		R 299,919.94				04-Apr-08	Bank Fees - 01 Apr '08 - 30 Apr '08	Bank statement	R 37.70										R 37.70
03-Apr-08	Interest April 2008		R 97.42			R 97.42														
09-Apr-08	Deposit - E. Hawks		R 2,325.00	R2,325.00						R 37.70										
			R 302,353.36																	
							30-Apr-08	Balance b/d		R 302,315.66										
			R 302,353.36							R 302,353.36										
01-May-08	Balance bf		R 300,315.66				05-May-08	Bank Fees - 01 May '08 - 05 May '08		R 98.06										R 98.06
								H. Lombard (Credit Collection 304 Costs (Mar '08)	(See Inv)	R 3,340.30	R 3,340.30									
								TelkOm (Sim) (Fee) Line - Date Sep '07 - Mar '08	(See Inv)	R 15,000.00	R 15,000.00									
			R 300,315.66							R 10,217.30										
							06-May-08	Balance b/d		R 290,098.36										
			R 300,315.66							R 300,315.66										
06-May-08	Balance bf		R 290,098.36																	

Ausg

SEQ 29/2021-2489

X

REFER TO BLUE FILE MARKED AS

ANNEXURE X

SEQ 29/2021-2491

Tel: 012 653 1005
Security Warehouse Academy
Co Bell and Jurg st
Hermopepark
0157

Invoice No. TmA6077

Invoice

Customer

Name: Helgard Lombard
Company: Protech
Email: helgard.lombard@telkomsa.net
Phone: 083 270 9922

Date: 21/01/2008
Order No.:
VAT NO:
FOB:

Qty	Description	Unit Price	TOTAL
2	Introduction to CCTV: 8,9 Feb 08 (Mike & Kenny)	R900.00	R1,800.00
	Security and Communication Warehouse (training) Standard Bank Centurion Acc# 018395281 Branch Code 012645 Savings Account		
		SubTotal	R1,800.00
		CTC	R1,800.00
		TOTAL	R 1,800.00

Payment Details

- ○ Cash
- ○ Cheque
- ● Bank transfer

Name
CC #
Expires

Thank you for your support.

G S M

SEQ 29/2021-2492

SECURITY
A COMMUNICATION WAREHOUSE

Tel: 012 653 1605
Security Warehouse Academy
Co Bell and Jurg st
Hennopspark
0157

Invoice No. TmA0081

Invoice

Customer

Name	Helgard Lombard
Company	Protech
Email	helgard.lombard@telkomsa.net
Phone	083 270 9922

Date	08/02/2008
Order No.	
VAT NO	
FOB	

Qty	Description	Unit Price	TOTAL
2	Mastering CCTV: 13 - 16 Feb 08 (Mike & Kenny)	R2,250.00	R4,500.00
	Security and Communication Warehouse (training) Standard Bank Centurion Acc# 018395281 Branch Code 012645 Savings Account		
		SubTotal	R4,500.00
		CTC	R4,500.00
		TOTAL	R 4,500.00

Payment Details

- ○ Cash
- ○ Cheque
- ● Bank transfer

Name
CC #
Expires

Thank you for your support.

SECURITY & COMMUNICATION
CUSTOMER RECEIPT
Credit Card
Sale 4500.00
TOTAL 4500.00

GSM

SEQ 29/2021-2493

Nedbank Limited
Reg No 1951/000009/06
THE REDS
06 FEB 2008
T1 (128)
11 - 28 - 05

0000000000
2481 D 1084 128 1 06/02/2008 14:57
THE REDS 80
0000000000
CURRENT ACCOUNT
VIOLENCE ANALYSIS SOLUTIONS
0000001517_055113/072629313 21 660,00
Cash/Kontant 0,00
Cheques/Tjeks 1
BRN.NR IN072008108
Have a happy day Geniet die dag
0000000000

NEDBANK

CHEQUES – Name of drawer / Tjeks – Naam van trekker
Total of CASH, POSTAL and MONEY ORDERS/Totaal van KONTANT, POSORDERS en WISSELS
NO CAS
No cheque exceeding R5 million will be accepted/Geen tjek wat R5 miljoen oorskry, word geweier
TOTAL/TOTAAL
R 21,660-00

Nedbank Limited
Reg No. 1951/000009/06
THE REDS
06 FEB 2008
T1 (128)
11 - 28 - 05

⑈7262931⑈ ⑆168205⑆ 73

ABSA
ABSA Bank Limited/Beperk, Reg No 1986/004454/06

CLIENT - TRANSACTION RECORD
CLIENT - TRANSAKSIEREKORD
Account No Rekeninggn

06 FEB 2008 11:30:19 00-6219-6056 0067166
CHQ ********21,660.00
BAL ********189,805.01 +
ACL/BAL ********209,755.01 +
0062 0000000113 CHQ 000297 5013111935739019
Notes:
VIOLENCE ANALYSIS SOLUTIONS**********

Thank you for being our client
Dankie dat u ons kliënt is
7034 (ABSA) 7032 (0) Authorised Financial Services Provider - Geïdentifiseerde Finansiële Diensverskaffer ABSA 10029 (08/2008)

GSmk

SEQ 29/2021-2494

4Knowledge Analysis Solutions cc
CK2007/005974/23
PO Box 40487, Koreleta Park,
South Africa, 0044
dalene@4knowledge.co.za
Cell: 082-413-1922 Fax 012-667-3456
VAT: 4560235250
DoD Supplier Code: V1[illegible]
SAPS Supplier Code: H03VR

Company: South African Revenue Service
Address: Enforcement Unit
299 Bronkhorst Street
Brooklyn, Pretoria
Attention: Frans van Nieleark

Tax Invoice

No: 2[illegible]

Date: 23 January 2008

Description	Quantity	Unit Price	Amount
Registration fee:			
Strategic Analysis Course: 28 Jan to 8 Feb 2008	2	R 9 500,00	R 19 000,00
		Subtotal	R 19 000,00
		Vat (14%)	R 2 660,00
		Amount due	R 21 660,00

Payments must be made to
4Knowledge Analysis Solutions cc
Nedbank Account: 1612056115
Castle Walk Branch Code: 191745
Pretoria, South Africa
Swift Code: NEDSZAJJ

Reservations for Strategic Analysis courses will be confirmed with receipt of registration fees in above account.

SEQ 29/2021-2495

SOUTH AFRICAN AIRWAYS
CARGO ACCEPTANCE RECEIPT

AWB Number	08202149176
Agent Number	[illegible]
Shipper	[illegible]
Origin/Dest	[illegible]
Offload Dest	CPT
Consignee	PIETER DE BOD
Pieces	1
Actual Wgt	17.60
Charge Wgt	18.00
Rate Per Kg	12.90
Wgt And Val	232.20
Vat	39.79
Other Charges	52.00
Total	323.95
Service Type	EXP
Goods Descript	GOLF EQUIPMENT
Flight Number	[illegible]
Flight Date	2008/02/15
Dept Time	13:00
Pro-No	0016912
Date/Time	2008/02/15 14:48

ULD NO KG ULD NO KG

SOUTH AFRICAN AIRWAYS CARGO
AIRPORT REQUISITION

AW 78

CONSIGNEE	DATE
PIETER DE BOD 0846807222	15/02/08

SERVICE TYPE	PIECES	WEIGHT	DECLARED VALUE FOR CARRIAGE
EXPRESS	1	17,6	

QUANTITY OF GOODS	AWB NUMBER
EQUIPMENT	08202143175
	PRO NUMBER
	16919

If any part of the consignment contains dangerous goods, such is according to the applicable Dangerous Goods Regulations.
and condition (except as noted) for carriage SUBJECT TO THE
15-02-08 16L9874 CASH 323.95

Signature of Shipper or its Agent

AGENT SIGNATURE _____

AIRLINE SIGNATURE _____

GSM

SEQ 29/2021-2496

[illegible] HARDWARE (PTY) LTD - BOSTON

[illegible] 12TH AVENUE
BOSTON: EAST LONDON
7630
TEL: 043-[illegible]
FAX: 043-2328

CASH SALE
CSH081697[illegible]53
2021/02/19

TAX INVOICE - V.A.T. REG. NO: 4770211662

MR CASH ACCT 000001

[illegible] BOX 50MM PLASTIC 173.75

[illegible] 1821
[illegible] 250M 18.50

[illegible] 38.80

[illegible] 1895.09 @ 2 SL 1847.72

[illegible] 10MM BLACK 65.90

[illegible] 26.14

[illegible] 200M PLASTIC 25.40

[illegible] 25.40

[illegible] HALL IN ANCHORS SKRS (100) 32.78

[illegible] HALL IN ANCHORS SKRS (100) 28.57

[illegible] STUFF 1/2 METER
2.0 X 12.00 24.00

[illegible] 7.85

[illegible] SELF ADHESIVE WHITE TYS (100) 49.95

[illegible] SELF ADHESIVE BLK (100) 49.95

[illegible] SOLDER IRON BRUSH [illegible] 337.33

GSM

SEQ 29/2021-2497

000000009979	
[illegible] HANDLE & BLADE KNOD #RDC159	27.50
000000000765	
[illegible] 97/3 INH 2005 SOLID/LEAD FREE	70.61
000000002240	
DRILL BIT RECOVERY [illegible]	41.52
000000002569	
BLUE STICKS LARGE 1.5KG TOP LINE	16.35
000000064173	
[illegible] SPRING [illegible]	2.74
000000002213	
GLUE GUN STANLEY H/D BLUE [illegible]	15.69
000000014005	
[illegible] INH 186	11.99
000000011874	
[illegible] SET 6PT [illegible]	17.95
000000002015	
FILE HOLD HALF ROUND [illegible]	28.95
000000166931	
FILE [illegible]	87.45
000000000120	
[illegible]	69.95
000000005500	
FILE [illegible] SET 10PC PROF.[illegible]	72.98
000000002080	
PUTTY KNIFE 3PC STAINLESS [illegible]	59.95
000000018734	
[illegible]	96.95
000000003195	
[illegible]	54.95
000000000719	
[illegible]	19.99
000000000718	
KNIFE [illegible] STANLEY [illegible]	76.99
000000004104	
SHAFTER [illegible]	45.60
000000016005	
[illegible] INH 186	11.99
[illegible]	6.77
[illegible]	7.50
TOTAL [illegible] U.A.T.	[illegible]
TOTAL [illegible]	[illegible]

G Smith

SEQ 29/2021-2498

[illegible]
[illegible] RIVET 3.2X17(25)
4.50

[illegible]
[illegible] 24.95

[illegible]
[illegible] RIVET 3.2X15(25)

[illegible]

[illegible]

[illegible]
6.27

[illegible]
[illegible] 7.50

TOTAL [illegible] 4068.37
[illegible] 499.62

BRUSHED 12.47 42 ITEMS
CRS: 4068.37

[illegible]

NEDLINK - SALE
2008/02/19 12:47 10.07
BRICHILL BOSION

Nedbank Merchant No:
0001437798

PAN: [illegible]1029
Exp Date: 2008/03/31
Auth No: [illegible]
VISA

R4068.37

Merchant Copy
[illegible] 000021 617/88 17/02/2008 12:47
[illegible] 000000 [illegible] 016
[illegible] 000000 [illegible] 0002
[illegible] 000000001[illegible]

CUSTOMER RECEIPT

D 448792

Warranty No.

CUSTOMER'S COPY

CUSTOMER NAME AND ADDRESS

MODEL No.	SERIAL No.	WORKING No.	DATE
8780D	026183	08157	270SH9

P.O. Box 5572 Wieron Place
083 278 9922

E-MAIL [illegible]

PLEASE INDICATE WHERE MACHINE WILL BE USED

TITLE	AGRICULTURE	CONSTRUCTION	ENTERPRISE	WORKSHOP	OTHER
SALE REPRESENTATIVE NAME					X

(ALL ABOVE INFO MUST BE COMPLETED IN FULL TO VALIDATE WARRANTY)

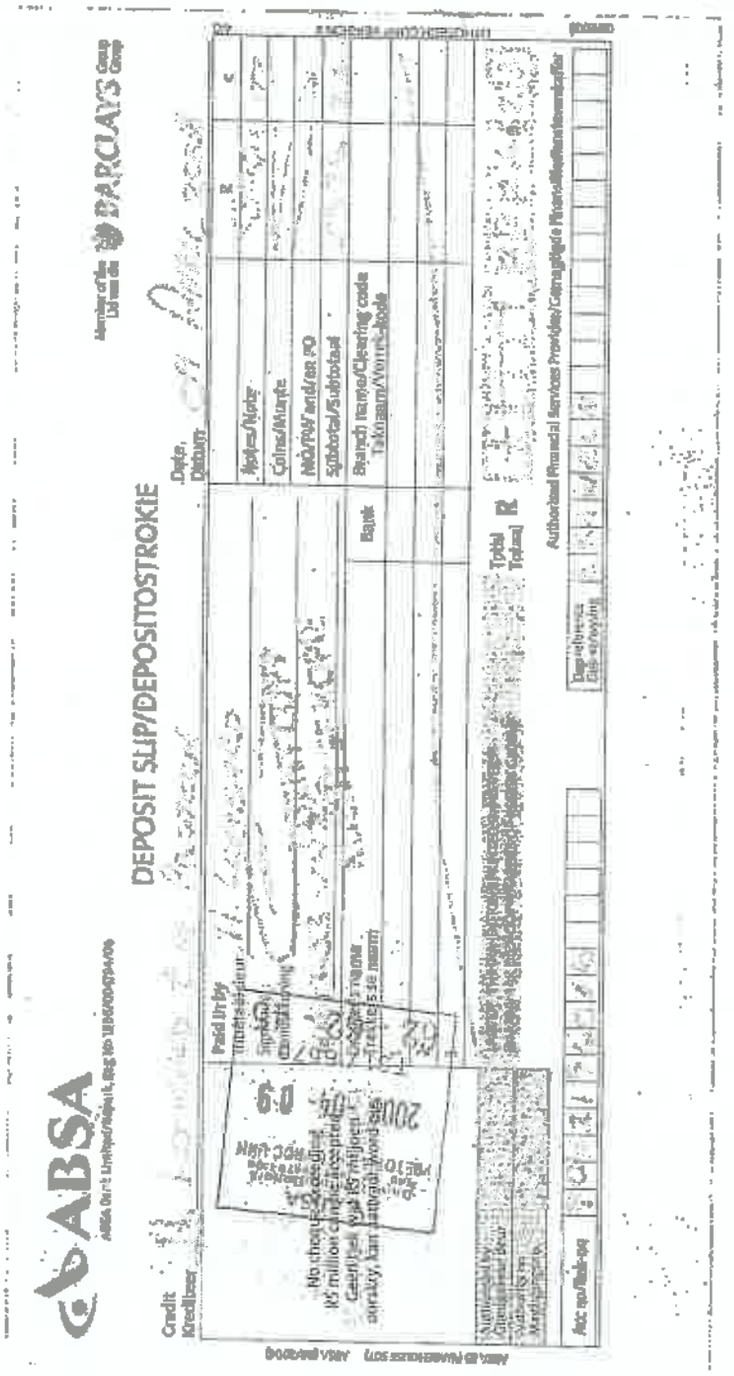
Makita Quality

CUSTOMER'S NAME

GSM

Reconciliation : 09 April 2008

1	Funds received from J. de Waal on behalf of Eric Khwela - Fund not paid to informant	R 5,000.00
	Less:	
	Airtime Services Jan 08	-R 1,425.45
	Airtime Services Feb 08	-R 1,248.32
		R 2,326.23



GSM

27 October 2008

Received the amount of R 10,000 (ten thousand rand) only from Helgard Lombard for the interim payment of a source (as authorized per telephone conversation between Helgard Lombard and J. van Loggerenberg on 24 October 2008).

G. Jute

ABSA

Member of the Ltd van die BARCLAYS Group/Groep

CLIENT TRANSACTION RECORD

CLIENT TRANSAKSIEREKORD

27 OCT 2008 16:15:54 30-5119-1036 0318050

OPTD ********10,000.00 -

BAL ********127,410.50 +

AVL/BAL ********137,410.50 +

0103 CHQ6:0821 5010311136739069

0500:	1000,000,000.00	2:	2000,000,000.00
1000:	2000,000,000.00	50c:	1000,000,000.00
2000:	5000,000,000.00	20c:	1000,000,000.00
R 50:	1000,000,000.00	10c:	2000,000,000.00
R 20:	2000,000,000.00	5c:	1000,000,000.00
R 10:	1000,000,000.00	2c:	1000,000,000.00
R 5:	1000,000,000.00	1c:	2000,000,000.00
R 2:	3000,000,000.00	2/R:	2000,000,000.00
R 1:	3000,000,000.00	5/R:	1000,000,000.00

Thank you for being our client

Double click if you want to

Authorised financial services provider

G Sm

SEQ 29/2021-2501

MEV B LOMBARD
POSBUS 5072
WITBANK
0140

Rekening Nommer : 905219036
Huidige Saldo : 891 372.74
Beskikbare Saldo : 891 322.74
Staat vir periode : 01/07/2007 tot 18/07/2007

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig krediet)	Tran Bedrag	Saldo
03/07/2007	SALDO OORDRAG	0.00	44.74
03/07/2007	ADMIN FOOI	0.00	44.74
03/07/2007	ADMINISTRASIE FOOI	-7.20	37.54
05/07/2007	4 LYN MINISTAAT KAART NR.9069	0.00	37.54
05/07/2007	STAATFOOI	1.50	36.04
9/07/2007	4 LYN MINISTAAT KAART NR.9069	0.00	36.04
09/07/2007	STAATFOOI	-1.50	34.54
09/07/2007	OTN DEPOSITO KAART NR.5069	100.00	134.54
11/07/2007	KORT OUT FOOI OTN	0.00	134.54
11/07/2007	TRANSAKSIE FOOI	0.00	134.54
12/07/2007	KONTANTDEPOSITO VERW: 450	300 000.00	300 134.54
12/07/2007	KONTANTOOR FOOI	-3 150.00	296 984.54
14/07/2007	SALDOAVRAAG KAART NR.5069	0.00	296 984.54
14/07/2007	SALDOAVRAAG FOOI	-1.50	296 983.04
17/07/2007	KONTANTDEPOSITO VERW: 930	600 703.46	897 687.04
17/07/2007	KONTANTOOR FOOI	-6 308.40	891 379.04
18/07/2007	4 LYN MINISTAAT KAART NR.9069	0.00	891 379.04
18/07/2007	STAATFOOI	-1.50	891 377.74

*** EINDE VAN NAVRAAG 18/07/2007 14:18:00 ***

GSM

SEQ 29/2021-2502

July – Bank Fees.

MBV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer	:	9062196036
Huidige Saldo	:	832 788.74
Beskikbare Saldo	:	832 738.74
Staat vir periode	:	12/07/2007 tot 26/07/2007

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
12/07/2007	SALDO OORGEBRING	0.00	300 133.68
12/07/2007	KONTANTDEPOSITO VERW: d50	300 000.00	300 133.68
12/07/2007	KONTANTDEP FOOI	-3 150.00	296 983.68
14/07/2007	SALDONAVRAAG KAART NR.9069	0.00	296 983.68
14/07/2007	SALDONAVRAAG FOOI	-1.50	296 982.18
17/07/2007	KONTANTDEPOSITO VERW: DSO	600 705.46	897 687.64
07/2007	KONTANTDEP FOOI	-6 308.40	891 379.24
18/07/2007	4 LYN MINISTAAT KAART NR.9069	0.00	891 379.24
18/07/2007	STAATFOOI	-1.50	891 377.74
18/07/2007	PIN AANBIEDNAVRAAG	0.00	891 377.74
18/07/2007	TRANSAKSIE FOOI	-5.00	891 372.74
18/07/2007	AANBIEDINGSNAVRAAG	0.00	891 372.74
18/07/2007	AANBIEDINGSNV FOOI	-5.00	891 367.74
26/07/2007	PINPAD ONTTREKKING KAART NR.9069	-11 628.00	879 739.74
26/07/2007	TRANSAKSIE FOOI	-120.40	879 619.34
26/07/2007	TP/PAD TJEK BET KAART NR.9069	-46 785.60	832 833.74
26/07/2007	TRANSAKSIE FOOI	-40.00	832 793.74
26 2007	TP/PAD TJEKBET KOR	46 785.60	879 579.34
26/07/2007	TRANSAKSIE FOOI	40.00	879 619.34
27/2007	TJEKBETALING TJEKNOMMER : 000017	-46 785.60	832 833.74
26/07/2007	TRANSAKSIE FOOI	-40.00	832 793.74

*** EINDE VAN NAVRAAG 26/07/2007 14:07:56 ***

+ R 5.00 Aanbiedingsfooi on 26/7/2007 not reflected on this statement.

Bank costs : R 9 636-80

SEQ 29/2021-2503

August 2007

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer : 9062196036
Huidige Saldo : 505 879.66
Beskikbare Saldo : 505 829.66
Staat vir periode : 01/08/2007 tot 04/09/2007

Datum	Transaksie Beskrywing (Bedrag tussen hakkies vertaenwoordig kostes)	Tran Bedrag	Saldo
03/08/2007	SALDO OORGEBRING	0.00	832 788.74
03/08/2007	ADMIN FOOI	0.00	832 788.74
03/08/2007	ADMINISTRASIE FOOI	-7.20 A	832 781.54
08/08/2007	KREDIETRENTE	167.12	832 948.66
08/08/2007	PINPAD DT OORP KAART NR.9069	-9 820.03	823 128.63
08/08/2007	TRANSAKSIE FOOI	-14.75 A	823 113.88
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-24 032.52	799 081.36
08/2007	TRANSAKSIE FOOI	-40.00 A	799 041.36
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-12 972.98	786 068.38
08/08/2007	TRANSAKSIE FOOI	-40.00 A	786 028.38
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-213 265.43	572 762.95
08/08/2007	TRANSAKSIE FOOI	-40.00 A	572 722.95
28/08/2007	TP/PAD TJEK BET KAART NR.9069	-19 197.60	553 525.35
28/08/2007	TRANSAKSIE FOOI	-40.00 A	553 485.35
28/08/2007	TP/PAD TJEK BET KAART NR.9069	-8 606.32	544 879.03
28/08/2007	TRANSAKSIE FOOI	-40.00 A	544 839.03
28/08/2007	PINPAD DT OORP KAART NR.9069	-14 792.55	530 046.48
28/08/2007	TRANSAKSIE FOOI	-14.75 A	530 031.73
08/2007	PINPAD DT OORP KAART NR.9069	-1 000.00	529 031.73
28/08/2007	TRANSAKSIE FOOI	-14.75 A	529 016.98
03/09/2007	ADMIN FOOI	0.00	529 016.98
03/09/2007	ADMINISTRASIE FOOI	-7.20	529 009.78
04/09/2007	TP/PAD TJEK BET KAART NR.9069	-23 085.12	505 924.66
04/09/2007	TRANSAKSIE FOOI	-40.00	505 884.66

*** EINDE VAN NAVRAAG 04/09/2007 14:43:58 ***

August Bank Cost = R 257-45.
Interest. R 167-12.

GSM

Sept & October 2007

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

ABSA
CAPE TOWN CHEQ PROC UNIT
2007 -11- 20
CUSTOMER SERVICE / 6570
62 - 45 - 09

Rekening Nommer	:		9062196036
Huidige Saldo	:		361 709.29
Beskikbare Saldo	:		361 659.29
Staat vir periode	: 01/08/2007	tot	20/11/2007

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/08/2007	SALDO OORGEBRING	0.00	832 788.74
03/08/2007	ADMIN FOOI	0.00	832 788.74
03/08/2007	ADMINISTRASIE FOOI	-7.20	832 781.54
08/08/2007	KREDIETRENTE	167.12	832 948.66
08/08/2007	PINPAD DT OORP KAART NR.9069	-9 820.03	823 128.63
08/08/2007	TRANSAKSIE FOOI	-14.75	823 113.88
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-24 032.52	799 081.36
08/2007	TRANSAKSIE FOOI	-40.00	799 041.36
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-12 972.98	786 068.38
08/08/2007	TRANSAKSIE FOOI	-40.00	786 028.38
08/08/2007	TP/PAD TJEK BET KAART NR.9069	-213 265.43	572 762.95
08/08/2007	TRANSAKSIE FOOI	-40.00	572 722.95
28/08/2007	TP/PAD TJEK BET KAART NR.9069	-19 197.60	553 525.35
28/08/2007	TRANSAKSIE FOOI	-40.00	553 485.35
28/08/2007	TP/PAD TJEK BET KAART NR.9069	-8 606.32	544 879.03
28/08/2007	TRANSAKSIE FOOI	-40.00	544 839.03
28/08/2007	PINPAD DT OORP KAART NR.9069	-14 792.55	530 046.48
28/08/2007	TRANSAKSIE FOOI	-14.75	530 031.73
08/2007	PINPAD DT OORP KAART NR.9069	-1 000.00	529 031.73
28/08/2007	TRANSAKSIE FOOI	-14.75	529 016.98
03/09/2007	ADMIN FOOI	0.00	529 016.98
03/09/2007	ADMINISTRASIE FOOI	-7.20	529 009.76
04/09/2007	TP/PAD TJEK BET KAART NR.9069	-23 085.12	505 924.66
04/09/2007	TRANSAKSIE FOOI	-40.00	505 884.66
04/09/2007	PIN AANBIEDNAVRAAG	0.00	505 884.66
04/09/2007	TRANSAKSIE FOOI	-5.00	505 879.66
08/09/2007	KREDIETRENTE	141.21	506 020.87
08/09/2007	BONUSRENTE	85.93	506 106.80
01/10/2007	PINPAD DT OORP KAART NR.9069	-20 631.44	485 475.36
01/10/2007	TRANSAKSIE FOOI	-14.75	485 460.61
01/10/2007	PINPAD DT OORP KAART NR.9069	-11 767.68	473 692.93

Sept '07

Bank Cost = R 52-20.
Interest = R 227-14

GSM

SEQ 29/2021-2505

MBARD
50072
DAPARK

ABSA Bank Limited/Beperk Reg No 1986/001811 CAPE TOWN CHEQ PROC UNIT 2007 -11- 20 CUSTOMER SERVICE / 6570 62 - 45 - 09

Rekening Nommer	:		9062196036
Huidige Saldo	:		361 709.29
Beskikbare Saldo	:		361 659.29
Staat vir periode	: 01/08/2007	tot	20/11/2007

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig koetes)	Tran Bedrag	Saldo
01/10/2007	TRANSAKSIE FOOI	-14.75 A	473 678.18
01/10/2007	TP/PAD TJEK BET KAART NR.9069	-1 641.60	472 036.58
01/10/2007	TRANSAKSIE FOOI	-40.00 A	471 996.58
01/10/2007	TP/PAD TJEK BET KAART NR.9069	-1 299.60	470 696.98
01/10/2007	TRANSAKSIE FOOI	-40.00 A	470 656.98
03/10/2007	ADMIN FOOI	0.00	470 656.98
[illegible]2007	ADMINISTRASIE FOOI	-7.20 A	470 649.78
[illegible]10/2007	KREDIETRENTE	122.75	470 772.53
08/10/2007	BONUSRENTE	77.37	470 849.90
19/10/2007	PINPAD DT OORP KAART NR.9069	-7 297.99	463 551.91
19/10/2007	TRANSAKSIE FOOI	-14.75 A	463 537.16
19/10/2007	TP/PAD TJEK BET KAART NR.9069	-23 721.53	439 815.63
19/10/2007	TRANSAKSIE FOOI	-40.00 A	439 775.63
24/10/2007	PINPAD DT OORP KAART NR.9069	-12 298.00	427 477.63
24/10/2007	TRANSAKSIE FOOI	-14.75 A	427 462.88
03/11/2007	ADMIN FOOI	0.00	427 462.88
03/11/2007	ADMINISTRASIE FOOI	-7.20 A	427 455.66
08/[illegible]2007	KREDIETRENTE	113.34	427 569.02
08/11/2007	BONUSRENTE	11.71	427 580.73
[illegible]11/2007	PINPAD DT OORP KAART NR.9069	-16 873.72	410 707.01
09/11/2007	TRANSAKSIE FOOI	-14.75 A	410 692.26
09/11/2007	PINPAD DT OORP KAART NR.9069	-10 930.23	399 762.03
09/11/2007	TRANSAKSIE FOOI	-14.75 A	399 747.28
12/11/2007	TP/PAD TJEK BET KAART NR.9069	-10 835.50	388 911.78
12/11/2007	TRANSAKSIE FOOI	-40.00 A	388 871.78
13/11/2007	UITGNME TELE OORPL TRO8106625507X13	-24 701.89	364 169.89
20/11/2007	TP/PAD ONTTREKKING KAART NR.9069	-2 418.00	361 751.89
20/11/2007	TRANSAKSIE FOOI	-37.60 A	361 714.29

Bank Cost = R 196-20
Interest = R 202-12

Nov 2007

Bank Cost = 114-30
+ Administration = 5-00
Transfer Cheque 26/11/07 = 40-00
Transaction-fee cheque 28/11/07 = 60-00
199 - 30

*** EINDE VAN NAVRAAG 20/11/2007 9:36:29 ***

GSM

1BRR 8758 ABS SVL356

MALL 9 REDS

A B S A B A N K

SAVINGS FINANCIAL HISTORY

04 DEC 2007

ACCOUNT NAME: MEV H LOMBARD
ACCOUNT NUMBER: 9062196036
CLIENT CODE: LOMBAH 120
PRODUCT: 089040 FLEXI ACCOUNT

DIV CODE: ABS
SITE CODE: 8758
ACCOUNT MEDIUM: CARD

PROC-DATE / EFF-DATE	DESCRIPTION / CARD NUMBER	CHARGE	TRAN-AMOUNT / GOVT-LEVY	ACCOUNT BALANCE / CHEQUE AMOUNT	CROSS-REF-ACNO / CROSS-REF-EVENT	EVENT / CODE	TELLER / CONTRL	REF-NBR / CHQ-NBR	TRAN-TIME / TRAN-SITE
2007/11/03	ADMINISTRATION FEE	7.20-	0.00	427,455.68		384			0
			0.00	0.00					8758
2007/11/08	CREDIT INTEREST	0.00	113.34	427,569.02		385			0
			0.00	0.00					8758
2007/11/08	BONUS INTEREST	0.00	11.71	427,580.73		386			0
			0.00	0.00					8758
2007/11/09	PINPAD DEBIT TRANSFER	14.75-	16,873.72-	410,692.26	3268148329	387	39782		14014729
	5010111136739069		0.00	0.00			3962		6570
2007/11/09	PINPAD DEBIT TRANSFER	14.75-	10,930.25-	399,747.28	4565464042851029	388	39782		14038478
	5010111136739069		0.00	0.00			3962		6570
2007/11/12	TELLER PINPAD CHEQUE PAYMEN	40.00-	10,855.50-	388,871.78		389	3953		8495918
	5010111136739069		0.00	0.00				447	6570
2007/11/15	OUTWARD TRF OF FUNDS	0.00	24,701.89-	364,169.89		391	17087		15022584
			0.00	0.00			28752		8106
2007/11/20	TELLER PINPAD WITHDRAWAL	57.60-	2,418.00-	361,714.29		392	39782		9288703
	5010111136739069		0.00	0.00					6570
2007/11/20	PIN PRESENTATION ENQUIRY	5.00-	0.00	361,709.29		393			9368129
			0.00	0.00					8758
2007/11/26	TELLER PINPAD CHEQUE PAYMEN	40.00-	2,814.00-	358,895.29		394	39293		15453570
	5010111136739069		0.00	0.00				34368	8758
2007/11/28	TELLER PINPAD CHEQUE PAYMEN	40.00-	81,767.58-	277,047.71		395	3952		13093870
	5010111136739069		0.00	0.00				460	6570

ABSA

BARCLAYS Group

SEQ 29/2021-2506

Dec 2007

ABSA
ABSA Bank Limited/Beperk. Reg No 1986/004794/06

MEV H LOMBARD
POSBUS 60072
WIERDAPARK
0149

ABSA BANK MALL @ REDS
FLEXI REKENING
REKENINGNOMMER : 90 6219 6036
REKENINGSTATUS : OOP
SALDO : 454309,10
BESKIKBARE SALDO : 454259,10

REKENINGNAAM : M/A PROTECH & PARTNERS

STAAT VIR DIE PERIODE 01/12/2007 TOT 10/01/2008

DATUM	TRANS BESKRYWING	TRANS.TAK	BEDRAG	SALDO
03/12/2007	ADMIN FOOI	MALL @ REDS	0,00	277047,71
	ADMINISTRASIE FOOI		7,20-A	277040,51
04/12/2007	TP/PAD TJEK BET	WIERDA PARK	24114,65-	252925,86
	TRANSAKSIE FOOI		40,00-A	252885,86
	KAART NR. 9069			
06/12/2007	PINPAD DT OORP	WIERDA PARK	3176,38-	249709,48
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		14,75-A	249694,73
	KAART NR. 9069			
06/12/2007	PINPAD DT OORP	WIERDA PARK	13779,80-	235914,93
	KREDIET REK:00000003260148329			
	TRANSAKSIE FOOI		14,75-A	235900,18
	KAART NR. 9069			
06/12/2007	TP/PAD TJEK BET	WIERDA PARK	2240,10-	233660,08
	TRANSAKSIE FOOI		40,00-A	233620,08
	KAART NR. 9069			
07/12/2007	KONTANTDEPOSITO	WIERDA PARK	247500,00	481120,08
	VERW: inv417			
	KONTANTDEPOSITO FOOI		2598,75-A	478521,33
08/12/2007	KREDIETRENTE	MALL @ REDS	84,93	478606,26
12/12/2007	TP/PAD ONTTREKKING	WIERDA PARK	5000,00-	473606,26
	TRANSAKSIE FOOI		60,10-A	473546,16
	KAART NR. 9069			
03/01/2008	ADMIN FOOI	MALL @ REDS	0,00	473546,16
	ADMINISTRASIE FOOI		7,50-	473538,66
08/ /2008	KREDIETRENTE	MALL @ REDS	120,82	473659,48
10/01/2008	PINPAD DT OORP	MALL @ REDS	3289,00-	470370,48
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		15,50-	470354,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	3876,00-	466478,98
	TRANSAKSIE FOOI		45,00-	466433,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	12074,88-	454359,10
	TRANSAKSIE FOOI		45,00-	454314,10
	KAART NR. 9069			
10/01/2008	AANBIEDINGSNAVRAAG	MALL @ REDS	0,00	454314,10
	AANBIEDINGSNAVRAAG FOOI		5,00-	454309,10

Dec 2007 = Bank Cost = R 2,775-55
Interest = R 954-93

Member of the Liberty Group BARCLAYS Group

Authorised Financial Services Provider/Gemagtigde Finansiële Dienstverleenser – Registered Credit Provider/Geregistreerde Kredietverleenser, Reg no NCRCP7

GSM

SEQ 29/2021-2508

DATUM	TRANS BESKRYWING	TRANS.TAK	BEDRAG	SALDO
	VOORUITGEDATEERDE ITEMS			

GEEN VOORUITGEDATEERDE ITEMS VANDAG VIR DIE REKENING NIE

OPGELOOPTE RENTE SOOS OP	10/01/2008	:	7,78
OPGELOOPTE BONUS SOOS OP	10/01/2008	:	0,00

EINDE VAN NAVRAAG - 2008-01-10 / 14:04:49 / 90 6219 6036

GSM

SEQ 29/2021-2509

Jan 2008

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

ABSA BANK MALL @ REDS
FLEXI REKENING
REKENINGNOMMER : 90 6219 6036
REKENINGSTATUS : OOP
SALDO : 396890,59
BESKIKBARE SALDO : 396840,59

2008 -02- 26

REKENINGNAAM : H/A PROTECH & PARTNERS

STAAT VIR DIE PERIODE 01/01/2008 TOT 26/02/2008

DATUM	TRANS BESKRYWING	TRANS.TAK	BEDRAG	SALDO
03/01/2008	ADMIN FOOI	MALL @ REDS	0,00	473546,16
	ADMINISTRASIE FOOI		7,50- A	473538,66
08/0[illegible]008	KREDIETRENTE	MALL @ REDS	120,82	473659,48
[illegible]1/2008	PINPAD DT OOKP	MALL @ REDS	3289,00-	470370,48
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		15,50- A	470354,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	3876,00-	466478,98
	TRANSAKSIE FOOI		45,00- A	466433,98
	KAART NR. 9069			
10/01/2008	TP/PAD TJEK BET	MALL @ REDS	12074,88-	454359,10
	TRANSAKSIE FOOI		45,00- A	454314,10
	KAART NR. 9069			
10/01/2008	AANBIEDINGSNAVRAAG	MALL @ REDS	0,00	454314,10
	AANBIEDINGSNAVRAAG FOOI		5,00- A	454309,10
24/01/2008	PINPAD DT OOKP	MALL @ REDS	21464,53-	432844,57
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		15,50- A	432829,07
	KAART NR. 9069			
03/02/2008	ADMIN FOOI	MALL @ REDS	0,00	432829,07
	ADMINISTRASIE FOOI		7,50-	432821,57
[illegible]2/2008	PINPAD DT OOKP	WIERDA PARK	1296,06-	431525,51
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		15,50-	431510,01
	KAART NR. 9069			
06/02/2008	TP/PAD TJEK BET	WIERDA PARK	21660,00-	409850,01
	TRANSAKSIE FOOI		45,00-	409805,01
	KAART NR. 9069			
08/02/2008	KREDIETRENTE	MALL @ REDS	104,87	409909,88
26/02/2008	PINPAD DT OOKP	WIERDA PARK	12998,79-	396911,09
	KREDIET REK:04565464042851029			
	TRANSAKSIE FOOI		15,50-	396895,59
	KAART NR. 9069			
26/02/2008	AANBIEDINGSNAVRAAG	WIERDA PARK	0,00	396895,59
	AANBIEDINGSNAVRAAG FOOI		5,00-	396890,59

VOORUITGEDATEERDE ITEMS

Bank Cost = R133-50
Interest = R120-82

GSM

SEQ 29/2021-2510

TRANS BESKRYWING	TRANS.TAX	BEDRAG	SALDO
UITGEDATEERDE ITEMS VANDAG VIR DIE REKENING NIE			
VERLOOPTE RENTE SOOS OP	26/02/2008	40,42	
OPGELOOPTE BONUS SOOS OP	26/02/2008	0,00	

EINDE VAN NAVRAAG - 2009-02-26 / 15:00:15 / 90 6219 6036

GSM

SEQ 29/2021-2511

Feb 2008.

MEV H LOMBARD
POSBUS 50073
WIERDAPARK
0149

Rekening Nommer : 9062196036
Huidige Saldo : 396 937.44
Beskikbare Saldo : 396 887.44
Staat vir periode : 01/02/2008 tot 29/02/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/02/2008	SALDO OORGEBRING	0.00	432 829.07
03/02/2008	ADMIN FOOI	0.00	432 829.07
03/02/2008	ADMINISTRASIE FOOI	-7.50 A	432 821.57
06/02/2008	PINPAD DT OORP KAART NR.9069	-1 296.06	431 525.51
06/02/2008	TRANSAKSIE FOOI	-15.50 A	431 510.01
06/02/2008	TV/PAD TJEK BET KAART NR.9069	-21 660.00	409 850.01
06/[illegible]/2008	TRANSAKSIE FOOI	-45.00 A	409 805.01
[illegible]/2008	KREDIETRENTE	104.87	409 909.88
26/02/2008	PINPAD DT OORP KAART NR.9069	-12 998.79	396 911.09
26/02/2008	TRANSAKSIE FOOI	-15.50 A	396 895.59
26/02/2008	AANBIEDINGSNAVRAAG	0.00	396 895.59
26/02/2008	AANBIEDINGSNV FOOI	-5.00 A	396 890.59

*** EINDE VAN NAVRAAG 19/03/2008 9:22:18 ***

Bank Cost = R 88-50.
Interest = R 104-87

GSM

SEQ 29/2021-2512

Part of March 2008

PAGE: 1

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer : 9062196036
Huidige Saldo : 396 932.44
Beskikbare Saldo : 396 882.44
Staat vir periode : 01/03/2008 tot 19/03/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/03/2008	SALDO GORGEBRING	0.00	396 890.59
03/03/2008	ADMIN FOOI	0.00	396 890.59
03/03/2008	ADMINISTRASIE FOOI	-7.50	396 883.09
08/03/2008	KREDIETRENTE	64.35	396 947.44
19/03/2008	PIN AANBIEDMAVRAAG	0.00	396 947.44
19/03/2008	TRANSAKSIE FOOI	-5.00	396 942.44
19/03/2008	PIN AANBIEDMAVRAAG	0.00	396 942.44
19/03/2008	TRANSAKSIE FOOI	-5.00	396 937.44

*** EINDE VAN NAVRAAG 19/03/2008 9:22:36 ***

To 19/3/2008
Bank Cost = R 17.50
Interest = R 64.35

GSM

March 2008

MEV H LOMBARD
POSBUS 50072
WYERDAPARK
0149

Rekening Nommer : 9062196036
Huidige Saldo : 399 275.89
Beskikbare Saldo : 399 225.89
Staat vir periode : 01/03/2008 tot 09/04/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/03/2008	SALDO OORGEBRING	0.00	396 890.59
03/03/2008	ADMIN FOOI	0.00	396 890.59
03/03/2008	ADMINISTRASIE FOOI	-7.50	396 883.09
08/03/2008	KREDIETRENTE	64.35	396 947.44
19/03/2008	PIN AANBIEDNAVRAAG	0.00	396 947.44
19/03/2008	TRANSAKSIE FOOI	-5.00	396 942.44
19/03/2008	PIN AANBIEDNAVRAAG	0.00	396 942.44
19/03/2008	TRANSAKSIE FOOI	-5.00	396 937.44
[illegible]/2008	PIN AANBIEDNAVRAAG	0.00	396 937.44
[illegible]/03/2008	TRANSAKSIE FOOI	-5.00	396 932.44
26/03/2008	JOEENAALDEBIET MRT 0821 CN	-12.50	396 919.94
03/04/2008	ADMIN FOOI	0.00	396 919.94
03/04/2008	ADMINISTRASIE FOOI	-7.50	396 912.44
08/04/2008	KREDIETRENTE	67.42	396 979.86
09/04/2008	KONTANTDEPOSITO VERW: EKHWELA	2 326.23	399 306.09
09/04/2008	KONTANTDEP FOOI	-25.20	399 280.89

*** EINDE VAN NAVRAAG 09/04/2008 14:54:30 ***

Bank fees : R 35-00
Interest : R 64-35

GSM

SEQ 29/2021-2514

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer	:	9062196036
Huidige Saldo	:	384 053.86
Beskikbare Saldo	:	384 003.86
Staat vir periode	: 01/04/2008 tot	06/05/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/04/2008	SALDO OORGEBRING	0.00	396 919.94
03/04/2008	ADMIN FOOI	0.00	396 919.94
03/04/2008	ADMINISTRASIE FOOI	-7.50	396 912.4-
08/04/2008	KREDIETRENTE	67.42	396 979.86
09/04/2008	KONTANTDEPOSITO VERW: EKHWELA	2 326.23	399 306.0[illegible]
09/04/2008	KONTANTDEP FOOI	-25.20	399 280.89
09/04/2008	FIN AANBIEDNAVRAAG	0.00	399 280.8[illegible]
[illegible]/2008	TRANSAKSIE FOOI	-5.00	399 275.8[illegible]
[illegible]/05/2008	ADMIN FOOI	0.00	399 275.8[illegible]
03/05/2008	ADMINISTRASIE FOOI	-7.50	399 268.39
05/05/2008	PINPAD DT OORP KAART NR.9069	-1 345.99	397 922.40
05/05/2008	TRANSAKSIE FOOI	-15.50	397 906.9[illegible]
05/05/2008	TP/PAD TJEK BET KAART NR.9069	-13 803.04	384 103.8[illegible]
05/05/2008	TRANSAKSIE FOOI	-45.00	384 058.86

*** BINDE VAN NAVRAAG 06/05/2008 9:19:13 ***

G SM

SEQ 29/2021-2515

May – July 2008

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer : 9062196036
Huidige Saldo : 377 980.47
Beskikbare Saldo : 377 930.47
Staat vir periode : 01/05/2008 tot 04/08/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/05/2008	BALDO OORGEBRING	0.00	399 275.89
03/05/2008	ADMIN FOOI	0.00	399 275.89
03/05/2008	ADMINISTRASIE FOOI	-7.50	399 268.39
05/05/2008	PINPAD DT OORP KAART NR.9069	-1 345.99	397 922.40
05/05/2008	TRANSAKSIE FOOI	-15.50	397 906.90
05/05/2008	TR/PAD TJEK BET KAART NR.9069	-13 803.04	384 103.86
05/05/2008	TRANSAKSIE FOOI	-45.00	384 058.86
[illegible]/2008	PIN AANBIEDNAVRAAG	0.00	384 058.86
06/05/2008	TRANSAKSIE FOOI	-5.00	384 053.86
08/05/2008	KREDIETRENTE	37.06	384 090.92
30/05/2008	INETENK BETAAL KT ABSA BANK Lening terugbetaling KAART NR.1596	500.00	384 590.92
03/06/2008	ADMIN FOOI	0.00	384 590.92
03/06/2008	ADMINISTRASIE FOOI	-7.50	384 583.42
08/06/2008	KREDIETRENTE	32.63	384 616.05
03/07/2008	ADMIN FOOI	0.00	384 616.05
03/07/2008	ADMINISTRASIE FOOI	-7.50	384 608.55
08/07/2008	KREDIETRENTE	31.61	384 640.16
03/08/2008	ADMIN FOOI	0.00	384 640.16
03/08/2008	ADMINISTRASIE FOOI	-7.50	384 632.66
04/0[illegible]/08	PINPAD DT OORP KAART NR.9069	-6 631.69	378 000.97
[illegible]/2008	TRANSAKSIE FOOI	-15.50	377 985.47

*** EINDE VAN NAVRAAG 04/08/2008 9:11:35 ***

GSM

SEQ 29/2021-2516

1BR# 8758 ABS SVL356

A B S A B A N K

MALL @ REDS

SAVINGS FINANCIAL HISTORY

ACCOUNT NAME: MEV H LOMBARD
ACCOUNT NUMBER: 9062196036
CLIENT CODE: LOMBAH 120
PRODUCT: 009040 FLEXI ACCOUNT

PROC-DATE EFF-DATE	DESCRIPTION CARD NUMBER	CHARGE	TRAN-AMOUNT GOVT-LEVY	ACCOUNT BALANC CHEQUE AMOUN
2008/08/03	ADMINISTRATION FEE	7.50-	0.00 0.00	384,632.6 0.0
2008/08/04	PINPAD DEBIT TRANSFER 5010111136739069	15.50-	6,631.69- 0.00	377,985.4 0.0
2008/08/04	PIN PRESENTATION ENQUIRY	5.00-	0.00 0.00	377,980.4 0.0
2008/08/08	CREDIT INTEREST	0.00	32.60 0.00	378,013.0 0.0

G.S.M

SEQ 29/2021-2517

MEV H LOMBARD
POSBUS 50072
WIERDAPARK
0149

Rekening Nommer	:		9062196036
Huidige Saldo	:		115 331.34
Beskikbare Saldo	:		115 281.34
Staat vir periode	: 01/09/2008	tot	15/12/2008

Datum	Transaksie Beskrywing (Bedrag tussen hakkies verteenwoordig kostes)	Tran Bedrag	Saldo
03/09/2008	SALDO OORGEBRING	0.00	378 013.07
03/09/2008	ADMIN FOOI	0.00	378 013.07
03/09/2008	ADMINISTRASIE FOOI	-10.00	378 003.07
08/09/2008	KREDIETRENTE	32.11	378 035.18
09/09/2008	KONTANTDEPOSITO VERW: CELL DATA	26 385.00	404 420.18
09/09/2008	KONTANTDEP FOOI	-279.65	404 140.53
09/09/2008	TF/PAD TJEK BET KAART NR.9069	-266 840.69	137 299.84
((7/2008	TRANSAKSIE FOOI	-50.00	137 249.84
09/09/2008	AANBIEDINGSNAVRAAG	0.00	137 249.84
09/09/2008	AANBIEDINGSNV FOOI	-5.00	137 244.84
03/10/2008	ADMIN FOOI	0.00	137 244.84
03/10/2008	ADMINISTRASIE FOOI	-10.00	137 234.84
08/10/2008	KREDIETRENTE	11.94	137 246.78
27/10/2008	TF/PAD ONTTREKKING KAART NR.9069	-10 000.00	127 246.78
27/10/2008	TRANSAKSIE FOOI	-116.50	127 130.28
03/11/2008	ADMIN FOOI	0.00	127 130.28
03/11/2008	ADMINISTRASIE FOOI	-10.00	127 120.28
08/11/2008	KREDIETRENTE	11.32	127 131.6[illegible]
03/12/2008	ADMIN FOOI	0.00	127 131.6[illegible]
03/[illegible]/008	ADMINISTRASIE FOOI	-10.00	127 121.6[illegible]
08/12/2008	KREDIETRENTE	10.45	127 132.05
[illegible].2/2008	FINPAD DT OORP KAART NR.9069	-8 100.00	119 032.05
15/12/2008	TRANSAKSIE FOOI	-17.50	119 014.55
15/12/2008	FINPAD DT OORP KAART NR.9069	-3 660.71	115 353.84
15/12/2008	TRANSAKSIE FOOI	-17.50	115 336.34

*** EINDE VAN NAVRAAG 15/12/2008 10:51:25 ***

GSM

Reconciliation of the DSO Account as on 09 September 2008			
Date	Description	Amount	
	Payments Received from the DSO		
12 July 2007	Cash Payment Received : Deposit	R	300,000.00
17 July 2007	Cash Payment Received : Equipment Delivery Deposit	R	600,705.46
02 September 2008	Cash Payment Received	R	2,995.00
02 September 2008	Cash Payment Received	R	23,390.00
	Total Received from DSO	R	927,090.46
	Invoices Issued to the DSO		
28 September 2007	Invoice 200 : Alarm System Airtime - Jul 07	R	1,297.51
28 September 2007	Invoice 201 : Alarm System Airtime - Aug 07	R	1,567.07
31 October 2007	Invoice 215 : Alarm System Airtime - Sep 07	R	1,484.53
30 November 2007	Invoice 243 : Alarm System Airtime - Oct 07	R	1,735.30
28 December 2007	Invoice 254 : Alarm System Airtime - Nov 07	R	1,555.06
31 January 2008	Invoice 267 : Alarm System Airtime - Dec 07	R	1,415.91
29 February 2008	Invoice 274 : Alarm System Airtime - Jan 08	R	1,630.65
31 March 2008	Invoice 277 : Alarm System Airtime - Feb 08	R	1,453.51
30 April 2008	Invoice 301 : Alarm System Airtime - Mar 08	R	1,551.20
30 April 2008	Invoice 302 : Data Cards video Sep 07 - Feb 08	R	8,395.03
30 April 2008	Invoice 303 : Data Cards video - Mar 08	R	1,304.03
30 May 2008	Invoice 310 : Alarm System Airtime - Apr 08	R	1,498.26
30 June 2008	Invoice 315 : Alarm System Airtime - May 08	R	1,497.30
31 July 2008	Invoice 319 : Alarm System Airtime - Jun 08	R	1,469.83
29 August 2008	Invoice 323 : Alarm System Airtime - Jul 08	R	1,438.83
29 August 2008	Invoice 324 : Data Cards video - Jun 08	R	1,281.22
01 September 2008	Invoice 330 : Installation of Systems & Equipment	R	599,782.93
09 September 2008	Invoice 332 : Data Cards video Jul 08 -Aug 09 (Basic Data Costs)	R	17,875.20
09 September 2008	Invoice 333 : Alarm System Airtime : Aug 08- Jun 09 (Basic Airtime Cost)	R	12,038.40
	Total of Invoices issued	R	660,243.77
09 September 2008	Difference Refunded to DSO Head Office C-Funds Acc (Standard Bank)	R	266,840.69
	Total of Invoices Issued & amount paid back to DSO	R	927,090.46

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Reconciliation of the DSO Account as on 09 September 2008			
Date	**Description**	**Amount**	**Balance**
12 July 2007	Deposit	R -300,000.00	R -300,000.00
17 July 2007	Payment : Equipment delivery	R -600,705.46	R -900,705.46
28 September 2007	Invoice 200 : Alarm System Airtime - Jul 07	R 1,297.51	R -899,407.95
28 September 2007	Invoice 201 : Alarm System Airtime - Aug 07	R 1,567.07	R -897,840.88
31 October 2007	Invoice 215 : Alarm System Airtime - Sep 07	R 1,484.53	R -896,356.35
30 November 2007	Invoice 243 : Alarm System Airtime - Oct 07	R 1,735.30	R -894,621.05
28 December 2007	Invoice 254 : Alarm System Airtime - Nov 07	R 1,555.06	R -893,065.99
31 January 2008	Invoice 267 : Alarm System Airtime - Dec 07	R 1,415.91	R -891,650.08
29 February 2008	Invoice 274 : Alarm System Airtime - Jan 08	R 1,630.65	R -890,019.43
31 March 2008	Invoice 277 : Alarm System Airtime - Feb 08	R 1,453.51	R -888,565.92
30 April 2008	Invoice 301 : Alarm System Airtime - Mar 08	R 1,551.20	R -887,014.72
30 April 2008	Invoice 302 : Data Cards video Sep 07 - Feb 08	R 8,395.03	R -878,619.69
30 April 2008	Invoice 303 : Data Cards video - Mar 08	R 1,304.03	R -877,315.66
30 May 2008	Invoice 310 : Alarm System Airtime - Apr 08	R 1,498.26	R -875,817.40
30 June 2008	Invoice 315 : Alarm System Airtime - May 08	R 1,497.30	R -874,320.10
31 July 2008	Invoice 319 : Alarm System Airtime - Jun 08	R 1,469.83	R -872,850.27
29 August 2008	Invoice 323 : Alarm System Airtime - Jul 08	R 1,436.83	R -871,413.44
29 August 2008	Invoice 324 : Data Cards video - Jun 08	R 1,281.22	R -870,132.22
01 September 2008	Invoice 330 : Installation of Systems & Equipment	R 599,762.93	R -270,369.29
02 September 2008	Payment : Inv 310 & 315	R -2,995.00	R -273,364.29
02 September 2008	Payment: inv 200, 201, 215, 243, 254, 267, 274, 277, 301, 302 & 303	R -23,390.00	R -296,754.29
09 September 2008	Invoice 332 : Data Cards video Jul 08 -Aug 09 (Basic Data Costs)	R 17,875.20	R -278,879.09
09 September 2008	Invoice 333 : Alarm System Airtime : Aug 08- Jun 09 (Basic Airtime Cost)	R 12,038.40	R -266,840.69
09 September 2008	Refund to DSO Head Office C-Funds Acc (Standard Bank)	R 266,840.69	R -

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ABSA

ABSA Bank Limited, Reg No 1986/00394/06

WIERDA PARK MALL

Not Transferable
Nie Oordraagbaar nie

630-865

29 · 06 · 2021

Pay
Betaal

the sum of
die bedrag van

R

1986/00394/06

FOR/VIR ABSA BANK LIMITED/BEPERK
REG NO 1986/00394/06

Member of the Barclays Group

BARCLAYS Group Corp

⑈00000894⑈ ⑆630865⑆ 4068875788⑈ 18

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SEQ 29/2021-2520

SEQ 29/2021-2521

Standard Bank

Deposit slip
Depositostrokie

Date
Datum (YYYY-MM-DD)

Deposit to
Deponeer aan

Account number / Rekeningnommer

Telephone no. including dialling code
Telefoonnr. en skakelkode

Signature
Handtekening

Depositor's name or reference. These details will appear on the accountholder's/beneficiary's statement
Naam van deponeerder of verwysing. Hierdie besonderhede sal verskyn op die rekeninghouer/begunstigde se stat

Notes Note		
Coins/Munte		
Postal/Money order Poseorders-/-wissels		
Total cash and postal/money orders Totale kontant en posorders en wissels		
Cheques and postal orders Tjeks en posorders		
Total cheques Totale tjeks		
Total Totale		

Conditions
Cheques, etc. handed in for collection will only be available as cash when paid. While acting in good faith [illegible] will not accept responsibility for ensuring that depositors/account holders have lawful title to cheques, etc. [illegible]. Please ensure that the account number is correctly inserted as the Bank cannot be held responsible for errors resulting from incorrect information furnished.
Voorwaardes
Tjeks ens. wat vir insaeling ingewys is, [illegible] slegs as kontant beskikbaar word wanneer dit betaal is. Hoewel die Bank te goeder trou handel en nadrukke aanspreekbaar uitoefen, kan hy nie verantwoordelikheid daarvoor aanneem om seker te maak dat deponeerders/[illegible] ens. wat gewissel word nie. Maak seker dat die rekeningnommer korrek ingevoer is. Die Bank kan nie aanspreekbaar gehou word vir foutiewe gevolg van foutiewe inligting nie.

The Standard Bank of South Africa Limited (Reg. No. 1862/000738/06) is authorised financial services and registered credit provider (NCRCP15).
Die Standard Bank van Suid-Afrika Beperk (Reg.no. [illegible]) is [illegible] en [illegible] (NCRP15).

ABSA

CLIENT TRANSACTION RECORD

BANK TRANSACTION RECORD

Account no
Rekeningno

Payee:

Thank you for being our client

Banks data [illegible]

GSM

SEQ 29/2021-2522

INCOME TAX IT 35

Assessment

Enquiries should be addressed to SARS:

Branch - PRETORIA
H/v Schoeman & Van der Walt str, Pretoria, 0002
Bus 435, Pretoria, 0001
Tel 012 - 317 2000 Fax 012 - 317 2302

H LOMBARD
P.O. BOX 50072
WIERDA PARK
0149

Always quote this reference number in correspondence with this office or during interviews.

Reference Number	: 1176/217/64/2
Date	: 2009-03-11
Tax Year	: 2008

Type of assessment	Period (Days)
OORSPRONKLIKE AANSLA	366
Due Date	**Second Date**
2009-04-01	2009-04-30

Income assessed

Income

Code	Source code description	Note	R
2550	SEKURITEITSDIENSTE	5	112,740
3601	INKOMSTE - BELASBAAR		367,619
3605	JAARLIKSE BETALINGS - BELASBAAR		37,489
3605	JAARLIKSE BETALINGS - BELASBAAR		26,378
3601	INKOMSTE - BELASBAAR		5,093
3605	JAARLIKSE BETALINGS - BELASBAAR		2,201
3701	REISTOELAE		71,966
3713	ANDER TOELAE - BELASBAAR		35,859
3702	VERGOEDENDE REISTOELAE - BELASB		27,779
3701	REISTOELAE		9,619
3808	BETALING VAN WERKNEMER SE SKULD		5,574
3714	ANDER TOELAE - NIE-BELASBAAR	1	0
3706	VERBLYFTOELAE - NIE-BELASBAAR	2	0
3705	VERBLYFTOELAE - NIE-BELASBAAR	3	0
3703	VERGOEDENDE REISTOELAE-NIE-BELAS	4	0
3808	BETALING VAN WERKNEMER SE SKULD		87
		Total Income	702,404

Deductions

Code	Source code description	Note	R
4001	LOPENDE PENSIOENFONDSBYDRAE	6	28,116-
4006	LOPENDE UAF-BYDRAE		22,352-
4008	MEDIESEUITGAWES (TOTAAL)	7	20,400-
4014	REISUITGAWES-VASTE KOSTE		47,419-
		Total Deductions	118,289-

Please note that the deductions claimed have been allowed within the parameters of the law, however SARS may require you to substantiate any claim made.

Taxable Income	584,115
Taxable Income â€" subject to Retirement fund lump sum benefit	0
Tax Calculation	
Normal Tax	184,771.00
Rebates 8	7,740.00-
Balance carried forward	7,740.00

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Tax Calculation

Code	Source code description	Note	R
		Balance brought forward	- 7,740.00
Net normal tax			177,031.00
Additional tax		9	8,553.55
Total tax payable			185,584.55
Tax credits		10	134,263.23-
89 Quat Interest		11	3,849.08
Net debit			55,170.40
Previous assessment result			0.00
This assessment			55,170.40
Net result			55,170.40
Balance of your account as at 2009-03-10		12	20,266.66-
Due by you			34,903.74

See notes at end of assessment

Income

Note	Code	Description	R
1	3714	BEDRAG VERKLAAR - 02000100	3,825
		NIE BELASBARE TOELAE	3,825-
			0
2	3705	BEDRAG VERKLAAR - 01005604	1,080
		NIE BELASBARE TOELAE	1,080-
			0
3	3705	BEDRAG VERKLAAR - 02000100	878
		NIE BELASBARE TOELAE	878-
			0
4	3703	BEDRAG VERKLAAR - 01005604	124
		NIE BELASBARE TOELAE	124-
			0
5	2588	ONCE-OFF SELLING OF ENCRYPTIONSECURITY SOFTWARE	112,740
			112,740

Deductions

Note	Code	Description	R
6	4001	BEDRAG VERKLAAR - 02000100	28,240
		BEDRAG O/B VANAF VORIGE JAAR	27,991
		BEDRAG O/D NA AFTREDE	26,113-
			28,118
7	4006	MEDICAL FUND CONTRIBUTIONS	31,898
		MEDICAL FUND EXPENSES NOT COVERE	4,489
		BYDRAES WAT BEBERKTE BEDRAG OORS	11,498-
		BYDRAES WAT BEBERKTE BEDRAG OORS	11,498
		BEREKENING OP MEDIESE AFTREKKING	15,987-
			20,400
		Balance carried forward	20,400.00

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8	**Rebates**	R	R
	PRIMERE	7,740.00	7,740.00
9	**Additional taxes**	R	R
	LAAT / NIE INDIEN - VOORL BELAS	8,553.55	8,553.55
10	**Tax credits**	R	R
	SIBW	6,120.00	
	LBS	128,143.23	134,263.23
11	**89 Quat interest**	R	R
	89QUAT(2)	3,849.08	3,849.08
12	**Balance of account as at**	R	R
	BELASTING	20,266.66-	
	BOETE	0.00	
	RENTE	0.00	20,266.66

Notes

1. **All assessments are subject to an Audit, which could result in a revised assessment being issued.**
2. **Interest**

   The rate of interest in the Income Tax Act is based on the rate determined by the Minister of Finance in terms of the Public Finance Management Act, 1999.

   2.1 **Section 89(2)** - unless the amount shown under 'Due by you' is paid on or before the 'Second Date' appearing on this assessment, interest at the prescribed rate, calculated from the first 'Due Date' will be payable in respect of each completed month during which any portion of this amount remains unpaid. Payments will be allocated to your account in the following manner: 1st Penalties, 2nd Interest, 3rd Tax.

   2.2 **Section 89*quat*(2)** - Interest on underpayment of provisional tax has been calculated up until the first "Due Date" of this assessment

   2.3 **Section 89*quat*(4)** - Interest on overpayment of provisional tax has been calculated up until the processing date of this assessment.
3. **No cheques exceeding R5 million will be accepted after 1 January 2002 due to the new banking practice.**
4. **Payments:**

   Always use payment reference number: 1178217842T00000000

   Payments can also be made:

   4.1. At any SARS branch office:
   Mondays to Fridays: 08h00 - 15h30
   Closed on Saturdays, Sundays and Public Holidays.

   4.2. Payments by cheque:
   When making payments by cheque, the cheque must bear the full name "South African Revenue Service" and not the abbreviation "SARS" This is to protect clients by reducing the scope for forgery and fraud.

   4.3. Bank payments or via Internet banking to: ABSA, First National Bank, Nedbank, Standard Bank

   For payments, the beneficiary ID must be used as the account number: SARS-ITA

   Payments that do not comply with both the above-mentioned payment reference number and the beneficiary ID will not be accepted.

   In terms of section 89 of the Income Tax Act where any day specified for any payment to be made, under the provision of this Act, falls on a Saturday, Sunday or public holiday, such payment must be made not later than the last business day prior to such Saturday, Sunday or public holiday.
5. **Change of address** - Notify your nearest SARS branch office immediately of any change of address.
6. **Any amount representing a credit balance is followed by a minus (-) sign.**
7. **Tax due amounting to R100 or less need not be paid, but will be included in your next assessment.** However, read note 2 above.
8. **Credit amounts of less than R100 are not refunded but will be included as a credit in your next assessment.**
9. As there is an unavoidable delay between the date of payment and the date of processing of the payment into your account, any receipts issued to you after the 'Balance of account' date shown on this assessment have not been taken into account on this notice.
10. Any document, rules or legislation referred to below, are available from any SARS branch office, the address indicated on the first page of this assessment or from the SARS website at www.sars.gov.za
11. **Delivery** - For purposes of note 13 - 14 below, 'delivery' means: handing, sending by registered mail, telefaxing or transmitting by electronic means (e-mail) the document to the relevant SARS person.

GSM

However, where the document was faxed or e-mailed, the original signed document must be handed to the relevant SARS person or sent by registered mail to that person within 10 days of it being so telefaxed or e-mailed.

12. Date of the assessment - For purposes of note 13 - 14 below, 'date of assessment' means the date indicated on the first page of such assessment as the due date or, where a due date is not so indicated, the date of such assessment.

13. Reasons for the assessment -

13.1. If you are aggrieved by this assessment, and you are of the view that adequate reasons for the assessment have not been provided to you, you may by written notice delivered to SARS at the address indicated on the first page of the assessment within 30 business days after the date of the assessment, request SARS to furnish reasons for the assessment.

13.2. Your written notice must indicate an address, at which you will accept notice and delivery of such reasons.

13.3. You also have the right to request reasons for the assessment in terms of section 5 of the Promotion of Administrative Justice Act No. 3 of 2000 where you are of the view that the assessment materially and adversely affected your rights, in which event you may request reasons in the manner contemplated in that Act.

14. Correction to the assessment -

14.1. Should you not agree with this assessment or you want to revise your original declaration, you may complete a Request for Correction (RFC) on the [illegible] submitted an IT12S or IT12C return.

14.2. The RFC must be submitted to the address indicated on the first page of this assessment notice or to any SARS branch office within 30 business days of the date of this assessment.

15. Objection against the assessment -

15.1. You may object to this assessment. The objection must comply with the prescribed objection forms:

i) Notice of Objection (NOO) for individual taxpayers who have submitted an IT12S or IT12C return

ii) ADR1 for any other taxpayer.

15.2 The objection must be delivered to the address indicated on the first page of this assessment within 30 business days of the date of assessment

15.3. Where, however, you have requested reasons in terms of note 13 above, the objection must be delivered to the address indicated of the first page of this assessment within 30 business days of either the date of the notice issued by SARS that adequate reasons have been provided, or the date that reasons were furnished by SARS, as the case may be.

15.4. If the objection is not delivered at the address indicated on the first page of the assessment it will be deemed to be invalid and will not be considered.

15.5. Reasons must be given for any late submission of your objection - In this regard please study the guidelines set out in the SARS Interpretation Note 15 of 2003.

16. Obligation to pay tax (including interest or penalties) - Your obligation to pay the amount due in terms of the assessment is not suspended by any objection or appeal. SARS will consider a motivated application for such suspension of payment pending the finalisation of the objection and appeal (in this regards see section 88 of the Income Tax Act).

For office use only.

Tax reference number:			Amount	R	
			Remittance date	:	
Taxpayer					
Indicate method of payment	Cash	1	Cheque	2	

ISSUED BY THE SOUTH AFRICAN REVENUE SERVICE

GSM

SEQ 29/2021-2526

ABSA

ABSA Bank Limited Reg No [illegible]

WIERDA PARK MALL

Not Transferable
Nie Oordraagbaar nie

630-668

Pay
Betaal

the sum of
die bedrag van

R

1986/004794/06

FOR/VIR ABSA BANK LIMITED/BEPERK
REG NO 1986/004794/06

Member of the
Lid van die BARCLAYS Group Groep

⑈00001097 ⑆630668⑆ 4068875788⑈ 18

90485995

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I, the undersigned, **Helgard Lombard**, an adult male with identity number 570817 5018 087, and residing at 327 Theuns van Niekerk Street, Wierda Park, Centurion, 0149 declare under oath as follows:

1.

I am currently employed by the South African Revenue Services (SARS), situated at Riverwalk Office Park, Matroosberg Road (Erf4), Ashlea Gardens X6, Pretoria in the capacity of Manager Technical Physical Security with the effect April 2009. I am currently suspended and can be contacted at 0832709922.

2.

The contents of the affidavit in question pertains to the investigation of the South African Police Service (SAPS) into the existence and operations of an alleged SARS Rouge Unit (Brooklyn CAS 427\5\2015) and more particular to an operation called "Sunday Evenings".

3.

I am aware that the statement which I am about to make, may incriminate me with regard to contraventions of the provisions of the Regulations of Interception of Communications and Provision of Communication Related Information Act, 2002 (Act 70 of 2002). However on 17 May 2016 the Priority Crimes Litigation Unit and more particular, the Acting Special Director of Public Prosecutions informed me and my Legal Representative that they were prepared to use me as a witness in terms of Section 204 of Act 51 of 1977 and requested me to furnish the investigation team with my draft statement in terms of the said section. I was therefore afforded the opportunity to make a statement subject to the provisions of the said Section 204. The provisions of the said section have been explained to me and I understand it.

3.1 I have been informed that I am not obliged to make the statement and do so on my own free will.

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3.2 The National Prosecution Authority (NPA) did not promise me any indemnity from prosecution or amnesty for any crime or any other reward should I make this statement.

3.3 I also understand that the decision to be called as a state witness lies with the Prosecuting Authority.

3.4 I understand that my status as a witness will depend on me giving my full co-operation to the South African Police Service and to the Prosecuting Authority.

3.5 I understand that by making the statement I am not entitled to claim any immunity against prosecution. Furthermore, I understand that should I fail to co-operate as aforesaid or should I not make a full disclosure, my status as a witness may be reviewed.

3.6 I understand that should I later be prosecuted the contents of this statement may **NOT** be tendered in evidence against me except in a case of perjury.

I have already furnished the investigating team with an undated and unsigned draft statement.

I was however requested on 2 September 2016 to elaborate in detail (if possible) on some of the facts as contained in the said draft statement as well as other relevant facts including detailed information of my involvement in all projects that I lead \ conducted while I was a member off SPU \ NRG \ HRIU. This request was done in the form of questions that were directed to me.

4.

My legal representative informed me that the National Prosecution Authority (NPA) or the SAPS may file an application in terms of Section 71 of the Tax Administration Act, nr. 28 of 2011 requiring SARS to disclose information referred to in subsection 2 of the said Section. I was also informed that the said information refers to information, which may, *inter alia*, reveal evidence that:

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- "an offence (other than a tax offence) has been or may be committed in respect of which a court may impose a sentence of imprisonment exceeding five years;
- may be relevant to the investigation or prosecution of the offence"

I was further informed that the National Commissioner of the South African Police Service indeed obtained an order in terms of Section 71. However, the contents of the said order is not applicable on the information that is requested from me.

On 29 September 2016 my legal representative handed me a letter dated 27 September 2016 in which the Commissioner of SARS, Mr. Tom Moyane, authorized me in terms of the power vested in him in terms of Chapter 6 of the Tax Administration act, Act 28 of 2011 to release confidential SARS information in my possession to the SAPS (the HAWKS) in an endeavour to assist the HAWKS in the investigation under Brooklyn CAS427/05/2015. The said information refers to information required and requested by the HAWKS.

The Commissioner, as the complainant in the investigation in question, declared in paragraph 3 of the said letter that I will not be disciplined and \ or criminally prosecuted as a result of my roll in assisting the HAWKS in this regard.

I now wish to make a detailed affidavit that is based on my recollection of the relevant events over the last ten years. However, I make the affidavit in question subject to the provisions of Section 204 of the Criminal Procedure Act, 1997.

INTRODUCTION

5.

I have been employed by the South African Defence Force (SADF) during 1984 and was transferred to Chief Staff Intelligence (Counter Intelligence: Operations) during 1986.

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In June 1988, I have been instructed by Chief Staff Intelligence to establish a covert office with the aim to conduct counter intelligence operations on espionage activities aimed at the SADF and its related institutions. I indeed established such a covert office and the office specialized mainly in surveillance operations, which included surveillance based on security technology. The said office was highly effective in surveillance and counter surveillance operations with the effect that the South African National Defence Force (SANDF) continued with the facility after 1994 without any changes. The office received its instructions from and reported to Defence Intelligence (Counter Intelligence).

6.

In 1996 I was appointed as the Manager, Technology for the facility, started to do research and specialized in surveillance technology. During this period, the focus moved from conducting counter intelligence operations for the SANDF Intelligence (DI) to assist other government departments as well. The office, *inter alia*, assisted the SAPS and had joined operations with the NIA. I was involved in operations with SAPS and the DSO. I gave surveillance training to the surveillance team of the DSO in September 2001 and assisted them with technical surveillance. I assisted the DSO and SAPS with their Witness Protection Program by installing security equipment to safeguard the witnesses.

7.

In March 2002, I resigned from the SANDF and accepted an employment offer from Harmony Gold Mining Company Limited as "Group Technical Manager: Security". My main function was to employ current security technology to protect the assets of the company against theft and malicious actions. It included the installation and maintenance of CCTV systems, alarm systems, electric fencing, access control systems as well as the introduction of centralized control rooms situated in Gauteng and the Free State.

8.

At the end of 2005, I received a call from either Charl Fourie or Johan de

GSM

Waal, informing me that the South African Revenue Service (SARS) planned to establish a similar office as the one I have run at the SANDF (DI). He enquired whether I would be interested to join this unit in a technical capacity as this unit will investigate and collect information on taxpayers and / or crime syndicates that are not tax compliant. I indicated to the person who called me that I will indeed be interested as it is challenging and that I am sure that I could positively contribute to the endeavours of such a unit. The said person then informed me that I could expect a call from a certain Mr Andries Janse van Rensburg, (known as "Skollie"), who would like to interview me. He also mentioned that Janse van Rensburg was previously employed at NIA. I did not know Janse van Rensburg at that stage.

9.

Janse van Rensburg called me late in 2005 or early in 2006 and arranged a meeting in Centurion. We met and Janse van Rensburg enquired about my technical knowledge. He asked me a few questions, inter alia, whether it will be possible to install CCTV, but to view it remotely, namely not in the close proximity of the installation. I told him that it will be possible, but that there are a few factors that have to be considered before such an installation could be done e.g. availability of ADSL or GPRS to stream video. After the meeting, I did not hear from Andries Janse van Rensburg until the last quarter of 2006.

Charl Fourie contacted me late in 2006 to conduct a few psychological tests, i.e. integrity tests, IQ tests as well as a few other tests. It was said that only those who pass these tests would be appointed at SARS. Charl Fourie, a qualified Clinical Psychologist, facilitated these tests and Johannes Muller assisted him. Andries Janse van Rensburg (Skollie) was also present.

10.

In May or June 2006 (I am not sure) the South African Secret Service (SASS) invited me for an interview and undertook to make me an offer should I be successful in obtaining a Top Secret Clearance. SASS indeed made me an offer which I accepted, but SARS followed with a better offer.

11.

I informed Charl Fourie that I have accepted an offer from SASS, but he informed me that a letter from SARS would follow suit. Charl Fourie and Skollie Janse van Rensburg indeed provided me with a SARS offer. A day or two later I received another SARS offer to sign. The only difference between the two offers was that the second letter had the SARS logo on it while the first one was a letter without the logo. Charl Fourie later told me that he and Janse van Rensburg gave me the first letter just to ensure that I will accept the SARS offer and that they produced the letter themselves - it was not an original SARS offer. The SARS offer was much better than the SASS offer and I had to decline the SASS offer. I accepted the SARS offer because, I had to take in consideration that I only had fifteen years left to build up a reasonable pension and a higher salary would contribute to a higher pension.

I cannot recall that I signed any performance agreements and was monthly remunerated by SARS.

EMPLOYMENT

12.

I commenced my employment at SARS on 1 March 2007 as a "Specialist Agent" at "Customs Border Control Unit" **(Annexure A).** I presumed that the term "Specialist Agent" referred to my experience in physical and technical surveillance. I reported directly to Mr Andries P. Janse van Rensburg (Skollie) and he reported to Mr Ivan Pillay, General Manager, Enforcement and Risk. Mr Pillay was also the Deputy Commissioner of SARS. The employees of the newly formed unit were told that they would not be exposed to other SARS employees because, the unit might have to investigate them if necessary. As a result of this, the unit's employees would work from home as instructed by Janse van Rensburg. The unit used guesthouses and other venues for meetings so as not to be exposed to SARS employees. Later members of the group rented other venues that were not so expensive in an effort to save money.

13.

The unit was informed to operate on a "need-to-know" basis and members of the unit were not to discuss any operation with each other unless approved by Janse van Rensburg. The unit was divided into cells to carry out specific SARS related investigations \ operations. This was to adhere to the "need-to-know" principle. All communication was directed to Janse van Rensburg who made the decision of who might communicate with whom in respect of operations. Communication to and from Mr Ivan Pillay was done through Janse van Rensburg. The only other person that I was aware of that had direct communication with Mr Ivan Pillay at the time, was Chari Fourie.

Mr Eddie Kotze managed the unit's administration and Mrs Rita Hayes assisted Mr Ivan Pillay with administrative communication between the unit and him.

14.

During the early stages of my employment, Janse van Rensburg enquired from me whether it was possible to install eavesdropping equipment in one of the DSO's offices. I told him that it will be possible, but with the necessary approval in terms of the provisions of Act 70 of 2002. I told him that it will be possible to install such equipment in any place with the said authorisation and the assistance of someone in the target area, namely an operational co-worker. The conversation ended on that note. I am not sure of the exact date of this conversation. It could have been between March and May 2007.

15.

Janse van Rensburg called me in June 2007 and informed me that the DSO contacted him unexpectedly for a quotation to install security systems in their offices. He further informed me that they needed to install a few systems because, they suspected that the South African Police Service (SAPS) entered their offices to gain access to sensitive documents regarding their investigations. Janse van Rensburg made an appointment for us to

meet with Adv. Gerrie Nel and Andrew Leask, Head of the Special Investigation Unit at the DSO. Janse van Rensburg instructed me not to inform them that we are SARS employees because, we can use the opportunity to earn money for the unit. He instructed me therefore to make sure that I include profit that the unit could use. Adv. Gerrie Nel and Andrew Leaks informed us that they needed concealed and overt equipment to be installed in order to detect intrusions real time and remotely view it. This meant that they could monitor their offices from anywhere in South Africa, should they become aware of an intrusion. They would then have record of the said intrusions.

The initial request was for:

- CCTV cameras, overt and concealed, complete with digital video recorders and microphones.
- Equipment to monitor these CCTV cameras remotely, i.e. GSM 3G-routers and remote viewing software.
- Alarm systems at earmarked offices.
- Access system in the Special Investigation Unit's area.
- Boardroom protection to counter eavesdropping devices.
- Window tint. **(Annexure B).**

The scope later changed in order to procure equipment to support the CCTV system and to add to the audio capability in the offices. Andrew Leask gave these instructions to me verbally. The following equipment was procured for this purpose:

- Cellular telephones with remote viewing software installed on it.
- Digital audio recorders and concealed microphones.

Adv. Nel and Andrew Leask requested an additional quotation for cellular telephone encryption. The said quotation was given to the DSO in November \ December 2007 for an amount of R 247,500.00. This included the cellular device as well as military specification software. I had to register with the Department of Communications as a "Cryptography Service Provider" to provide the equipment to the DSO. I did so on 21 August 2007 and paid an annual fee until **(Annexure C).** I do not have a copy of the "Encryption

equipment" quotation that was given to the DSO. I am also not sure who presented the final quotation to the DSO, whether it was Janse van Rensburg or myself. In July 2007, Janse van Rensburg contacted me and informed me that the DSO accepted the quotation.

16.

After the DSO accepted the quotation, I realized that I had to open a new bank account to manage the funds of the said installation. However, my wife reminded me that we had an ABSA Flexi-savings account (nr 9062196036) of which she was the account holder. The account holder was indicated as H. Lombard trading as Protech.

The said account was approximately opened in 2001 \ 2002 (I am not sure of the exact date) and was previously used for small security installations that I did in my personal capacity while I was employed at Harmony Gold Mine. The said account was dormant at the time because, I did not do any installations for some time.

I decided to use the said account for the installation in question in order to separate the said funds from my personal funds. This was much easier for bookkeeping purposes and also made reconciliations easier. I could provide the bank statements to Janse van Rensburg for audit purposes but, he never audited it.

The name "Protech" describes the services that I am able to render. I was a so-called one-man-business and I was of the opinion that I was not obliged to register it at CIPRO. I also discussed the situation with Janse van Rensburg and he gave approval that I could use this bank account, because the unit did not have its own bank account.

17.

On 12 July 2007 an investigator, Piet Jonker of the DSO, called me and told me that he had money with him and wanted to hand it to me, being funds for the installation in question. It was quite a surprise because, I expected an electronic transfer of the money into "H. Lombard T\a Protech"-bank account. He handed me R300,000.00 cash and I deposited it into the said

GSM

account **(Annexure D)**. On 17 July 2007 I received the rest of the money to make up the amount that was on the quotation. The amount was R600,705.46 **(Annexure D)**. I am not sure whether the DSO brought the said amount to me or whether I collected it from them at their offices. I also deposited the said amount into the said bank account.

In general I had to get verbal authorization from Janse van Rensburg before I could spend any money. The only exception was money that I could spend on the DSO-project although I had to inform him about it. I have sent a memorandum to Janse van Rensburg to confirm verbal authorisations that he gave me to spend some of the money on SARS projects but, he never provided me with such document. **(Annexure E)**.

INSTALLATION

18.

I commenced with the said security system installation in July 2007.

Initially Janse van Rensburg accompanied me to assist with the installations, which mainly took place afterhours when we did the installations at Adv. Gerrie Nel's office. The reason for this was not to expose the installation to the rest of the DSO personnel in the building who might have had links with the SAPS. One evening, after about two or three weeks, Janse van Rensburg informed Adv. Gerrie Nel and Andrew Leask that he had to leave for Germany for business and will most probably not see them for quite a while. They discussed the so-called places that he would visit. This was a lie because, Janse van Rensburg never left the RSA, but was looking for an excuse not to assist any further with the installations.

19.

During this time, our unit was busy with strategic as well as other planning at CSSI, CSSI House, 28 Augrabies Road, Waterfall Office Park, in Midrand. Frans van Niekerk acquired the said location from CSSI at no cost or at a special price for SARS. Janse van Rensburg used to call me out of the

GSM

meetings and informed the other members of the unit that it was a special operation that we ran and that they need not to know what it was all about. It did not upset anyone because, it was this *modus operandi* that the unit followed and no questions were asked. I used this time to acquire equipment and consumables for the said installations. When I commenced with the installations at VGM Building in Weavind Park, I installed during the day to complete the installations. Janse van Rensburg used to excuse me from workshops and meetings so that I could complete the work.

Due to poor signal in the area, as well as a bug in the 3G-routers, it often happened that the routers hung up whereafter one could not remotely login to monitor the CCTV systems. I requested Andrew Leask if they would mind if I connect remotely with these systems to make sure that the routers did not hung up because, it needed a "hard reset" when this happened. A "hard reset" is when you remove power from the router and then restart it. Andrew Leask gave me verbal permission to remotely monitor these in order to do these maintenance checks.

Both Adv. Gerrie Nel and Andrew Leask ask me during this time whether Janse van Rensburg was in Germany and I had to lie by admitting that he left for Germany whilst carrying on with the installation.

I concluded the installation in December 2007.

20.

The following equipment was installed in the VGM Building as well as the DSO offices:

- **See Annexure F** – Equipment Distribution list with legend and abbreviations
- **See Annexure G** – IP Address settings and IMEI numbers of TeleEye DVRs, Router IMEI numbers and mobile phone viewing license keys
- **See Annexure H** – Available Equipment Serial numbers and "owners"
- **See Annexure I** – NPA Alarm Systems Cellular numbers and access codes
- **See Annexure J** – Software license keys

GSM

- **See Annexure K: Equipment User Manuals, detail equipment specifications and capabilities)**
  - TeleEye RX504 DVR – In particular page 1 and 2
  - Marantz PMD660 – In particular from page 19 onwards
  - Cleo E12 Alarm Panel – In particular page 1 to 9

The Digital Video Recorders could have been accessed by any expert on the equipment and could download recordings from the unit. The distributor of the equipment in South Africa has the expertise to assist someone to reset the password on a DVR, but with the interaction of the manufacturer of the equipment. I am therefore of the opinion that with assistance of the said experts that Adv Nel, Leask and anyone who is acquainted with the systems could access the DVRs. As far as I can remember, the DVRs were set up in the "Basic Security Mode" with the username "Administrator" and password "000000". The occupants of the offices where I installed the equipment had knowledge of the equipment that have been installed and had access to the equipment. There was no server at all as the data were stored on the equipment's hard disk drive. Each DVR had an 80GB hard disk drive (HDD) installed and all video was recorded on this HDD. When the HDD reached its maximum storage, it started to overwrite the oldest data. A Notebook could be used to download data (video and audio) from the HDD of a DVR and could then be stored on the HDD of a notebook. I used this method to download data (video and audio) from the various DVRs that I had to monitor **(see Annexure L – Asset list for the SARS Notebook serial number).** These laptops are with SARS. After downloading the data (video and audio), I burnt CDs of it and handed the CDs to Janse van Rensburg. Thereafter I deleted the said data from the Notebook that I had used and therefore do not have any copies of it.

The communication between the DVRs was APN-driven. This means that all the SIM-cards in the routers had an IP address in the same IP range **(see Annexure G).** In other words, all the routers could "see" each other. When you connect to a specific IP address, it would then forward the communication to the DVR and enable the operator to have control over the DVR.

The access system had a 120GB Notebook with a Seagate HDD that served as a server for the access system. I cannot remember the passwords and \ or codes of any other of the said installed equipment.

In the presence of my legal representative, I pointed out (as far as possible) the offices and boardrooms where the equipment was installed.

Equipment bought, but not installed, was handed over to the DSO (I am not sure to whom). I do not have any knowledge of where the said equipment is currently.

INSTRUCTION TO MONITOR MEETINGS

21.

In mid-September 2007, Janse van Rensburg requested me to monitor meetings of the DSO. I told Janse van Rensburg that I could not adhere to his request unless he (SARS) had an Act 70/2002-approval to conduct eavesdropping and that it was the only way that we could do this. It was during this time that it became known that Commissioner Jackie Selebi could be arrested on corruption charges regarding his relationship with Glenn Agliotti. It was also during this time (2007) that President Thabo Mbeki suspended Adv. Vusi Pikole (Head of the NPA) from his duties.

22.

About a week to ten days after Janse van Rensburg's initial request to monitor meetings of the DSO, he called me late one evening (it was after 21:00) and informed me that he just had a meeting with Mr. Ivan Pillay who came from a meeting with President Mbeki. He informed me that we got permission to proceed to monitor the DSO- meetings. I asked him how did they (himself and Mr. Pillay) obtained the Act 70/2002-approval and Janse van Rensburg answered me: "How do you think the Judge or a Policeman will refuse a request from the President?" I asked Janse van Rensburg what the scope of the said approval was because, it could not have been a blanket approval to do what we (SARS) required. Janse van Rensburg's answer was

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that the President wants to know exactly what the DSO had against Commissioner Selebi and secondly, whether there was anyone else of the President's high ranking officials, e.g. Ministers, Director Generals, etc, that would be arrested. He said that the President told Mr Ivan Pillay that he could not afford another scandal like this and that the DSO did not even informed him about their intension to arrest Commissioner Selebi. Janse van Rensburg further said that the President did not want to be caught off-guarded.

23.

I asked Janse van Rensburg who else knew about the Act 70/2002-approval and he said that it was only six people, i.e. President Thabo Mbeki, Minister Trevor Manual, Commissioner Pravin Gordhan, Mr Ivan Pillay, himself and me. I believed Janse van Rensburg because, of the following reasons:

- Janse van Rensburg was a former employee of the National Intelligence Agency (NIA) and knew exactly what was needed to obtain an Act 70 / 2002-approval. He was also issued with "Top Secret" clearances, which was an indication that he was supposed to be trustworthy.
- We could only discuss operations with him or Mr Ivan Pillay because of the "need-to-know" principle. We never had an opportunity to meet with Mr. Ivan Pillay personally except when in a group.
- Janse van Rensburg conveyed all Mr. Pillay's instructions to the unit members. Janse van Rensburg could call Mr Pillay at any time, but kept all team members away from him. The only other person that I knew that had direct access to Mr. Pillay was Charl Fourie, one of the founder members, and a senior member in the group.
- I was told by various people that Mr Pillay was a very senior ANC member and that he could pick up the telephone and make an appointment with the President at any time. Janse van Rensburg also told me / us, on more than one occasion, that Mr. Pillay and he met the Minister of Finance every fortnight, but that he met with the Deputy Minister every two weeks to discuss the progress of the unit and to receive new instructions.

- Charl Fourie told me that when he and his wife were invited to dinner at Mr. Pillay's house, Mrs Jesse Duarte and her husband also arrived at Mr Pillay's house. Fourie confirmed that Mr Pillay is a very senior person in the ANC.
- I was also told that the now President Jacob Zuma was one of the people that joined Mr Pillay's surprise 55th birthday party held in Durban.
- Janse van Rensburg did not request me to start monitoring the meetings of the DSO immediately after I had asked him for the Act 70 / 2002-approval, but only gave me the instruction a week or a week-and-a-half later being adequate time to obtain an Act 70 / 2002-approval.
- I was aware of the possibility that the unit would have been seconded to the SAPS (CIG), which would have made the Act 70/2002-requests through the SAPS possible **(Annexure M)**.

I did not ask Janse van Rensburg to see the Act 70/2002-approval as he was a senior SARS official (Grade 9) and the reports would have been forwarded to Mr Ivan Pillay (Deputy Commissioner of SARS) in any way.

If it was an unauthorized and illegal operation, Mr Ivan Pillay could have stopped the operation after he received the first report from Janse van Rensburg.

MONITORING OF MEETINGS

24.

I commenced to monitor the meetings as requested at the end of September or beginning of October 2007 and gave Janse van Rensburg verbal feedback on what I found. Janse van Rensburg told me that Mr. Pillay requested the conversations and / or evidence with regard to Commissioner Selebi, on CD. My modus operandi in monitoring the conversations regarding CommissionerSelebi was to download all meetings and conversations that Andrew Leask (head of the investigation against Commissioner Selebi) had. I

then listen whether they were discussing Commissioner Selebi in this meeting or conversation and if this was confirmed, I downloaded it. I downloaded one conversation where they discussed the possible leak they had regarding the DSO's investigations. In the conversation, they suspected Adv Jiba to be the leak. Janse van Rensburg then wrote the report and handed it and the CD to Mr Pillay to verify the information on the CD if necessary.

25.

On a certain day in mid-November 2007, Andrew Leask needed a flash drive for a document he needed to complete at home. He did not have his flash drive with him as he borrowed it to his child for some reason. Whilst I was busy with the installation in his office, I offered him a flash drive. Andrew Leask returned the flash drive to me a day or two later. I am not sure of the date, but I think I opened the flash disk that evening or maybe a day or two later. I discovered that there was still a document on the flash disk and when I opened it, it contained information with regard to Commissioner Jackie Selebi, and about money he received in respect of the corruption charges against him. I took the flash drive to Janse van Rensburg and told him that I am of the opinion that they now obtained everything that the President required and that it was not necessary to continue with the monitoring.

26.

I am not sure, but I think it was that same day, Janse van Rensburg arranged a meeting with Mr Ivan Pillay. He told me that Mr Pillay wanted to discuss the information that was on the flash disk with me. Janse van Rensburg told me that I must call him "sir" or "mister Pillay" because, he liked it.

I met Mr. Pillay personally for the first time and assured him that I did not download the information from Andrew Leask's laptop. I asked him whether I must continue with the monitoring of the conversations regarding Commissioner Selebi's case. He confirmed that I must continue unless it is unsafe to do so. Janse van Rensburg said that I will continue with the

monitoring and will cease monitoring when it is not safe to do so. I felt uncomfortable with the task and told Janse van Rensburg so when we left. I also requested Janse van Rensburg to terminate the operation, but he insisted that I do my work.

27.

I made one further recording relating to Commissioner Selebi's case at the end of November beginning December 2007 (I am not sure of the date) and handed it to Janse van Rensburg. I then unexpectedly and without an appointment, went to Janse van Rensburg's house (it might have been the day after I handed him the CD). I again wanted to discuss the situation with him.

On my arrival, I asked him what he was doing and he said that he was compiling a report regarding the information on the said CD that I gave him in respect of Commissioner Selebi's case. I read the report and became extremely upset because, he was manipulating the information that was on the CD and added fictitious information that was never said and \ or took place. If I am not mistaken, he stated that the DSO was going to make more arrests and that they were "not doing what they are supposed to do". I confronted him with the nonsense he wrote and he answered me by saying that if I am so "fucking" upset about the way he compiles reports, he will delete it. He then deleted the report and confessed that Johan de Waal did all the other reports \ transcriptions. I confronted him with the fact that Johan de Waal also knew about the operation as he originally informed me that only six people were aware of the said operation. He then confessed that Charl Fourie also knew about the operation.

28.

I was extremely upset about the situation. I recall however, that I managed to make an appointment with Mr. Ivan Pillay through Charl Fourie (not sure) and that he and Johan de Waal accompanied me to Mr Pillay's house. I am also not sure whether Johann Van Loggerenberg joined us that evening or on a follow-up meeting, but Mr. Pillay informed him in my presence about the "Sunday Evenings-operation". Mr Pillay said that he needed Van

Loggerenberg to assist him with the said situation. I told Mr Pillay what happened and that he cannot trust any of the information he received from Janse van Rensburg because Janse van Rensburg distorted the truth. Mr Pillay told me that I must leave it in his hands and that he will deal with it.

29.

A few meetings took place to discuss the operation and Janse van Rensburg's behaviour. In one of the meetings Mr. Pillay said that if I was ever confronted with this operation he would say that he gave the instruction. I then asked him whether the President was aware of the said operation and the existence of an Act 70/2002-approval. Mr Pillay then denied that the President ever gave the instruction and or arranged the Act 70/2002-approval, but said that he will take responsibility for it. Mr. Pillay said that he and Johann van Loggerenberg would deal with the Janse van Rensburg-matter. I cannot recall whether Charl Fourie and \ or Johan de Waal attended these meetings.

Mr Pillay told us to carry on with our work and to interact with Janse van Rensburg while they will take action against Janse van Rensburg.

CONTINUATION WITH WORK AFTER THE EXPOSURE OF A.P. JANSE VAN RENSBURG

30.

Approximately, in April \ May 2008, I was seconded to SARS, Anti Corruption and Security (ACAS) unit to assist with the planning and installation of security at SARS sites nationally. I distanced myself from the unit and Janse van Rensburg because, I was disappointed in the way the unit was managed and specifically with the management of Janse van Rensburg. I concentrated on the work at ACAS. In April 2009, I was permanently transferred to ACAS after my first request for a transfer to ACAS in 2008 was lost or not processed. We had several meetings in 2008 where we were given the opportunity to take a financial package and leave SARS. I decided to stay.

I was also present when Johan de Waal and Charl Fourie confronted Janse van Rensburg over a cellular telephone telling him that they disclosed all his misrepresentations, lies and dealings to Mr. Pillay. The cellular telephone was on speakerphone. I also told him during this conversation that I am now aware that he lied to me and mislead me regarding the DSO-operation while he was in a position of trust and authority. He just said "dankie vir dit" (thank you for that). Johann van Loggerenberg was also present during this conversation. Janse van Rensburg took a financial package in 2008 and parted with SARS.

31.

We also had a meeting with Janse van Rensburg after he left. I could initially not remember this meeting in 2008, but, Johan de Waal showed me minutes that were taken by Charl Fourie during this meeting. The said minutes are a true reflection of the facts that were discussed during this meeting **(See Annexure N)**.

The following abbreviations for the persons present at the meeting were used:

- CF = Charl Fourie
- HL = Helgard Lombard
- JdW = Johan de Waal
- S = Skollie

Reference was also made to people that was not present at the meeting:

- PG = Pravin Gordhan
- IP = Ivan Pillay
- FvN = Frans van Niekerk
- JvL = Johann van Loggerenberg

At this meeting that took place on 23 July 2008 at 08:00, I told Janse van Rensburg that if the DSO operation was illegal, I will institute a "civil claim" against him to recover all costs. Janse van Rensburg confirmed in the presence of all at this meeting the legality of the DSO-operation and said

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that he had a letter with him, signed by Commissioner, Pravin Gordhan, that SARS authorised the said operation and that they will carry the legal costs should there be any "problems" due to the operation "Sunday Evenings". I requested a fax copy of this letter, but did not receive it.

I then broke all communications with Janse van Rensburg, but in April 2009 he called me and requested an urgent meeting. We met on 28 April 2009 at approximately 10:00 and during this meeting, Janse van Rensburg told me that he has a meeting with two NIA members. Janse van Rensburg asked me what he must tell them if it is about the DSO-operation. I told Janse van Rensburg that he could tell them whatever he want to because my superiors will have to take the "rap" for the instructions they gave me. **(Annexure O).**

REPORTING THE DSO OPERATION TO THE SAPS (HAWKS)

32.

KPMG was appointed by Commissioner Tom Moyane to investigate allegations of a "Rogue" SARS Unit as reported in the newspapers.

On 19 March 2015, Johan de Waal told me that he received an e-mail from KPMG asking questions about "Operation Sunday Evenings" (the DSO-operation). They retrieved an e-mail from the PC Laptop of Rita Hayes, with the minutes of the meeting held with Janse van Rensburg on 23 July 2008 and forwarded it to Johan de Waal. According to Johan de Waal they wanted to know why I threatened Janse van Rensburg with a civil case if his instructions were illegal **(Annexure N).**

33.

After I read the minutes dated 23 July 2008, I told Johan de Waal that we have to discuss the DSO-operation immediately with Commissioner Tom Moyane as I am no longer going to keep it secret because it will damage the image of SARS should it leak out. We then drove to the Commissioner's Office and told the Commissioner that we need an urgent meeting with him.

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Commissioner Moyane immediately put time aside for us, invited the Acting COO, Mr. Jonas Makwakwa, to the meeting and listened to what we had to say.

After I gave Commissioner Moyane and Acting COO Makwakwa a comprehensive briefing about the DSO operation ("Operation Sunday Evenings"), the Commissioner had a one-on-one talk with Johan de Waal. Mr Jonas Makwakwa and I left the office. In Mr Jonas Makwakwa's office, he (Makwakwa) promised me that I do not have to worry about anything, as I will not lose my work. He also promised that SARS would look after Johan de Waal and myself and will provide us with legal representation if necessary.

34.

After the meeting that Commissioner Moyane had with Johan de Waal, Mr Makwakwa and I returned to the Commissioner's office. Mr Makwakwa repeated his promise that he made to me in the presence of the Commissioner. The Commissioner then said that I must see him as my "Psychiatrist" and that I must tell him everything that I have not told him yet. I told the Commissioner that I furnished him with all the facts regarding the said operation.

When we left the Commissioner's office on 19 March 2015, he requested us, both Johan de Waal and myself, to provide him with a signed memorandum of what I told him as well as soft a copy (a flash disk thereof) of the signed document the next day. The next day I gave Commissioner Tom Moyane and the Acting COO Jonas Makwakwa a signed memorandum confirming what I told them on 19 March 2015 **(Annexure P)**.

35.

On 6 May 2015, I received a call from Charl Fourie in Australia, stating that he received a call from Adrian Lackay (former spokesperson of SARS). He enquired whether Johan de Waal or I spoke out about the operation (DSO-operation). Adrian Lackay indicated that he was with Sam Sole, a reporter from the Mail & Guardian, who stated that big trouble was eminent. Adrian Lackay wanted Charl Fourie to talk to Sam Sole, but Fourie refused. Fourie

GSM

then carried on by saying that he is, or was, also under the impression that the operation was legal. He also said that someone told him (he thought it was Johann van Loggerenberg) that it was an authorised operation **(Annexure Q)**.

I immediately informed Commissioner Tom Moyane, Acting COO Jonas Makwakwa and Adv. Theresa Kannemeyer (HR) via SMS about the conversation and told them that the Mail & Guardian was probably going to publish an article relating to the DSO-operation **(Annexure R)**. I am not aware who leaked this confidential information to the media because, this is a dismissible offence for a SARS employee to divulge confidential and /or unauthorized information to the media **(Annexure S)**.

36.

On Wednesday, 13 May 2015, Acting COO Jonas Makwakwa phoned me and requested that Johan de Waal and myself must be at Commissioner Moyane's office at 17:00. Johan de Waal and myself met with Commissioner Moyane and Mr Makwakwa at his office and the Commissioner informed us that the Mail & Guardian wanted input from SARS regarding the DSO-operation. Commissioner Moyane told us that SARS would provide us with legal assistance as we executed the DSO-operation **as per a SARS instruction.**

Commissioner Moyane then instructed us to report the matter to the SAPS (HAWKS) and he phoned a General to assist us. The General was not available as he was in Cape Town, but referred us to Lieutenant-Colonel Maluleke who met us at the Pretoria-North Police Station.

Johan de Waal and I informed him and a Warrant Officer (also from the HAWKS) about the DSO-operation.

37.

I provided Colonel Maluleke with an unsigned document on 14 May 2015, being the Memorandum that I handed to Commissioner Moyane on 20 March 2015. Colonel Maluleke explained to Johan de Waal and myself the possible steps that will follow before a case would be registered. Commissioner

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Moyane, as well as Acting COO Makwakwa, wanted feedback regarding our meeting with the HAWKS and I gave feedback to the Commissioner and the Acting COO on 14 May 2015 **(Annexure T)**.

On Sunday 17 May 2015, Colonel Maluleke contacted me and requested me to meet him at General Piet Joubert Building, i.e. the DCPI (HAWKS) offices, at 17:30. Colonel Maluleke requested me to sign the said document I gave him, but I called Adv. Theresa Kannemeyer and she advised me not to sign the document. She explained that I could incriminate myself without proper legal advice. I handed the phone to Colonel Maluleke and she spoke to him.

He accepted her explanation. He said that I could sign an affidavit at an appropriate time.

FINANCES

38.

When I commenced my employment at SARS, it was said that the SARS unit in question would most probably be seconded to NIA to work exclusively on state revenue-related cases. I had to hand in a budget of high technology equipment that the unit would need but, it was more of a wish list. I am of the opinion that it was to calculate costs should the unit be seconded to work under the auspices of NIA. It was soon clear that the unit would not be seconded to NIA. It was said that if the unit needs equipment, it would be best if they raise the money themselves although SARS already approached the SAPS (CIG) to second the unit to them to "enhance the South African State's capacity to address criminal activity and to collect state revenue" **(Annexure M)**. The negotiations with the SAPS (CIG) were unsuccessful and the said SARS unit had to buy their own equipment to do their work. I am not aware whether such equipment was bought. The unit was dissolved in 2015.

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I believed that the installation of security systems at the DSO was from the onset an official operation because of the following:

- Janse van Rensburg did not inform the DSO that he actually was a SARS employee when they first contacted him for a quotation. However, I cannot confirm that the DSO was aware of it.
- Janse van Rensburg told me that it was an official operation and indicated that I must not discuss it with the rest of the unit.
- I accompanied Janse van Rensburg when we met Adv Gerrie Nel and Andrew Leask to give input regarding the security installation should it be necessary. Janse van Rensburg did not mention that we were SARS employees. The meeting took place during working hours although we worked from our homes.
- Janse van Rensburg approved the quotation before it was handed to the DSO. I got instructions from Janse van Rensburg to make sure that I included "profit" that the unit could use.
- Once the first payment of R 300,000.00 was made on 12 July 2007, I had to get authorization from Janse van Rensburg to spend the money. This changed soon and Janse van Rensburg gave me verbal authorization to buy the equipment and consumables for the installations at DSO without me contacting him. Janse van Rensburg usually called me regarding expenses of the unit such as to buy equipment or pay cash to members of the unit **(Annexure D & U)**.
- Janse van Rensburg called me out of official meetings to attend to the DSO security installations and mentioned to the other unit members that we are busy with an official operation. This happened more than once while the unit was busy with planning sessions at the CSSI House in Midrand. CSSI (Pty) Ltd in Midrand is a global data recovery laboratory and data storage specialist company, supplying a host of branded products, software and data storage services from data storage supply; hard drives, backup systems, data migration to digital forensics and data archival services.

GSM

- Janse van Rensburg signed off my kilometres travelled for the purpose of the installation as official kilometres travelled.
- The fact that the DSO, Adv. Gerrie Nel and Andrew Leask, contacted Janse van Rensburg for the installation of the security equipment was questionable because, the DSO had its own technical capability at the time. There were also quite a few other companies that could have been approached to conduct the security installations.

40.

I reiterate that the unit had to generate its own funds for equipment. However, when the DSO security installation came up, the unit did not have a bank account that it could use for securing generated funds. I proposed to Janse van Rensburg that the unit could use the account as already mentioned in paragraph 16 above. The account was, as stated, with ABSA and the account number was 9062196036 **(Annexure V)**. Janse van Rensburg approved it and I agreed to do a reconciliation of the funds on a regular basis **(Annexure W)**. All the money that I received from the DSO was in cash and deposited into the said bank account **(Annexure V)**.

FINANCE FLOW

41.

I reiterate that I provided the DSO with a quotation **(Annexure B)**. If I am not mistaken, I followed this up with a pro-forma invoice with the exact details that were on the quotation.

42.

I reiterate that Piet Jonker, an Investigator at the DSO, phoned me on 12 July 2007 and informed me that he had R 300,000.00 in cash with him and that he wanted to hand it over to me so that I could commence with the security installations. I signed for the cash that I received and then deposited it into the bank account as mentioned above (ABSA Bank account

GSM

nr. 9062196036). I followed this procedure with all the payments that I received from the DSO. The total amount received was R 900,705.46 for the installation of the security equipment and a further R 247,500.00 on 07 December 2007 for cellular encryption equipment **(Annexure D)**.

43.

I then procured consumables and equipment by paying with my credit card and / or issuing a personal cheque for the payment. This was done because the ABSA bank account 9062196036 was a savings account and did not have a debit card facility. I then added the amounts of the invoices and requested my wife to do a transfer to my credit card or cheque account whichever one I used to pay for the consumables and equipment **(Annexure X)**.

At the service providers where I did not have an account, or where the amount exceeded my credit card limit or cheque overdraft limit, I requested my wife to obtain a "Bank cheque" in the name of the service provider and paid them directly with a "Bank Guaranteed Cheque" **(Annexure X)**.

I have done reconciliations on a regular basis **(Annexure W)**. I have done these reconciliations until 06 May 2008 **(Annexure W:** Reconciliation 06 May 2008**)**. I kept all invoices up and until 09 September 2008 when I did a final reconciliation of the DSO account **(Annexure Y)**.

44.

After Janse van Rensburg decided to take the financial package that SARS offered him, I once again met with Mr Ivan Pillay and Johan van Loggerenberg. I told them that there was an amount of approximately R100,000.00 in the said bank account and enquired from them in which SARS account I should deposit the money. Both of them then answered that there is no provision made for such an account and that I cannot pay the balance over to SARS. SARS would not be able to give an explanation of the money should anyone queried the deposit. Mr Pillay and Johann van Loggerenberg then said that I must take the money and regarded it as a "private installation" should anyone ask. Johan van Loggerenberg then gave me a letter that authorised me to conduct private work. This was the first

GSM

time for me to receive such letter. I attach the said letter as part of **Annexure Z.**

I declared R112,740.00 as profit in the 2008-tax year **(see Annexure W)** and paid an amount of R45,096.00 over to SARS being 40% on the declared additional income **(Annexure Z)**.

I already did a final reconciliation of the DSO account on 9 September 2008 as mentioned in paragraph 42 above. An amount of R 266,840-69 had to be refunded to the DSO. On the same day, I deposited the said amount of R 266,840-69 directly into the DSO Head Office, C–Funds bank account - Standard Bank, Account number 011691379 **(Annexure Y)**. I also supplied the DSO with an Asset List as well as an Asset Distribution list **(Annexure F and H).**

After September 2008, I kept on maintaining the DSO's alarm system account until June 2009 when the two-year contract with CellSecure (Pty) Ltd was terminated **(Annexure X).** I also maintained the data SIM-cards as supplied by TeleEye (Pty) Ltd.

I completed the final reconciliation after "Operation Sunday Evenings" leaked to the media and I reported the DSO-operation to the SAPS (HAWKS) **(Annexure W).**

In this reconciliation, it is clear that I still used some of the money to maintain accounts arising from the DSO-operation **(Annexure W)**.

45.

On request of the investigating team I would like to add the following facts:

45.1 I was requested to elaborate in detail my involvement in all projects that I conducted while a member of the said unit. As far as I can recollect, I was involved in the following projects during the period 2007 to the end of 2008: **(see Annexure AA1 to AA5).**

45.1.1 Task Babu – Pinetown – March \ April 2007. The purpose of this task was to establish whether a certain tax payer was smuggling with abalone. I did a reconnaissance of the area to determine

GSM

whether a video transmitter could be installed to assist in the investigation. The procurement of the equipment was not approved and I just took pictures of the house and area (**see Annexure AA1**).

I was part of the investigating team. I can confirm that Jappi Tshabalala and Sipho Nkomo accompanied me.

45.1.2 Operation Fok Tim – Bramley - May 2007. Information was received that drugs were manufactured on the premises of a person from Chinese origin. After establishing the address, Danie le Roux and myself were present on 28 May 2007 when the SAPS entered the premises of 92 Beryl Street, Bramley.

During a conversation with Mr. Fok, he confirmed that he did not register for tax as his businesses were illegal. A search of his property confirmed that he ran a "Fafi" business from his garage and provided accommodation for approximately twenty (20) Chinese citizens. He also had false documents in his possession.

I handed a report to Itumaleng Leeuw regarding this operation on 04 June 2007 (**see Annexure AA2**).

45.1.3 Operation Erwin – Ladybrand (FS) –June 2007. The purpose of the reconnaissance was to determine whether a full time surveillance investigation had to be conducted to establish the frequency of smuggled abalone that was delivered at a cold storage in Ladybrand.

I was accompanied by Kenny Mphalele and Mike Peega to conduct the initial reconnaissance in Ladybrand (FS) in June 2007. I wrote a reconnaissance report on 02 July 2007 to Mr. A.P. Janse van Rensburg with my recommendations, which included the cost for surveillance equipment. The equipment was never procured and the surveillance operation was not approved (**see Annexure AA3**).

45.1.4 Operation Border Posts – Beit Bridge – October 2007. I did research at Beit Bridge (Musina) to establish whether it was possible to monitor vehicle movement in respect of "ghost exports", bribery, etc by means of employing CCTV cameras that will be monitored remotely (**see Annexure AA4**). Gilbert Gunn and others accompanied me.

(While I was employed at the Anti-Corruption and Security unit, I installed two hundred and seventy four (274) CCTV cameras for the abovementioned purposes)

45.1.5 Operation WDF (Waterfront Duty Free) – Cape Town – February 2008.

The purpose of the investigation (operation) was to determine whether the company supplies duty free stock to businesses and \ or individuals which stock do not qualify for duty free stock (**see Annexure AA5**).

I can only recall that Gilbert Gun accompanied me during the investigation, but cannot recall the other members of the team that also accompanied us.

All information collected during this investigation, was handed over to SARS management.

45.1.6 Operation Abalone – Gansbaai. The purpose of this investigation was to collect information regarding abalone smugglers in the Gansbaai \ Hermanus area.

I cannot recall the exact date of the investigation, but remember that the investigation was done by Danie le Roux and myself. Frans van Niekerk compiled a comprehensive report regarding the smuggling of abalone in the said areas.

GSM

45.2 The unit did not have the means to buy tracking equipment, but I recommended Inkwazi and FinTrack tracking equipment as being reliable.

45.3 As far as I can recollect, I received a SARS identification card during 2007. The said card had a SARS emblem and a photograph of myself, but with another name and surname printed on it. I do not know who instructed the issuing of the said cards. I had the said card for a short period in my possession, but never used it. I later returned the card. I am not aware of what happened to the card.

45.4 When Janse van Rensburg parted with SARS during 2008, Johann Van Loggerenberg communicated through me to the unit. I never received a letter stating that I am the "Acting Head" of the NRG and I never regarded me as the acting head. I cannot recall whether projects were conducted during this period because, I assisted the Anti-Corruption and Security Unit (ACAS) to plan and implement a national rollout of a CCTV camera system with a centralised monitoring facility. During this period, I gave feedback from the unit members to Johann van Loggerenberg. I also reported to ACAS during this time. Although I was seconded to ACAS in 2008/2009, I was permanently transferred to the said unit on 1 April 2009.

I cannot recall whether I have signed a performance agreement.

45.5 I cannot recall whether I have conducted any projects (Crime Intelligence (SAPS) or NIA during the said period. Since 2009, after I joined ACAS, I conducted projects with SAPS (Hawks), SAPS (Crime Intelligence) and SSA on a few occasions.

45.6 While Janse van Rensburg was our manager, he allocated the projects. I am not aware who approved the said projects aware , nor do I know who monitored and evaluated the projects.

When J. Van Loggerenberg took over from Janse van Rensburg, we were made aware that no illegal methods were to be used to obtain information with regard to projects. He approved projects after he

received a detailed motivation, including financial implications and expected outcome of the project. I took it that he evaluated it.

45.7 I am not aware that any member of the unit escorted prominent politicians.

45.8 I left the "NRG" in 2009. While I was doing operations in the said unit, I never used any SARS equipment except those that I bought during the DSO-installation. I was made aware of the existence of a surveillance vehicle but, cannot remember who informed me about it. I have never seen the said vehicle.

Deponent

Signed and sworn to before me at 2016-10-26 pm Wierdsburg 2016. The Deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on his conscience.

COMMISSIONER OF OATHS

FULL NAMES: Hajir Singh

ADDRESS: 75 Vindhela Road Verdella

DESIGNATION: Warrant Officer

AREA: Wierdsburg SAPS

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A147

GSM

SUPPLEMENTARY AFFIDAVIT

I, the undersigned, **Helgard Lombard**, an adult male with identity number 570817 5018 087, and residing at 327 Theuns van Niekerk Street, Wierda Park, Centurion, 0149 declare under oath as follows:

1.

I already made an affidavit dated 24 October 2016 in which I disclosed the relevant facts.

2.

On 16 March 2018 I was approached by the State with regard to an allegation made by Werksmans Attorneys in a letter directed to the National Directorate of Public Prosecutions dated 12 March 2018. In the said allegation they alleged that I was instructed by Mr. Moyane not to avail myself for a scheduled interview with KPMG in 2015 and that I had to pretend that I was ill.

3.

I want to reiterate what I stated in paragraphs 32 and 33 of my affidavit dated 24 October 2016. On 19 March 2015 myself and Mr. de Waal gave Mr. Moyane and Mr. Makwakwa a comprehensive briefing about the DSO operation ("Operation Sunday Evenings"). I want to add that at this meeting Mr. Moyane instructed us to keep quiet about the said operation and not to discuss it with anyone.

4.

I also want to react to the said allegations from Werksmans Attorneys. On 6 May 2015 I informed Mr. Moyane that I had to avail myself for an interview with KPGM on 7 May 2015. Mr. Moyane requested me to phone him on the morning of 7 May. I in fact phoned him as requested. It was in this conversation that Mr. Moyane instructed me not to avail myself for the said interview and to pretend that I was ill. I obeyed the said instruction.

He further informed me that Mr. Luther Lebelo would phone KPGM and inform them of the fact that I was ill. I never testified before the KPMG Commission. I want to emphasize the fact that I was not ill and was able to testify if necessary.

GSM M.W.

I recorded the abovementioned conversation. All my incoming and outgoing cellphone conversations are recorded. I attach a transcription of the said conversation as Annexure **HL1**. The original recording was at all times in my possession under lock and key. The said original is available if required.

5.

I did not disclose these additional facts in my original affidavit because, at the time I did not consider it relevant to the investigations regarding the unit.

Deponent

Signed and sworn to before me at **Pretoria** on **21 March 2018**. The Deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on his conscience.

0616735-7
Mashishi. WO/O

COMMISSIONER OF OATHS

FULL NAMES: MAJOR WILLIAM MASHISHI

ADDRESS: 75 VINDHELLA ROAD

VALHALLA

DESIGNATION: WO/O

AREA: PRETORIA

SUID-AFRIKAANSE POLISIEDIENS
COMPONENT HEAD
2018 -03- 21
WIERDABRUG
DETECTIVE SERVICE
SOUTH AFRICAN POLICE SERVICE

GSM

CONFIDENTIAL

Annexure HL1

TELEPHONE CONVERSATION BETWEEN COMMISSIONER THOMAS (TOM) MOYANE AND HELGARD LOMBARD ON 07 MAY 2015 AT 07:31

ABBREVIATIONS:

COMMISSIONER TOM MOYANE: TM

HELGARD LOMBARD: HL

Telephone rings

TM: Hi Helgard.

HL: Commissioner, good morning.

TM: Good morning.

HL: I hope you had a good night.

TM: I did.....I did.

HL: (Laughing) That's good.

HL: Commissioner (unclear)?

TM: Just a minute, just a minute, just a minute...

(Silence TM talking to people in the background)

TM: Hallo....

HL: Commissioner?

TM: Just wait, let's deal with case KPMG.

HL: Huh... okay.

TM: Let's deal with it..... you are not going.

HL: Okay.

GSM M.W

CONFIDENTIAL

Annexure HL1

TM: You are not going to them. Ehh.... Luther is going to tell them that you are not well.

HL: Oh... okay.

TM: Ja, you're not well.

HL: Okay.

TM: Hmm... and, and that... eh you... you certainly not well... and therefore... ehm they'll have to organize another day.

HL: Okay.

TM: Ja, you not going today, you're not going tomorrow... so you... you... you have a challenge... Ja, you're not well.

HL: Okay.

TM: They'll... he'll do it on your behalf.

HL: All right... thank you very much.

TM: Ja...

HL: Commissioner must I come through to you?

TM: No, don't come and see me. I'm going through to Maputo now.

HL: Okay.

TM: Ja... so let's discuss it on Monday.

HL: On Monday?

TM: Ja...

HL: ...

TM: Thank you very much for sending me... I just want you to be calm Helgard

HL: Okay... Commissioner.

G.S.M M.W

CONFIDENTIAL

Annexure HL1

TM: You can even don't go to work... don't just go... stay at home, pull your mind together. I am very happy with what you have shared with me ... and just send a message to your immediate superior and said that you are... you are not feeling well and... and... that's it.

HL: Okay but..... Luther

TM: Just for today and then you can...

HL: But Luther will.....

TM: Luther will deal with ..... yah Luther, Luther will... no Luther won't contact you... Luther is going to make an apology on your behalf.

HL: Okay, thank you very much.

TM: Yah...

HL: There is something else that I need to tell you about a trap that they set up for the other six...

TM: Yah...

HL: That I'm not sure you are aware off...

TM: No.

HL: So, eh... when we have time I will discuss it with you. They...

TM: Oh...

HL: Same lady that was at my place last night.

TM: Okay, let's... let's... have a meeting on Monday.

HL: Okay, that's right. Thank you, Commissioner.

TM: Okay, stay at home today, take care of your wife.....

HL: Thank you.

TM: eh..... relax as much as you can... you have me behind you and thank you for sharing some of this things with me.

HL: It's a pleasure..... thank you very much...

GS m

CONFIDENTIAL

Annexure HL1

TM: Thank you..... thank you very much, ... thank you very much.

HL: Okay.

TM: Bye-bye.

HL: Okay ... bye-bye

TM: When they call you, when they call you.....

HL: Yes?

TM: Just say ..... "I am not well" ..... if they do call you from KPMG, say "I am not well", I thought Luther has communicated that with you...

HL: Okay...

TM: Yah

HL: Thank you Commissioner... I'll tell them.

TM: Yah... say (unclear) okay bye..... bye...bye.

HL: Okay...ehm...bye.

END OF CONVERSATION 07:35

M.W

BROOKLYN CAS 427/05/2015

A106

GSM24

Izak Johannes Fischer states as follows in English:

1

I am a Colonel in the South African Police Service with persal no 0082476-3, stationed at Crime Intelligence, Head Office, Technical Support Unit, Pretoria. I have 37 years experience in Technical Support with the following qualifications:

1.1 National Diploma - Police Administration
1.2 National Diploma - Elect. Engineering
1.3 National Higher Diploma - Elect. Engineering

2

On the 2nd of February 2016, I was approached to assist in the identification of equipment at the offices of SARS in Brooklyn. The request was made by Col HW Maluleka from Crimes Against the State (CATS). After the on-site investigation was completed, I compiled the following report, using the photo album compiled by Const SP Ndebele, marked Brooklyn CAS 427/05/2015 NCSPT CR06/2016.

3

Photograph 1 shows the inside of the offices where the equipment was displayed. Photograph 2 to 24 shows the equipment to be identified. Photograph 5 shows a Nikon D200 digital camera with two lenses.

4

Photograph 6 shows a photo of nigh sight equipment. The detail on the photo is not enough to determine the make or model of the equipment. This type of equipment is used to take photographs at night or in very dark circumstances.

5

Photograph 7 to 13 shows a mobile digital video recording system. This is a four input and one output system. Four different video/audio feeds can be streamed to this system and watched on the internal screen or an externa monitor. Next to the four inputs and one output, the collapsible antennas for the video/audio inputs can be seen. The monitor is built into the lid of the case, to be accessible when the case is opened. The system also has a battery installed to operate without a connection to outside power. At the front connectors can be seen where outside power (220v ac and 12v dc) can be connected. The digital recorder records video and audio on a removable hard drive. Photograph 22 to 24 shows photographs of connection wires, antennas and audio/video transmitters used with the recorder unit. The cables are used to connect cameras as well as batteries to the four transmitters. The transmitters are then used to transmit audio and video to the equipment (receiver and recorder) described in photos 8 to 12. The transmitters shown operate in the frequency band 1.2 GHZ, generally reserved for law enforcement. Two transmitters have dip-switch settings to select one of four channels available. This feature is to enable the receiver to receive different feeds at the same time and shown on the monitor split in four segments. The other two transmitters do not have visible channel selectors and it is presumed to be fixed on specific channels. No names are shown to determine the make and model of the transmitters. The power output of the transmitters is 500mw that will give it an effective range of 500 to 1000 meters within city limits under ideal circumstances.

6

Photograph 15 to 18 shows photos containing images of pelican protection cases with the supplier's detail as well as the name of the equipment inside. No photos were supplied on the contents of the cases. It is presumed that the contents are Gnome digital audio recorders. It is small in size and after recording it is downloaded to a computer as an audio file. This type of recorder generally has its own propriety authentication system that makes it difficult to alter or change the recorded files. For that reason it is generally sold to law enforcement agencies and used where it is essential to prove the originality of the recording in court.

GSM

7

Photographs 19 to 21 shows photographs of a Sting audio/video body worn digital recorder. The unit is disguised under a person's shirt. One of the top buttons of the shirt is then used as a camera. On photo no 20 the digital camera (disguised as a button) as well as the remote to operate the recorder is shown. The files on the recorder is downloaded to a computer for viewing after the recording.

8

Photographs 26 to 43 shows a working area as well as a safe where similar equipment is stored. All of this photos show the equipment store and equipment stacked and marked. Some of this equipment is new and have not been used and some have been used but is still in a excellent condition. Photograph 40 shows a blue folder that is used as a log to capture particulars of everybody entering the storeroom.

9

I have nothing more to declare in this statement.
I know and understand the contents of this declaration.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

Date: 19 September 2016

Time: 14:00

Place: Pretoria

(SIGNATURE OF DEPONENT)

I certify that the above statement was taken by me and that the deponent has acknowledged that he knows and understand the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on 19 September 2016 at 14:00.

COMMISSIONER OF OATHS
HW MALULEKA
GENERAL PIET JOUBERT BUILDING
218 VISAGIE STREET, PRETORIA
COLONEL, SA POLICE SERVICE

Lt Col Maluleka/ verklaring IJ Fischer(s)

GSM

SEQ 29/2021-2566

RSC7 1.

A 106.

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

SOUTH AFRICAN POLICE SERVICE

PHOTOALBUM COMPILED BY:
W/O S.P. NDEBELE

GSM

KEY TO PHOTOGRAPHS

BROOKLYN CAS 427/05/2016

NATIONAL CSM 06/02/2016

PHOTOGRAPH 1:	Is taken in a Southerly direction depicting the scene of crime at River Walk Park ,48 Matrionsburg road Pritoria.
PHOTOGRAPHS 2-24 :	Depicts the equipment found inside the office with make and serial numbers of other.
PHOTOGRAPHS 25-26:	Depicts scene .
PHOTOGRAPHS 27-31:	Depicts safe room locked and unlocked.
PHOTOGRAPH 32-41:	Depicts the equipment found in the safe.
PHOTOGRAPHS 42-43:	Depicts the safe locked after taking photographs.

The scene was attended on 2016/02/01 at 15:15 by CST. S.P Ndebele at the requested of Col. Fischer.

CONSTABLE
S. P. NDEBELE 6255250-3
KEY point 470/tm

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CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 1

PHOTO: 2

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 3

PHOTO: 4

GSm

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 5

PHOTO: 6

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 7

PHOTO: 8

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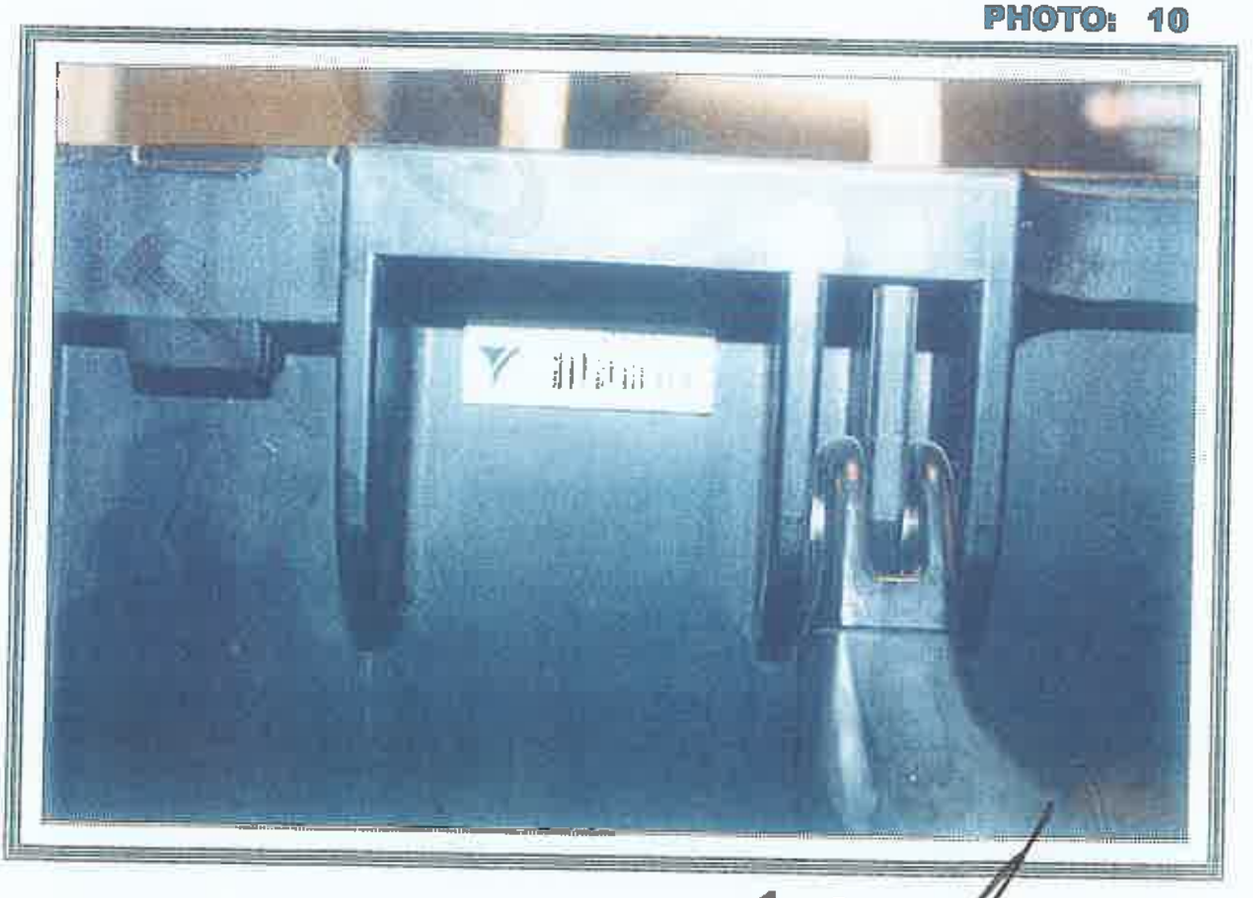
CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 9

PHOTO: 10



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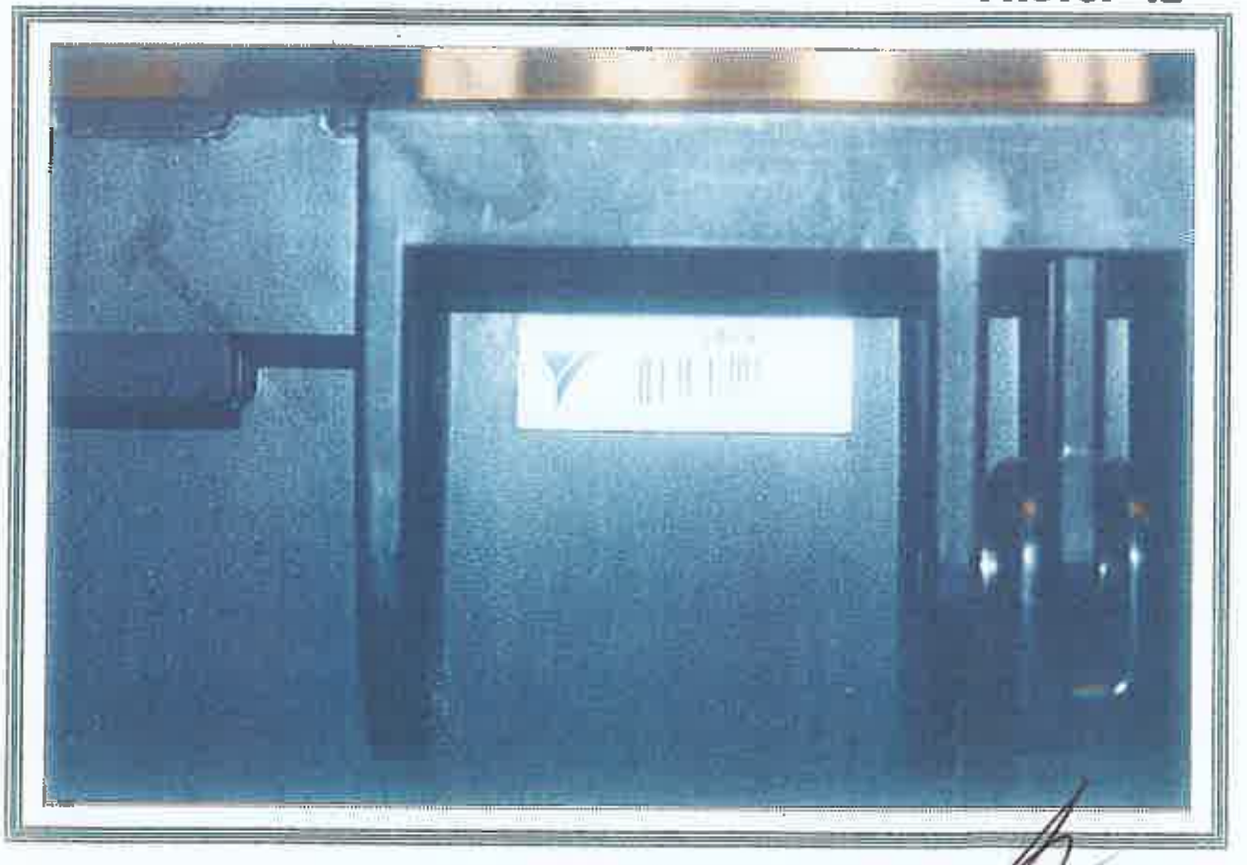
CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 11

PHOTO: 12



GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 13

PHOTO: 14

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 15

PHOTO: 16

65m

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 17

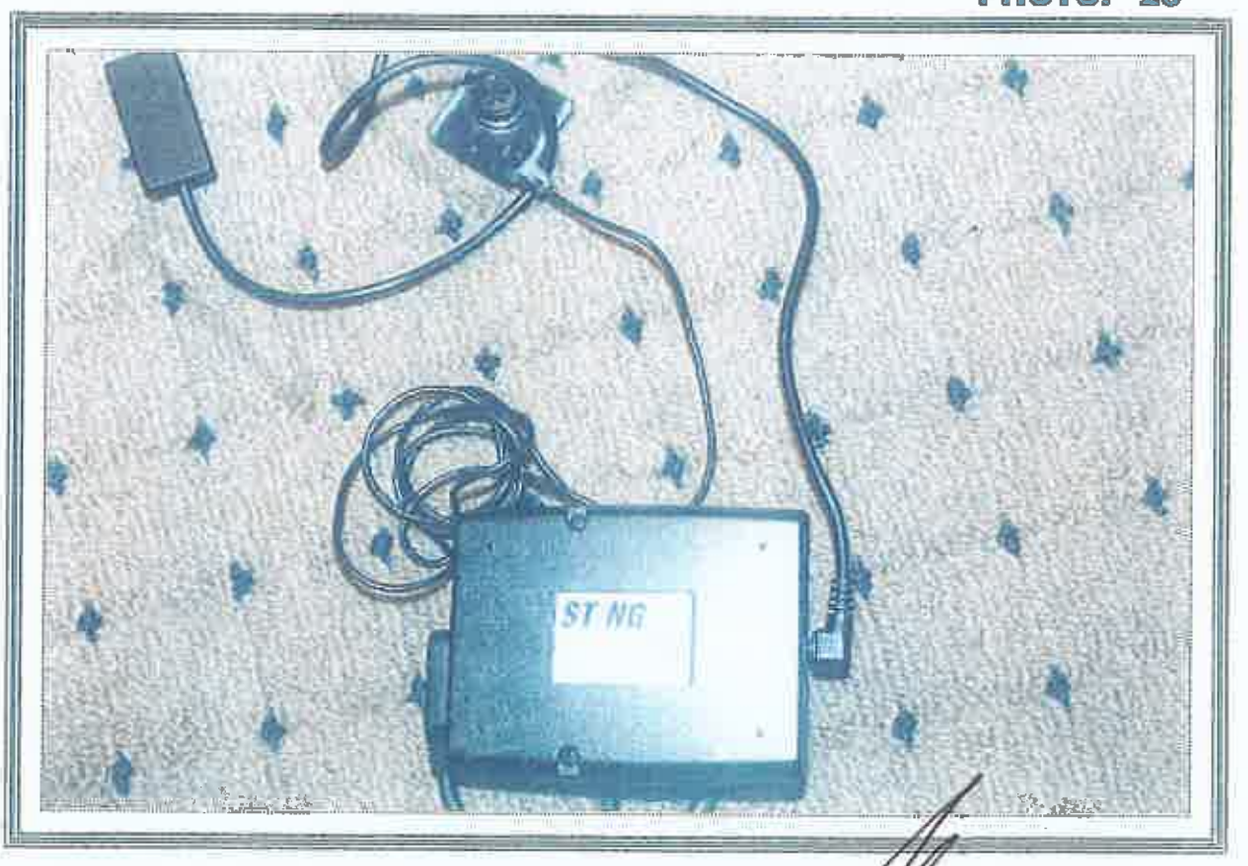
PHOTO: 18

GS

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 19

PHOTO: 20



GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 21

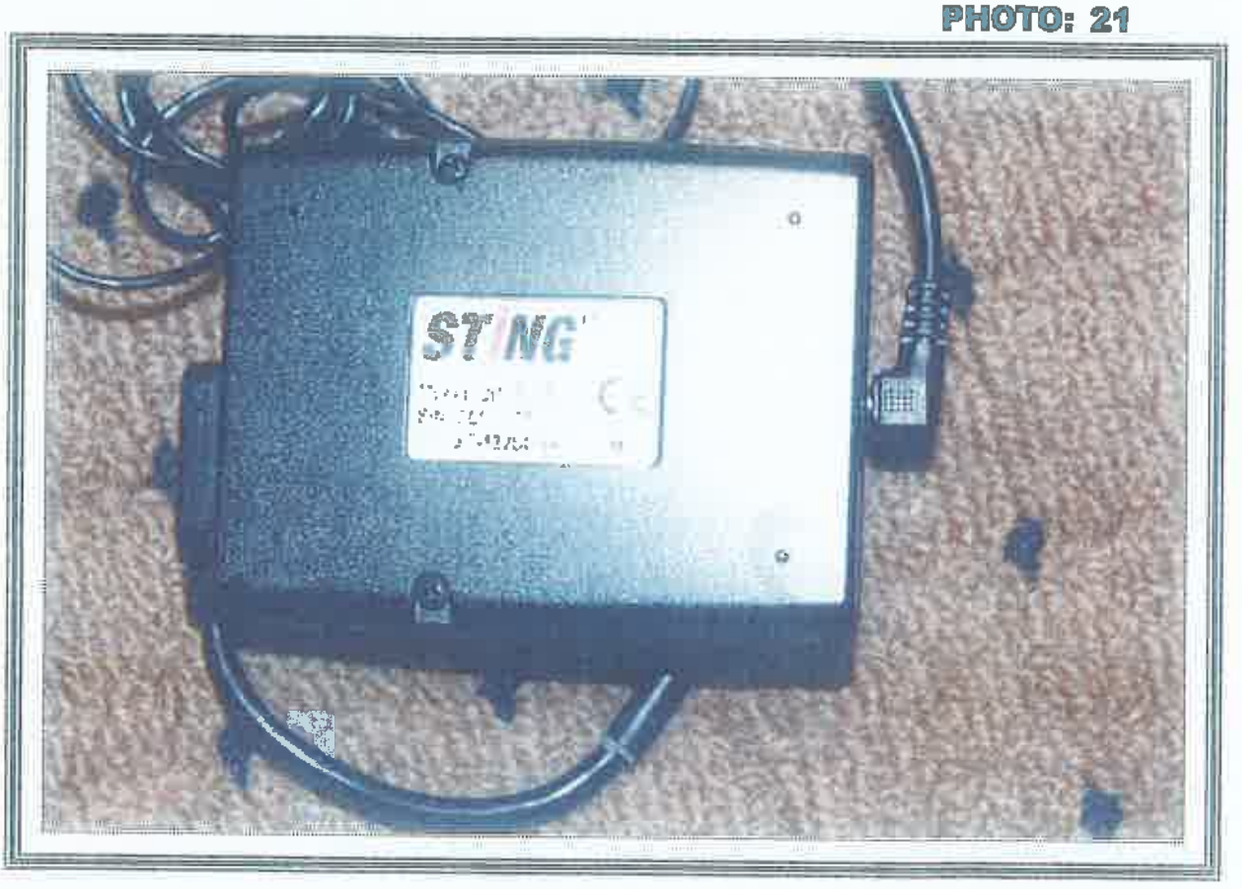


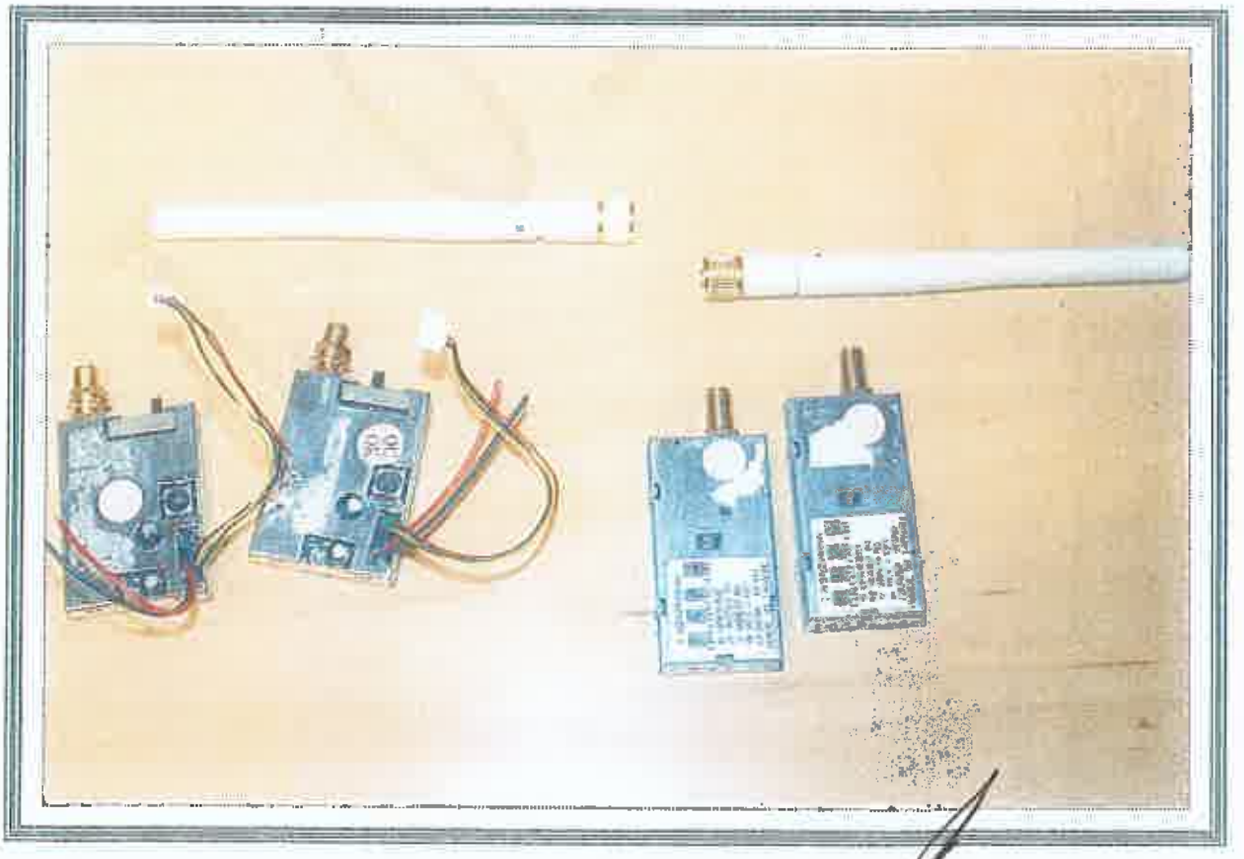
PHOTO: 22

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 23

PHOTO: 24



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CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 25

PHOTO: 26

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 27

PHOTO: 28

GSM

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 29

PHOTO: 30

GS

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 31

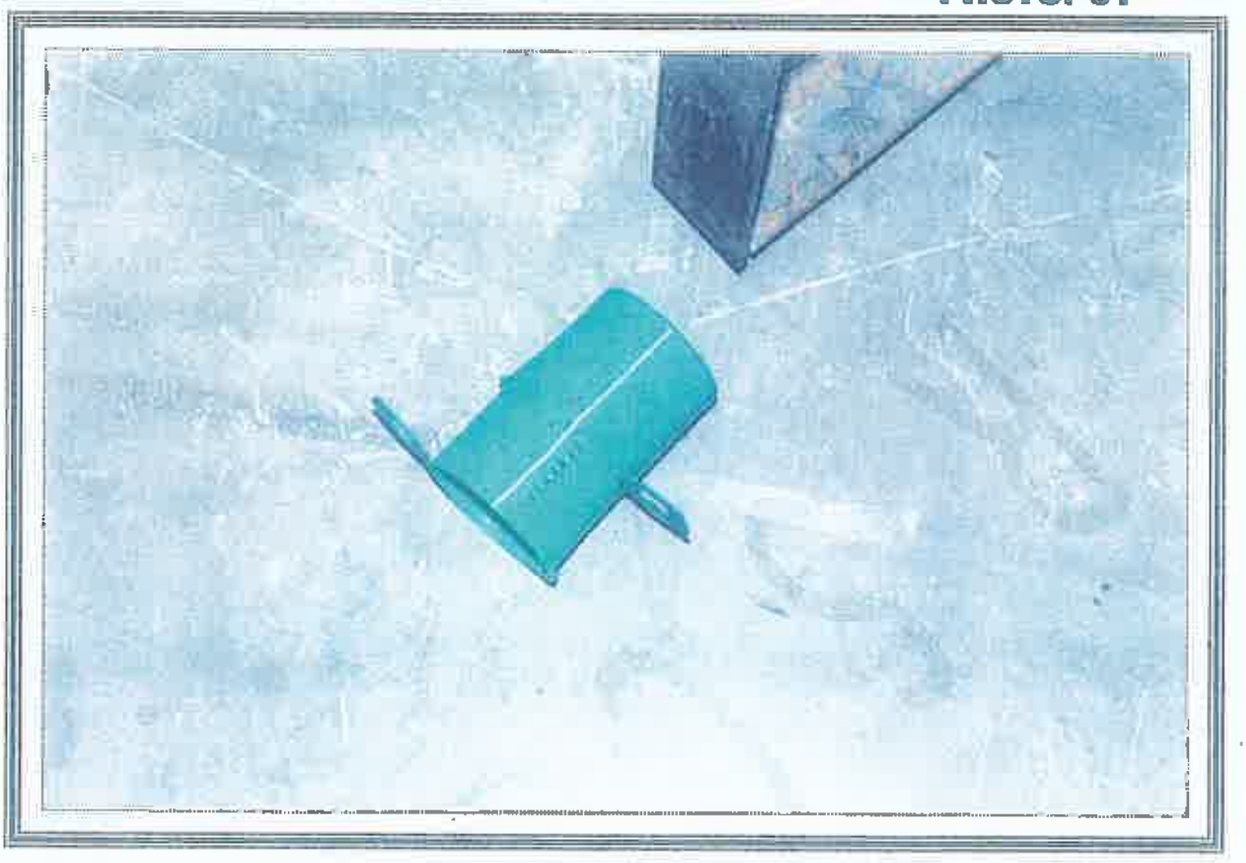


PHOTO: 32

GS

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 33

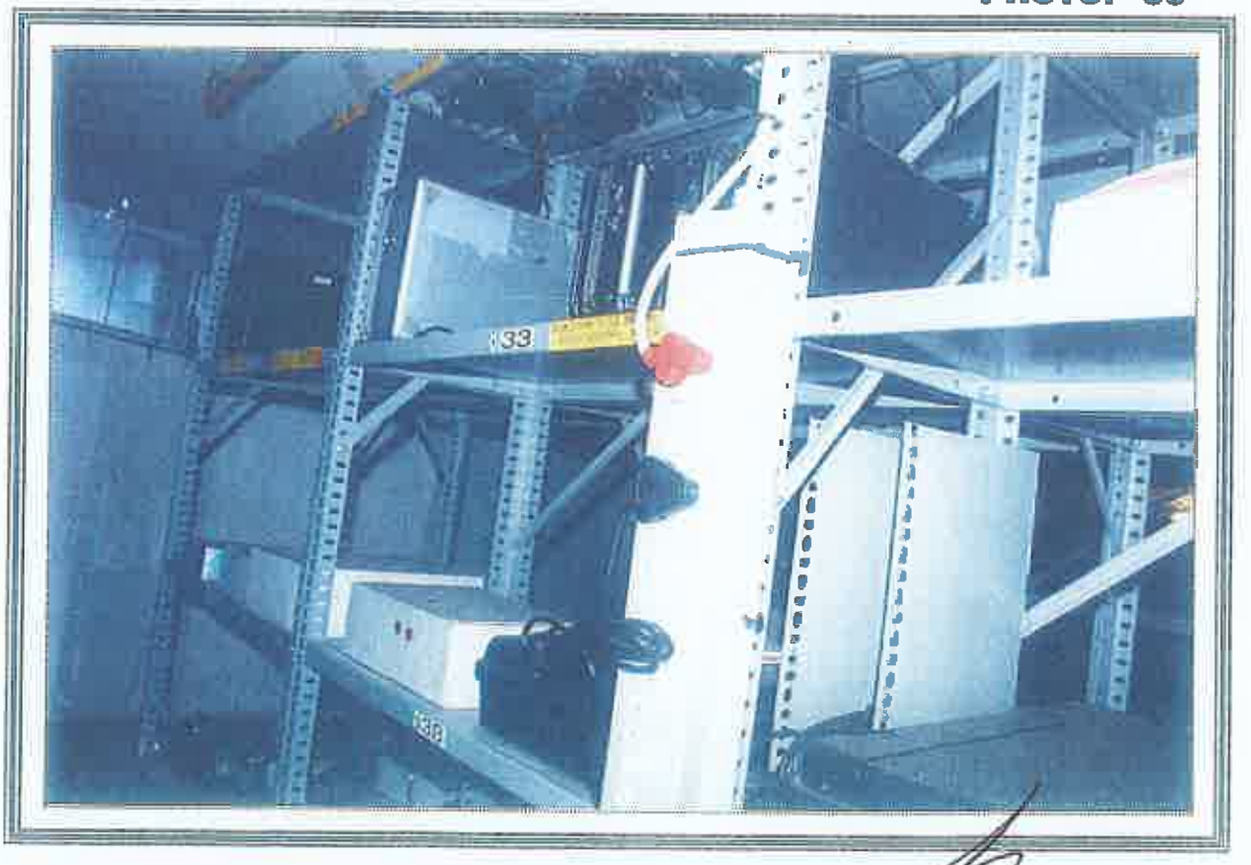
PHOTO: 34

G Smith

CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 35

PHOTO: 36



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CATS: CONTRAVENING ACT 70
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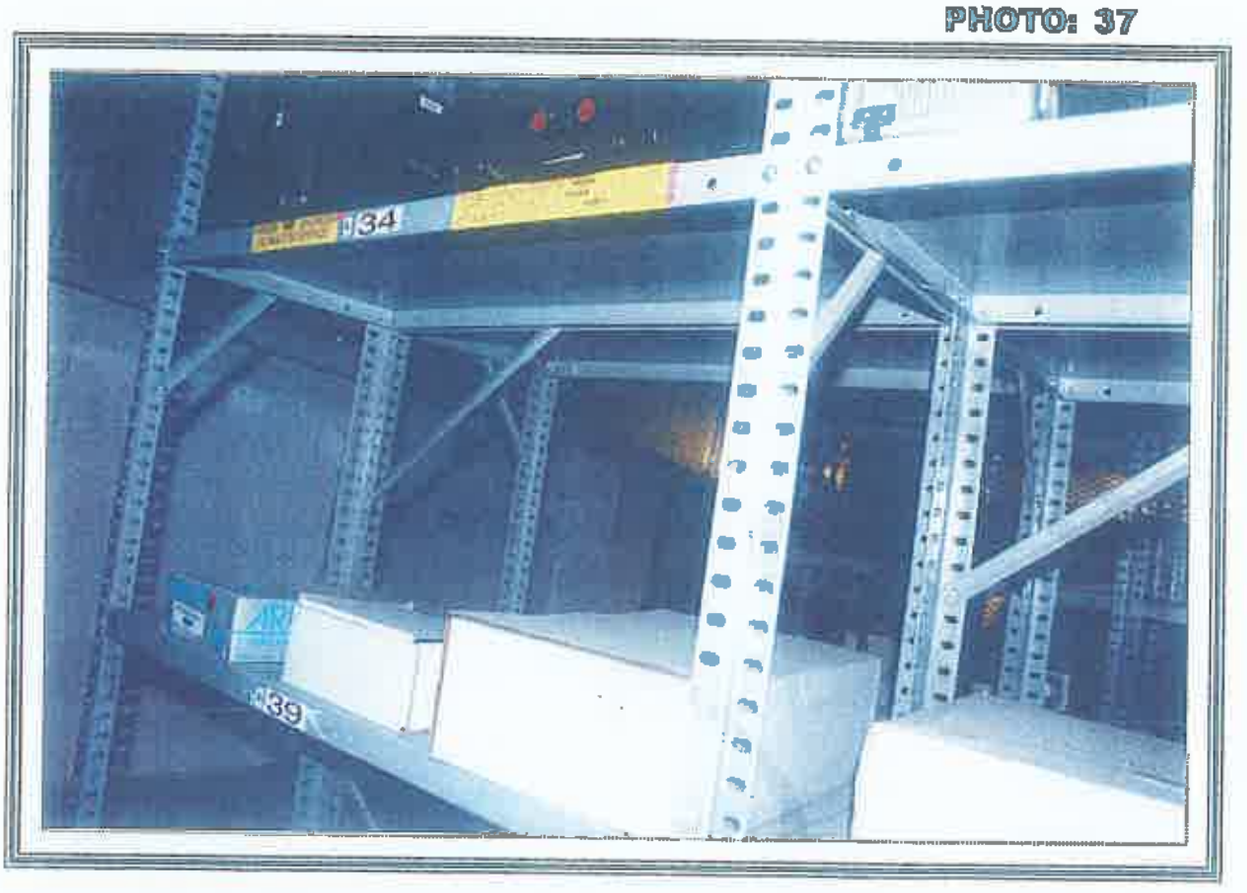
PHOTO: 37



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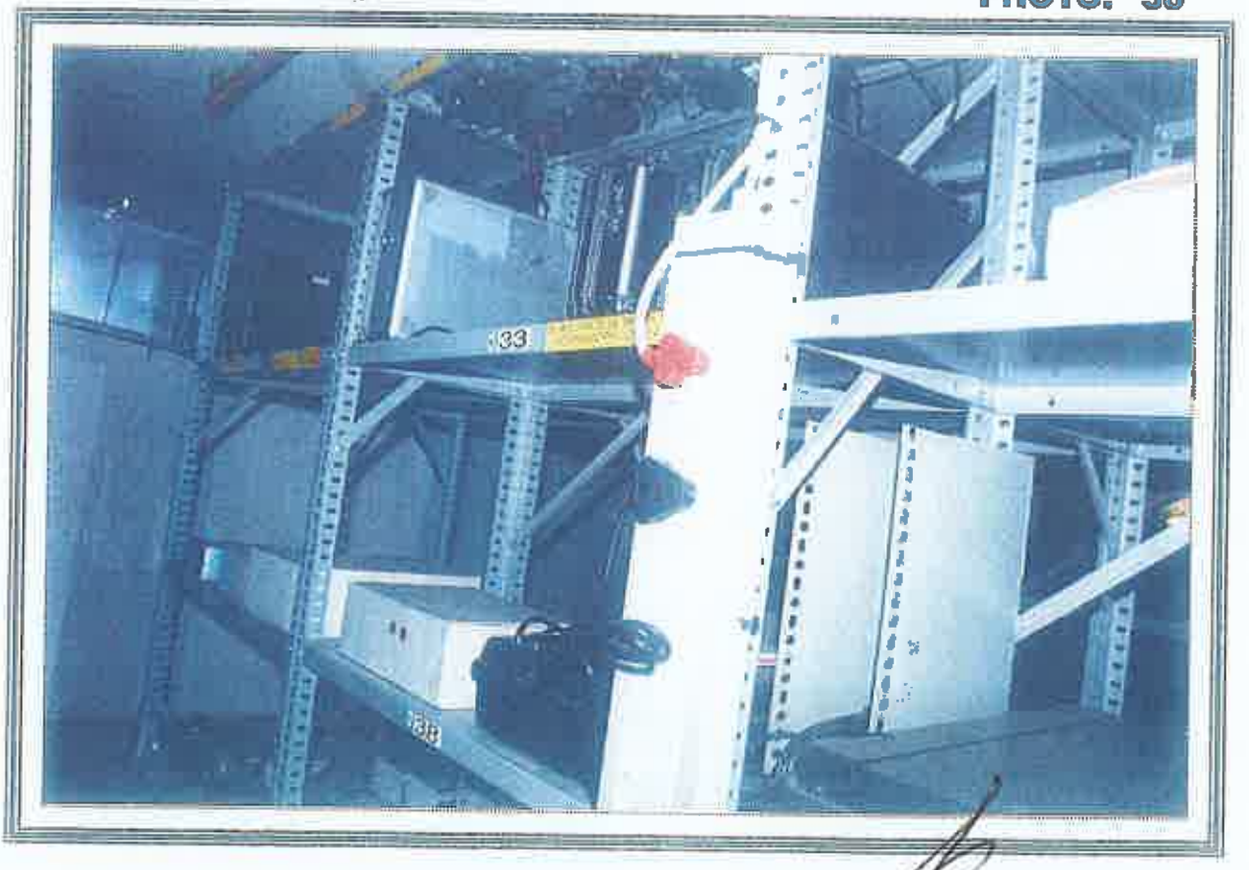

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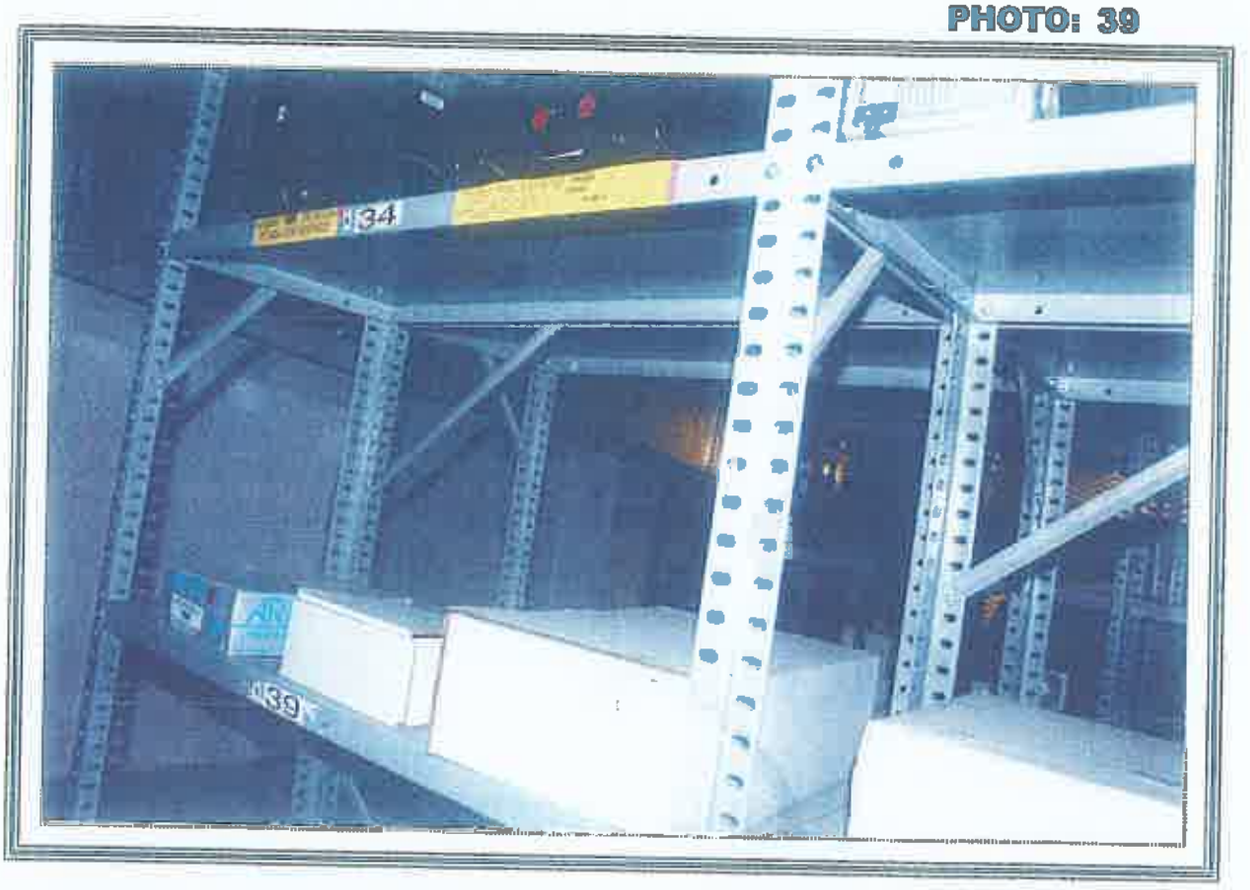
CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 39



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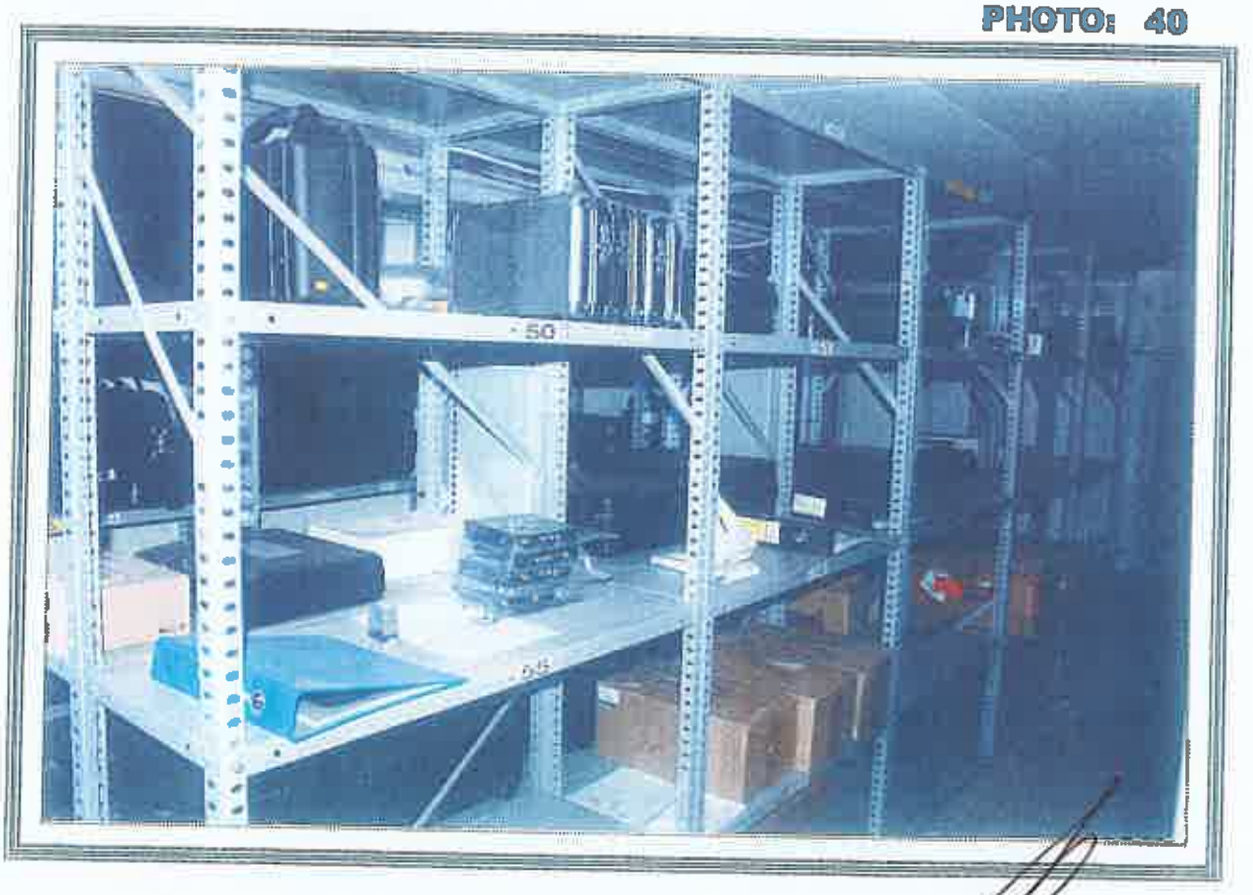

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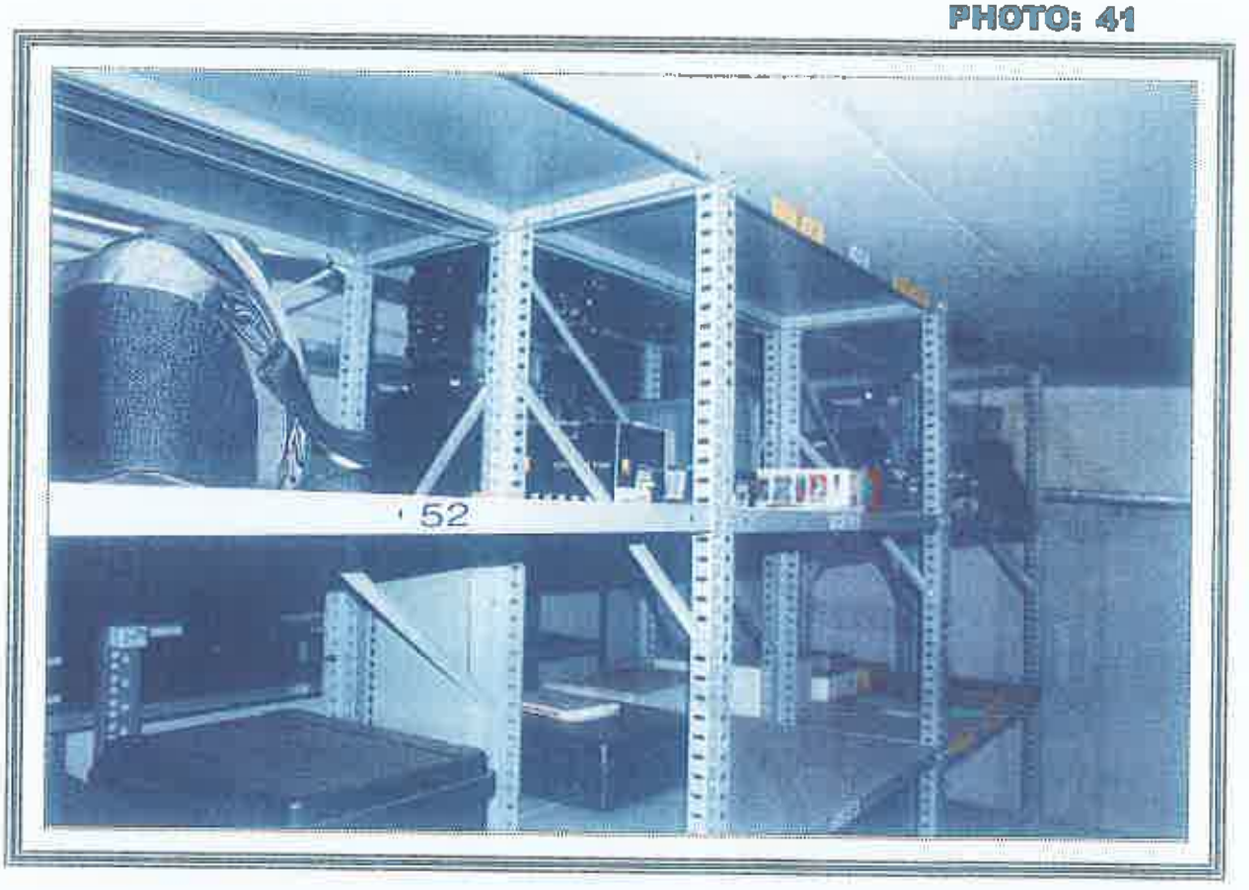
CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

PHOTO: 41



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CATS: CONTRAVENING ACT 70
BROOKLYN CAS 427/05/2015

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GSM 25

AFFIDAVIT

I, the undersigned

JAPPIE TSHABALALA

Do hereby make oath and state in English that:

1.

I am an adult male, with ID number 7605315338086 and employed by the South African Revenue Service (hereinafter referred to as "SARS") as an Operational Specialist Investigator. I am currently employed and based in Tax and Customs Enforcement Investigation's division and in a unit called Preliminary Investigations and Enquiries.

I am employed at 41 Riverwalk Office Park, c/o of Matroosberg and Garsfontein Roads, , Block A, Extension 6, Ashlea Gardens, Pretoria, Gauteng.

My work telephone number is (012) 340 3442 and my mobile number is 082 557 4194.

GSM N. 1

Jappie Tshabalala continues in English under Oath

2.

I am an officer as contemplated in:

Section 6(5) of the Tax Administration Act No 28 of 2011 ("the TA Act"); and

Section 3(1) of the Income Tax Act, Act 58 of 1962 ("the Income Tax Act");

In the exercise of my duties in terms of the TA Act, the Income Tax, and VAT Act, it is *inter alia*, my duty to:

- Conduct investigations into serious tax and customs related offences disrupting organised crime and tax evasion schemes;

- Support the compliance improvement strategies of SARS through targeted enforcement interventions;

- Strengthen strategic relations with internal and external law enforcement stakeholders to enhance the reputation and outcome of enforcement actions of SARS;

- Determine and investigate whether or not persons and/or entities are compliant with their obligations in terms of the TA Act, the Income Tax and VAT Acts.

Jappie Tshabalala continues in English under Oath

- Obtaining of full information in relation to any amount received by or accrued to any person and/or property disposed of for no consideration and/or payment made or liability incurred by any person;

- Ascertaining the correctness of any return, financial statement, document, declaration of facts, valuation or other information in the Commissioner's possession;

- Determination of the liability of any person for any tax, duty or levy and any interest or penalty in relation thereto leviable under the TA Act, the Income Tax and VAT Act;

- Ascertaining whether an offence in terms of the Acts has been committed and also enforcement of any of the Commissioner's remedies under the applicable legislation, to ensure that any obligation imposed upon any person is complied with;

- Performance of any other administrative function which is necessary for the carrying out of the provisions of the Acts;

I am also bound by the Oath of Secrecy of SARS and have duly signed upon my employment at SARS, the applicable secrecy and confidentiality provisions of Chapter 6 of the Tax Administration Act, 2011 and Section 4 of the Customs and Excise Act, 1964;

N.

'Jappie Tshabalala continues in English under Oath

I am exercising the powers conferred upon me in terms of the above Acts and my duties under the provisions of the above Acts, under the control, direction and/or supervision of the Commissioner.

3.

The facts herein contained, except where otherwise stated, fall within my own personal knowledge and are to the best of my knowledge and belief, both true and correct.

However, I further state that where applicable, several critical aspects and specifics like dates, venues, taxpayer/operational details and so forth are not immediately recalled by myself due to them transpiring almost 8 to 9 years ago, but all the best of effort is put into consideration herewith to correctly and truthfully give an honest account to the best of my ability.

4.

On the 1st June 2016, I received a letter from the Directorate for Priority Crime Investigation (DPCI) requesting to conduct an interview and to also take a statement from me. The letter was signed by Brigadier Xaba, who is the Section Head of the Crimes Against the State and TOMS (CATS and TOMS).

In the letter it was mentioned that the interview relates to the activities at the former Special Projects Unit (SPU), the National Research Unit (NRG) and the High Risk Investigation Unit (HRIU) between 2006 and 2014.

GSm N. 4

Jappie Tshabalala continues in English under Oath

The letter requested me to avail myself, as a former member of the SPU and NRG, at the DPCI offices at 218 Visagie Street in Pretoria. The enquiries person stated in the letter was Captain Sewele of Organised Crime – CATS and TOMS.

5.

On the 2nd June 2016 at 09:50 am, I met Brigadier Xaba at the aforementioned offices of CATS and TOMS. Brigadier Xaba introduced himself and some of his colleagues and we proceeded to his office for the interview.

Brigadier Xaba showed me a report and asked me to read it and confirm that it was my report. I did read the report as requested and confirmed that it had indeed been written by me.

This report was written by me on the 14th October 2014 and was marked "Strictly Confidential". I had then handed over this report to my seniors at SARS. The SARS Senior Officers who requested that report and to whom I have given it to are Patrick Moeng and Gene Ravele.

6.

Brigadier Xaba asked me several questions relating to the SPU, the NRG and the HRIU and he requested me to give details as feedback to my answers. I told Brigadier Xaba that I was a member of the SPU and the NRG from 2007 up to until 2009. I also informed Brigadier Xaba that I was never a member or knew of the so-called HRIU.

Jappie Tshabalala continues in English under Oath

My response and answer to a number of questions posed to me by the brigadier, are dealt with herein under.

7.

In the middle of 2007, I was amongst other candidates who were selected from SARS and other external law enforcement agencies and invited to attend an evaluation and assessment programme. We had been included in this assessment and evaluation because of our expertise in matters relating to various taxes. The other candidates were former Scorpions and other intelligence agencies and they possessed with them expertise in tactical operations, surveillance and other intelligence operations.

During the assessments and evaluations, some of it was conducted by Charl Fourie while Johannes Muller was responsible for human resources.

The assessments and evaluations were done at the ABSA Conference and Training Facility which is situated in Montana, Pretoria. I was informed that once successful, I will be included in a team with other members who will be incorporated into a unit called "Special Projects Unit" (SPU) in due course which was to be headed by Andries Janse van Rensburg also known as "Skollie".

G Sm N. SLLL

Jappie Tshabalala continues in English under Oath

8.

To some of us in SARS at this time of the evaluation, it was not the first time that we have seen or met Skollie. The first time I met Skollie was in the year of 2003/4 while working at the then SARS' Special Compliance Unit called "Organised Revenue Crime Unit" (ORCU) which was headed by the late Sihle Mbongwa.

During this time, all members of ORCU received training from KROLL Risk Management and Consultancy at the Persequor Techno-Park venue in Lynwood near the CSIR in a training programme called "Project Moreleta". This is the same venue where most of the Directorate of Special Operations also known as "Scorpions" received their training.

Skollie and Peter Richer were part of the KROLL team that provided various training modules to the team. Also in the KROLL team as a speaker was the renowned Dr. Bennie Fanaroff (now the Director of the SKA Project in South Africa).

9.

At the ABSA Training facility in Montana, during the evaluations and assessments, SPU candidates were given a very short yet intensive evaluation programme. The evaluation included – surveillance techniques, weapons handling and identification tests, explosives recognition tests, operational readiness, sleep-deprivation, and a number of psychometric tests and other related assessments.

GSM N. 7

Jappie Tshabalala continues in English under Oath

10.

During this time of the evaluations, successful members were informed that they will form part of a special unit that is 50% National Intelligence Agency (NIA) and 50% SARS. The members were also informed by Skollie that they would be paid their salaries by NIA but the client would be SARS. The members were also informed that they would all get similar packages of Grade 7 and up and also the same employment benefits.

Successful SPU members were also informed by Skollie that the unit would be working within the illicit economy.

I was amongst the few candidates who were successful and incorporated into the SPU. I was given an appointment letter with the job title of Specialist Agent under the SPU. My job title later changed to Specialist Investigator.

The SPU had an initial proposed mandate at the time. Attached hereto as **Annexure JT 1**

11.

Brigadier Xaba then asked me how I felt at the time when I was joining the SPU for the first time and I responded by telling him that I was very excited and highly motivated as I knew that I was amongst a team of professionals who were all passionate about fighting crime in our country.

Jappie Tshabalala continues in English under Oath

12.

The SPU in 2007 was having around 20 or so members that I can recall. During this time, SPU members were informed that they should no longer report to their normal places of work and respective managers but should wait to be contacted for new reporting protocol. We were told by Skollie to start working from home until such time that we would receive further instructions.

All SPU members were informed by Skollie that they should register new email accounts and have private emails for communication purposes. The other instruction from Skollie was to also have Skype accounts and the usage of Telsip IP phones for communication.

Skollie also instructed SPU members to purchase new vehicles and acquire new, safe and secure residences as they would be well compensated and all will be getting car allowances.

SPU members were also instructed by Skollie to register legitimate businesses which would serve as "cover" due to the fact that SPU members would be operating from their private homes and would therefore attract attention.

Jappie Tshabalala continues in English under Oath

13.

From the onset, the SPU started to operate from different offices around Pretoria and Johannesburg.

SPU utilised the following offices for their meetings:

- Cipherwave Offices in Midrand.
- Irene Farm Village in Irene.
- Waterkloof Guest House in Waterkloof.
- Brooklyn Lodge in Brooklyn.
- Blue Crane Restaurant in Nieuw-Muckleneuck.
- Magnolia Park in Muckleneuck.
- NG Kerk/Church in Wierda Park.

14.

SPU members then received short term training on a number of areas. The SPU did a lot of training exercises in and around Pretoria/Irene/Montana areas. Training involved following live "targets" of vehicles or persons with emphasis on counter-surveillance measures.

SPU Members mostly used the Kenwood two-way radios for communications. SPU Members utilised their own private vehicles as the SPU did not have operational vehicles.

N. 10

Jappie Tshabalala continues in English under Oath

SPU members also used and received a number of equipment for usage during operations. These equipment include -two-way radios and chargers with extra batteries (Kenwood), Telsip IP phones, printers but not everyone in the SPU received, MTN 3G cards, desktop computers and screens, keyboards, cell-phones and laptops. Most of the equipment had SARS barcodes on them.

15.

Initially, the responsibility of drafting the budget for the SPU belonged to Helgard Lombard. He was tasked to draw up a comprehensive list of all the requirements of the unit.

The equipment list included a "wish list" containing the proposed purchases and acquisition of operational vehicles, weapons, hi-tech TSCM equipment, IT equipment and other items. SPU members were also asked to submit ant other item or equipment that they felt would be necessary for operations. I do not know if any of the equipment was ever purchased or acquired, as a draft list was presented to Skollie. The list is attached hereto as **Annexure JT 2**

16.

The SPU was divided into different small teams of 4 or 5 or as the situation required regularly and emphasis was always put on the fact that team members who were

belonging to the same team should not engage with the other teams, especially during operations. This was dubbed the "Golden Rules" of the SPU and members were instructed to adhere to these rules.

SPU team members would receive tasking from Skollie and then those team leaders or project leaders would then choose the resources within the SPU for that particular project.

In line with the mandate, the team would sometimes do tasking that would seem 'unconventional' to attain results. Like the use of setting-up cameras to monitor 'subjects'.

17.

I was personally involved in a number of SPU projects. Some of these projects are:

- Project White Pipe – a drugs related project with national coverage.
- Project Mint – a project aimed at locating two money-printing machines situated in the Newcastle and Utrecht areas.
- Project Hollywood – counterfeit DVD's and piracy.
- Project FTV – clothing, footwear and textiles industry.
- Project ICE – drugs related project.
- Project Basi – drugs related project.
- Project Gold Leaf – tobacco/cigarette project.
- Project Zola Budd – taxi industry project.

Jappie Tshabalala continues in English under Oath

Where necessary, our team members would do observation of subjects like residences, warehouses, vehicles/trucks with containers, persons, offices, etc) to attain results.

We would also use CCTV to monitor the subjects and also relied on extensive research and analysis of our internal systems and open-source information from the internet.

18.

There were a number of challenges in the early stages of the SPU which sometimes hampered production. Some of these challenges were salary matters and unpaid claims of members for operational spending.

SPU members were instructed to create "aliases" or "cover" names to be used during operations. This was done so as to limit the danger and exposure to personal risk that was perceived then to be present to SPU members.

The SPU members were issued with two "high-quality" ID cards with one card bearing the correct details of the member and the other card bearing the 'cover' names and details of the members. At one time at the SPU meeting, members were asked to hand back all the cards. I did hand back the card with my correct details as instructed. I could not hand over the card with my cover details as I could not find it at the time. The copy of the card with the cover details that was issued to me is attached herewith as **Annexure JT 3.** The original card was handed over to

Jappie Tshabalala continues in English under Oath

Brigadier Xaba as requested on the 10th June 2016 during the interview and taking of this statement.

19.

During the leadership of Skollie over the SPU, many meetings were held at the Cipherwave office in Midrand and most meetings were not 'minuted'.

It was only after Mr Johann van Loggerenberg took over as the new Manager of the team that all the meetings were 'minuted' and records kept.

SPU meetings usually occurred once or twice a week (Tuesdays OR Thursdays at 10:00 am) at designated places and issues like operations, tasking, finances, HR, administration, resources/equipment and SARS' organisational interests would be discussed.

20.

At some time, the SPU team was called to an urgent meeting and informed that Skollie was no longer in charge. We were informed that Skollie has left the employ of SARS 'under a cloud' after a 'fall-out' with management of SARS.

We were instructed not to pursue the matter but to continue with our work. The team then operated on a "rotational basis" of leadership with Johan de Waal, Charl Fourie and Helgard Lombard taking up 'guiding and leadership' positions for the team.

Jappie Tshabalala continues in English under Oath

21.

Sometime in 2008, the team was informed by Johan de Waal and Charl Fourie that JVL would take over the team going-forward.

I remember that when JVL came to the team, a number of changes were affected immediately. The team started to work in a structured and coordinated manner.

- Minutes were kept of every meeting.
- JVL engaged with team members regularly and demanded compliance and adherence to matters of discipline and governance.

22.

JVL immediately requested team members to consider 'scrapping' the name of SPU and rather use a name that would almost 'align' to the type of work that the unit was conducting for SARS.

JVL insisted that the team do away with names like "Special" and "Projects" and "Unit" as the implication was that our work was somehow "irregular" and "covert" or even "controversial".

After engagement with team members on the matter, the name National Research Group (NRG) was adopted.

Jappie Tshabalala continues in English under Oath

The team was instructed by JVL to start submitting weekly reports on everything of the unit. It was then that Johan de Waal was elected the as the Acting Manager of the team.

23.

JVL also proposed to the NRG that we should consider having a new mandate. A proposal was presented to the NRG team for approval as the new mandate, attached hereto as **Annexure JT 4**

JVL then introduced the team to projects falling within the illicit economy which SARS needed to immediately engage on. **Annexure JT 5**

24.

During this time, the NRG was also experiencing some internal challenges. A division developed in the NRG along racial lines. For months, many of us who are African in the NRG, still received our existing salary packages of Grade 6 while our white colleagues received their packages ranging from Grades 7 to 8.

We viewed this as extremely unfair as the difference in salary was vast and the level of operations and the risks or dangers involved were the same. We did form an internal group of concerned employees and forwarded our grievances to JVL and Johan de Waal.

Jappie Tshabalala continues in English under Oath

25.

In the NRG, I was working with different team members on different projects that include those mentioned in paragraph 17 above.

But I had personally developed a very strong bond and friendship with Michael Peega ("Mike"). It is for this reason that I shared most of the projects with Mike. Mike was a former Special Forces member and he taught me various tactical and operational techniques to use during operations while at the same time I taught him a lot concerning various aspects of criminal and civil investigations and taxation in general.

From time to time I would engage in weekend odd jobs with Mike. One of these odd jobs would be to offer a close protection and driving service to potential clients. We did these odd jobs as we were travelling a lot in the NRG and sometimes could not afford the expenses associated with being on the roads all the time all over the country.

26.

Mike introduced me to several high-ranking members of the ruling party, most of which he knew personally. We once travelled to Polokwane and Johannesburg with Julius Malema, Fikile Mbalula and Pule Mabe. We were providing a service of Close Protection (bodyguards and drivers) for the clients. We were always paid by the clients for services rendered.

Jappie Tshabalala continues in English under Oath

27.

There were incidents where NRG team members "accidentally met" some of these ruling party members at hotels or airports. There was never a project that was allocated to me by the NRG whereby certain politicians and or their businesses were allocated to me.

Mike was arrested sometime back while working for SARS in the NRG for allegations of rhino poaching. He was later dismissed by SARS. Mike had told the investigators that he had been acting as an NRG agent infiltrating the rhino poaching syndicates.

Mike was acquitted of all charges brought against him in the Nelspruit Court. Since Mike left the employ of SARS, I have always maintained contact with him and assisted him during difficulties.

Mike has always maintained his innocence all the time and I have believed him.

28.

It was reported in past media articles that the NRG has investigated several high-ranking members of the ruling party and also "bugged" the home of the State President.

I state in my personal capacity, and categorically put it on record that:

Japple Tshabalala continues in English under Oath

- I am not aware of any plot, case or investigation into any personal tax affairs of any individual mentioned in the media articles by the NRG.
- I was never involved in any investigation of any political figure within the country – whether be it the ruling party or the opposition.

- I have NEVER bugged nor did any surveillance on the State President and/or any close members of his family and/or members of the ruling party.

I do not know of any NRG activity to either bug or investigate the State President and/or any of the politicians mentioned in the media articles.

29.

Sometime in 2009, we were informed by Johan de Waal that the NRG as a unit was going to be disbanded.

Johan de Waal told us that due to a number of negative publicity that the unit was receiving i.e. Skollie and Mike matters, the NRG was not going to operate anymore. All of us in the NRG were told to either resign or go back to our former positions within SARS.

I have always viewed my time at the NRG and SPU as a secondment and always maintained that I have never left the employ of SARS as this view is strengthened by the fact that my salary was always paid on time like all other SARS employees on

the same date and I have always received my salary advice bearing SARS as my employer.

30.

Once the NRG was disbanded, I was in the group of members that went to report to a new unit in SARS called Illicit Economy Research Unit based at the Doringkloof office in Centurion.

During the disbandment of the NRG, we were requested to submit all equipment like laptops and radios to Johan de Waal. I do not know what happened to this equipment afterwards.

31.

We were also informed by Johan de Waal that those members of the NRG who did not elect to go to work for SARS had simply resigned and that their resignations were received and accepted.

I have never seen nor heard from those members or Johan de Waal again until recently last year in 2015 when I saw them in the SARS office at the Riverwalk Office Park where I am currently based. It is only then that I have established that those members have never resigned from the NRG as previously stated but were working for a unit called High Risk Investigation Unit.

'Jappie Tshabalala continues in English under Oath

I know and understand the contents of the above statement.

I do not have any objections in taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

SIGNATURE OF DEPONENT - JAPPIE TSHABALALA

I certify the deponent acknowledged that he knows and understands the contents of this statement and that he has no objection in taking of the prescribed oath which was sworn to before me and the deponent's signature was placed there on in my presence at Pretoria on the 10th June 2016 at 10:00 am

SIGNATURE OF COMMISSIONER OF OATHS

Full Names : Nyameko Xaba (Bongani)

Designation : Section Head

South African Police Service

Directorate for Priority Crime Investigation

218 Visagie Street

Pretoria

GSM

Annexure

Proposed Mandate

The proposed mandate of the Special Project Unit consists of the establishment of a ***Shielded-off*** unit that will operate nationally and internationally with the following objectives:

- The protection of the economy of South Africa
- The collection and analysis of information, through investigation and monitoring of structured organised groups and individuals involved in illegal activities, such as:
    - The illicit economy (Abalone, Tobacco, Drugs, Textiles, Human trafficking and the Importation of second-hand vehicles, etc.)
    - Subjects that are non-compliant
    - Corruption

- The use of legally sanctioned methods to achieve the goals of the South African Revenue Service

- To gather information for SARS that is not readily available to SARS during SARS legally sanctioned investigations.

- To support and enhance the mandate of the World Customs Organisation in combating trans-national crime.

G S m

JLLL

Annexure 2 1 2

Equipment List

Item	Description	Qty	Unit Cost	Budget Total	Must Have: Entry Level	Nice to have: Professional Level
1	Weapons MP3	8	32 000	R 256 000		R 256 000
2	Glog. 9mm pistols	25	8 000	R 200 000	R 200 000	
3	556 rifles commando	8	29 000	R 232 000		R 232 000
4	Ammunition 9mm.556mm.	1	144 000	R 144 000		R 144 000
5	Sleeping bags	35	900	R 31 500		R 31 500
6	Special overalls	70	800	R 56 000		R 56 000
7	Binoculars 10X50	25	5 000	R 125 000	R 125 000	
8	Oil skins/ Key Way (all weather rain-suits)	35	800	R 28 000		R 28 000
9	Entry tools	1	15 000	R 15 000		R 15 000
10	Night vision	2	45 000	R 90 000	R 90 000	
11	Medical bags	2	1 600	R 3 200		R 3 200
12	Bullet proof jackets	8	6 500	R 52 000		R 52 000
13	Ammunition pouches/ holsters	8	470	R 3 760		R 3 760
14	Gloves	8	450	R 3 600		R 3 600
15	Ear protection	35	400	R 14 000		R 14 000
16	Eye protection	35	400	R 14 000		R 14 000
17	Targets and equipment, sticks gun Target stickers	1	11 000	R 11 000		R 11 000
18	Camouflage tape, canopies	1	30 000	R 30 000		R 30 000
19	Camouflage suits	8	2 800	R 20 800		R 20 800
20	Back pack	8	900	R 7 200		R 7 200
21	Boots	8	1 200	R 9 600		R 9 600
22	Chemical/radio active	8	10 000	R 80 000		R 80 000
23	AST Batons	35	1 300	R 45 500		R 45 500
24	SABS approved safes	2	4 000	R 8 000	R 8 000	
25	Lightcell	35	500	R 17 500		R 17 500
26	Leather mats	35	800	R 28 000		R 28 000
27	Special Ladder	1	35 000	R 35 000		R 35 000
28	Training facilities/training	4	2 300	R 9 200	R 9 200	
29	Rental of shooting range (Training)	1	14 400	R 14 400		R 14 400
30	Special equipment/battle jackets	8	2 600	R 20 800		R 20 800
31	Tranquilizer Dart gun Parkerhale (1unit x R10 000) Blowpipe1 unit R2000,1 Gass Unit R10 000, 30 Darts +Chemicals xR1500	1	58 000	R 58 000		R 58 000
32	AOR8200 Portable Scanner	2	8 500	R 13 000		R 13 000
33	Audio enhancement software & studio hardware	1	14 500	R 14 500		R 14 500
34	Beowulf Miniature Digital Recorder (3-hours)	1	36 800	R 36 800		R 36 800
35	Beowulf Standard Digital Recorder with AAA-battery (12-hours)	1	38 800	R 38 800		R 38 800
36	Cellular telephone signal detector and DOS (Tri-band) 15W	1	50 000	R 50 000		R 50 000
37	DeltaTron Baby Sitter & Receiver	2	7 000	R 14 000		R 14 000
38	DeltaTron Mega-Switcher	4	5 000	R 20 000		R 20 000
39	Digital Stereo Marantz Recorder (Flash Card)	2	6 800	R 13 000		R 13 000
40	Digital Voice Recorder (Mono - Genix \ Data Bank) MP3 recording	25	1 200	R 30 000	R 30 000	
41	Eagle Digital Stereo Recorder concealed in Casio watch	2	43 000	R 86 000		R 86 000
42	Gnome Pocket Stereo Digital Voice Recorder	1	18 500	R 18 500		R 18 500
43	Headphone	1	1 800	R 1 800	R 1 800	R 1 800
44	INCA RCM / X-IDER Remote Control Receiver Module	1	25 000	R 25 000		R 25 000
45	INCA Rx for use with INCA Tx units (analogue)	1	45 000	R 45 000		R 45 000
46	Inca Streetfighter TRACK II - 4ch Tactical Pocket Receiver with integrated recorder - 12 hours	1	170 690	R 170 690		R 170 690
47	INCA TXFH-RC Remote Control High Power Audio Transmitter	2	45 000	R 90 000		R 90 000
48	INCA TXF-RC PSTN Remote Controlled PSTN Transmitter	2	25 000	R 50 000		R 50 000
49	INCA ULL - Remote control recorder with built in transmitter 24-hours recording time	2	45 000	R 90 000		R 90 000
50	ITA-1 Multi-purpose Monitoring Tool (direct feed PSTN lines)	2	18 100	R 36 200		R 36 200
51	Loke Digital Stereo High Power Transmitter (200mW - 2W)	1	85 000	R 85 000		R 85 000
52	Loke Digital Stereo Receiver	1	125 000	R 125 000		R 125 000
53	Loke Digital Stereo Standard Transmitter (12mW-170mW)	1	75 000	R 75 000		R 75 000
54	Marantz PMD660 Digital Recorder	1	6 500	R 6 500	R 6 500	R 6 500
55	Micro Mains Power Supplies	6	5 400	R 32 400		R 32 400
56	Nials Kit (Receiver & 4xTransmitters-Digital)	1	55 300	R 55 300		R 55 300
57	Smart Cell (Voice, SMS, monitor modes)	1	26 000	R 26 000		R 26 000
58	Spectronic ACC Wired room monitoring system on live mains lines (Rx & Tx units)	1	86 100	R 86 100		R 86 100
59	Spectronic RFM Wired Room and Phone monitoring System (RF-version) (Rx & Tx-units)	1	43 320	R 43 320		R 43 320
60	Surround sound speakers	2	1 600	R 3 200		R 3 200
61	Mobile DVR Unit	1	28 000	R 28 000	R 28 000	R 28 000
62	Microphonr with Pre-amplifier	8	1 350	R 10 800	R 2 700	R 10 800
63	X-IDER Wireless Remote Control System (to be used with Spectronic equipment)	2	25 000	R 50 000		R 50 000
64	Digital camera Nikon D300 SLR lens interchangeable)	5	21 000	R 105 000	R 105 000	
65	Nikkor 2 x Converter DX	2	4 500	R 9 000	R 6 000	
66	Nikkor DX lens 18-200mm lens	5	25 000	R 125 000	R 125 000	
67	Nikkor DX lens 400mm fixed lens	2	63 000	R 126 000	R 126 000	
68	XRY 3 Version	1	75 800	R 75 800		R 75 800
69	EnCase Software	1	37 500	R 37 500		R 37 500
70	FastBlock2 Hardware	1	11 000	R 11 000		R 11 000
71	Ultimate Toolkit (UTK)	1	18 800	R 18 800		R 18 800
72	Ultra Kit from Digital Intelligence	1	23 800	R 23 800		R 23 800

GSM

Item	Description	Qty	Unit Cost	Budget Total	Must Have Entry Level	Nice to have Professional Level
73	VOOM HardCopy II	1	15 400	R 15 400		R 15 400
74	4x2 SMS Communicator (Cellsecure) i.e. early warning system & switching units	5	1 500	R 7 500		R 7 500
75	Battery charger (Sinetech) 12VDC 5A	2	5 000	R 10 000		R 10 000
76	Carry cases for Equipment	15	600	R 9 000		R 9 000
77	Cellsecure Cleo 12 Alarm unit with NO/NC high power transmitters	1	8 000	R 8 000		R 8 000
78	DVD/VCR Combination system	2	4 500	R 9 000		R 9 000
79	Frequency Interceptor (Remote Keyrings)	2	5 600	R 11 200		R 11 200
80	Handheld Vacuum cleaner	1	600	R 600	R 600	R 600
81	Magnetic \ Smart card cloner	1	29 000	R 29 000		R 29 000
82	Nilfisk	1	6 500	R 6 500		R 6 500
83	Power Supply regulated 12VDC 1.5A	26	200	R 5 200	R 800	R 5 200
84	Power Supply regulated 12VDC 10A	11	750	R 8 250	R 3 000	R 8 250
85	Power supply Switch mode 12VDC 5A	10	750	R 7 500		R 7 500
86	TV Set	2	4 000	R 8 000		R 8 000
87	UPS In-line 2500VA	6	4 800	R 28 800		R 28 800
88	Covert Kits (Two way radios)	25	749	R 18 725	R 18 725	
89	Mobile Radios (ICASA Frequencies)	25	2 700	R 67 500	R 67 500	
90	Portable Radios (ICASA Frequencies)	25	1 641	R 41 025	R 41 025	
91	Repeaters - Two-way radios (Mobile units)	2	30 000	R 60 000	R 60 000	
92	PSTN Telephone Test Set	1	2 500	R 2 500		R 2 500
93	Covert GSM Tracking Unit	4	22 500	R 90 000	R 22 500	R 90 000
94	Covert satellite tracking unit & software	2	35 000	R 70 000		R 70 000
95	Cellular Analysis and Tracking Unit complete with Direction finder, map software and training	1	5 401 865	R 5 401 865		R 5 401 865
96	GPS - units for longitude and latitude positioning	20	7 500	R 150 000		R 150 000
97	GSM Pointer Tracking Unit	3	15 000	R 45 000		R 45 000
98	GSM Tracking Base Station, Modem & Software	1	5 500	R 5 500		R 5 500
99	Notebook (For Tracking Unit) with modem 9600bps	1	14 000	R 14 000	R 14 000	R 14 000
100	PC Scanner	2	2 500	R 5 000		R 5 000
101	RF-locator (Pinpoint & transmitters)	2	25 000	R 50 000		R 50 000
102	Noise Generator	1	55 000	R 55 000		R 55 000
103	OSCOR 5000 (Spectrum Analyzer)	1	300 000	R 300 000		R 300 000
104	REI Microphone amplifier	1	15 000	R 15 000		R 15 000
105	FLIR ThermoVision camera	1	125 000	R 125 000		R 125 000
106	2GB SD Cards	16	1 000	R 16 000	R 2 000	R 16 000
107	4ch 1.2GHz general video receiver with Yagi antenna	1	700	R 700	R 700	R 700
108	4ch 1.2GHz general video transmitter with Yagi antenna 1W unit	1	1 450	R 1 450	R 1 450	R 1 450
109	4ch 2.4GHz general video receiver with Yagi antenna	11	750	R 8 250	R 750	R 8 250
110	4ch 2.4GHz general video transmitter with Yagi antenna 100mW \ 1W \ 2W units	11	1 200	R 13 200	R 1 200	R 13 200
111	4-Sight (Picture-in-picture) unit	1	23 500	R 23 500		R 23 500
112	5.5" B/W 550TVL monitor	5	950	R 4 750		R 4 750
113	AfterBurner time-lapse DVD video recorder	1	36 000	R 36 000		R 36 000
114	AP-700 Orinoco (or similar)	2	11 000	R 22 000		R 22 000
115	Button cameras 5VDC	4	6 500	R 26 000	R 6 500	R 26 000
116	CCTV camera Light suppress camera (vehicle lights, etc)	3	3 000	R 9 000	R 3 000	R 9 000
117	CCTV camera with 22 times zoom lens	2	3 000	R 6 000		R 6 000
118	CCTV lens 10-50mm pinhole zoom lens	4	7 000	R 28 000		R 28 000
119	CCTV lens 120-1200mm zoom lens	1	11 500	R 11 500	R 11 500	R 11 500
120	CCTV lens 2.8mm lens	2	950	R 1 900		R 1 900
121	CCTV lens 5-20mm pinhole zoom lens	4	7 000	R 28 000		R 28 000
122	CCTV lens 5-60mm vari-focal lens	4	1 500	R 6 000		R 6 000
123	COFDM pain Antennas with Down-converters	2	30 800	R 61 600		R 61 600
124	COFDM Power Amp	1	99 613	R 99 613		R 99 613
125	COFDM Solo 1 watt vehicle Tx with antennas	1	162 025	R 162 025		R 162 025
126	COFDM Solo diversity Receiver	1	136 233	R 136 233		R 136 233
127	Colour 15" video monitor	2	4 500	R 9 000	R 4 500	R 9 000
128	Colour 17" LCD display 1024 x 768 with audio composite output, S-VGA & S-video	2	4 500	R 9 000		R 9 000
129	Covert PTZ dome camera (18 x optical zoom)	1	36 000	R 36 000		R 36 000
130	Dazzle 150 video capture card	1	4 500	R 4 500		R 4 500
131	Digiscan motion detector	2	5 500	R 11 000		R 11 000
132	Digital Video Recorder - 750GB HDD 4input 4audio (GSC)	5	9 500	R 47 500		R 47 500
133	Digital Video Recorder - TeleEye (TeleLink system) 750GB HDD 4ch	3	25 000	R 75 000		R 75 000
134	FlashBack-2 Motion Detector	1	30 000	R 30 000		R 30 000
135	Flash Back-2 Video Flash disk recorder	2	39 500	R 79 000		R 79 000
136	GE Active Video Receiver Kit (UTP video Transmission)	2	1 500	R 3 000		R 3 000
137	Gemini 4 Multiplexer	2	34 609	R 69 218		R 69 218
138	GSM video transmitter unit - TeleEye	2	8 500	R 17 000		R 17 000
139	Manfrotto Tripod	2	2 500	R 5 000		R 5 000
140	Mini Tripod	4	950	R 3 800		R 3 800
141	Video & audio CD/VCD/DVD- burn software	2	2 500	R 5 000		R 5 000
142	Pinnacle Studio 10 video editing software	2	4 500	R 9 000		R 9 000
143	Pinhole KPC camera	14	635	R 8 890	R 635	R 8 890
144	PVR600 mini digital video recorder	2	5 500	R 11 000	R 5 500	R 11 000
145	PVR200 miniature 30GB HDD recorder (motion detector)	3	5 500	R 16 500		R 16 500
146	Quest Star CCTV video lens 1200mm - 480mm	1	500 000	R 500 000		R 500 000
147	Quick Fit Camera 380TVL 5VDC	4	7 950	R 31 800		R 31 800

GSM

Item	Description	Qty	Unit Cost	Budget Total	Nice to have: Entry Level	Nice to have: Professional Level
148	Quick Fit Camera toolkit for customized concealment	1	7 950	R 7 950		R 7 950
149	RauRoss 20W Power Amplifier	1	25 000	R 25 000		R 25 000
150	RauRoss Audio Tx (100mW output-Analog)	2	7 000	R 14 000		R 14 000
151	RauRoss Video Tx & Rx (Analogue) 40mW - 1W output	4	25 000	R 100 000		R 100 000
152	Sony GV800E digital video recorder	2	18 000	R 36 000		R 36 000
153	Speaker unit with amplifier for video audio output	2	3 500	R 7 000		R 7 000
154	StableEyes: video stabilisation system	1	32 000	R 32 000		R 32 000
155	Sting DVR mini	1	51 810	R 51 810		R 51 810
156	Sting DVR miniature Standard	1	55 400	R 55 400		R 55 400
157	Thermal Imaging Lenses \ Camera	1	450 000	R 450 000		R 450 000
158	Video Forensic & Enhancement Software	1	85 000	R 85 000		R 85 000
159	Video Test Monitor Sonic VTM-Type1	2	8 550	R 17 100		R 17 100
160	Video/Audio repeater System 2.5W Output	1	4 300	R 4 300		R 4 300
161	Viewlock II	2	33 790	R 67 580		R 67 580
162	Warwick modem	4	6 800	R 27 200		R 27 200
163	Watec 902H low light camera	4	2 266	R 9 064		R 9 064
164	WinDVD7 video reviewing software	2	3 500	R 7 000		R 7 000
165	Maxibeam lights c/w IR lenses	2	20 000	R 40 000		R 40 000
166	Video Camera : Canon XL2 with VL-10 video light, 1.6 x extender, Filter set, DM-50 Directional microphone	1	28 658	R 28 658	R 28 658	R 28 658
167	Sony DCR-SR300 Digital Video camera, 10 x Optical zoom, cam bag, tripod,additional battery	2	11 750	R 23 500	R 11 750	R 23 500
168	Keyphod keylogger USB	2	3 130	R 6 260		R 6 260
169	Access Equipment : Key Cutter & Pics	1	105 000	R 105 000		R 105 000
170	Tarmedine welder Mig/Tig 220VAC	1	40 000	R 40 000		R 40 000
171	Plasma Cutter	1	17 000	R 17 000		R 17 000
172	Welding helmet	2	500	R 1 000		R 1 000
173	4Ton hand notcher	1	7 000	R 7 000		R 7 000
174	Guillotine (3mm steel)	1	25 000	R 25 000		R 25 000
175	Bender (3mm steel)	1	28 000	R 28 000		R 28 000
176	Punch Set	1	2 000	R 2 000		R 2 000
177	Hydraulic press	1	10 000	R 10 000		R 10 000
178	Work bench	2	3 500	R 7 000		R 7 000
179	Tool trolley	2	3 000	R 6 000		R 6 000
180	Computer with drafting package	1	25 000	R 25 000		R 25 000
181	CNC Milling Machine	1	370 000	R 370 000		R 370 000
182	Milling Tooling	1	15 000	R 15 000		R 15 000
183	Lathe 220VAC	1	30 000	R 30 000		R 30 000
184	Lathe Tooling	1	15 000	R 15 000		R 15 000
185	DHS16 Hydraulic horizontal Band Saw 220VAC .	1	17 000	R 17 000		R 17 000
186	Band saw vertical 400mm on stand with 1.5KW 220VAC motor	1	6 000	R 6 000		R 6 000
187	Horizontal belt sander 1.1KW belt size 2000 x 150mm	1	5 000	R 5 000		R 5 000
188	Circular saw 1200W	1	1 500	R 1 500		R 1 500
189	Dremil kit	1	1 500	R 1 500		R 1 500
190	Socket wrench set	1	2 000	R 2 000		R 2 000
191	Wood Rotor 750/850W	1	2 000	R 2 000		R 2 000
192	Drill press	1	2 000	R 2 000		R 2 000
193	Sand blast cabinet	1	4 000	R 4 000		R 4 000
194	Tilting arbour table saw	1	7 000	R 7 000		R 7 000
195	3Ton low level trolley jack	1	8 000	R 8 000		R 8 000
196	3Ton heavy duty jack stands	1	8 000	R 8 000		R 8 000
197	Padded mechanics creeper .	1	500	R 500		R 500
198	Compressor 200L	1	7 000	R 7 000		R 7 000
199	20m Hose reel Retractable	1	1 500	R 1 500		R 1 500
200	42 Pieces pneumatic tool kit	1	1 700	R 1 700		R 1 700
201	17 Pieces Micro Air Grinder Kit	1	350	R 350		R 350
202	Pneumatic Stapler	1	700	R 700		R 700
203	Pneumatic Brad Nailer	1	1 300	R 1 300		R 1 300
204	Pneumatic High Speed Belt Sander	1	450	R 450		R 450
205	Pneumatic High Speed Belt Sander + belts all available grits	1	500	R 500		R 500
206	28 piece 90 degree Pneumatic Die Grinder Kit	1	650	R 650		R 650
207	Heavy Duty Pneumatic Riveter	1	800	R 800		R 800
208	Pneumatic Water Gun	1	200	R 200		R 200
209	Pneumatic Undercoating Gun	1	200	R 200		R 200
210	Air Vacuum Cleaner	1	150	R 150		R 150
211	Pneumatic Body Sabre Saw	1	700	R 700		R 700
212	Heavy duty Pneumatic High Speed Saw	1	900	R 900		R 900
213	Gravity feed Spray Gun	1	500	R 500		R 500
214	12 Piece combo spanner set HTC312 Hallermann Tyton	3	550	R 1 650	R 550	R 1 650
215	AC Clamp Meter - Max conductor 30mm (Major Tech MT77)	3	860	R 2 580		R 2 580
216	AC Current with cable & Fine Tracer (Major Tech MT123KIT)	2	960	R 1 800	R 960	R 1 800
217	Adjustable spanner (Shifting) AW100 Hallermann	3	95	R 285	R 95	R 285
218	Adjustable spanner (Shifting) AW250 Hallermann	3	125	R 375	R 125	R 375
219	Allen Keys (1.5-10mm)	3	45	R 135	R 45	R 135
220	Bench Power Supply 0-30VDC 5Amp (Digital Display)	2	6 500	R 13 000		R 13 000
221	BNC CrimpingTool	3	2 750	R 8 250	R 2 750	R 8 250

Item	Description	Qty	Unit Cost	Budget Total	Must Have Entry Level	Nice to have Professional Level
222	Cable Identifier (Major Tech MT81S)	3	R 1 500	R 4 500	R 1 500	R 4 500
223	Charger (Sinetech) HT-C Series 12VDC 40Amp	1	R 5 600	R 5 600	R 5 600	R 5 600
224	Charger board 12VDC 3Amp	4	R 150	R 600		R 600
225	Coaxial Cable Stripper RG59	3	R 100	R 300	R 100	R 300
226	Cordless drill	3	R 3 500	R 10 500	R 3 500	R 10 500
227	Cordless Glue Gun HTG973 Hellermann	3	R 650	R 1 950	R 650	R 1 950
228	Crimp Tool - Light Duty ASA486 4P4C, RJ-12, RJ-11 & RJ-45 plugs Hellerman	3	R 750	R 2 250	R 750	R 2 250
229	Crimp tool (Ferrule & Lugs)	3	R 250	R 750	R 250	R 750
230	Diagonal cutter HDC205H-piano wire 1000V Hellermann Tyton	3	R 150	R 450	R 150	R 450
231	Digital Stud, metal & ACV Detector (Major Tech MT305)	3	R 850	R 2 550	R 850	R 2 550
232	Drill bits - masonary	3	R 480	R 1 440	R 480	R 1 440
233	Drill bits - steel	3	R 480	R 1 440	R 480	R 1 440
234	Drill bits - wood	3	R 480	R 1 440	R 480	R 1 440
235	Electric cable lead 30m	3	R 500	R 1 500	R 500	R 1 500
236	Electricians Pliers HCP205H 1000V Hellermann	3	R 95	R 285	R 95	R 285
237	Electronic Screwdriver Kit ESS - Hellermann	3	R 150	R 450	R 150	R 450
238	Engineering Screwdrivers Ecoset insulated 1000V Hellermann	3	R 250	R 750	R 250	R 750
239	Engraving set ctw bits	4	R 500	R 2 000		R 2 000
240	Fish Pole 5m extended (push or pull wires in ceilings)	2	R 450	R 900	R 450	R 900
241	Fish tape 30 meter	2	R 105	R 210	R 105	R 210
242	Frequency Counter	2	R 7 500	R 15 000		R 15 000
243	Gas Solder Iron	3	R 975	R 2 925	R 975	R 2 925
244	Glue sticks	80	R 5	R 400		R 400
245	Hacksaw (small) HC15 Hellermann	3	R 45	R 135	R 45	R 135
246	Hammer - Claw & fiber	3	R 65	R 195	R 65	R 195
247	Hammer Action Drill	3	R 3 750	R 11 250	R 3 750	R 11 250
248	Hilti Drill (M16)	2	R 9 750	R 19 500		R 19 500
249	Hot air gun	4	R 300	R 1 200		R 1 200
250	Ladder	3	R 975	R 2 925	R 975	R 2 925
251	LAN Multi-Network Modular Cable Tester	3	R 1 050	R 3 150	R 1 050	R 3 150
252	LED headlight (Torch)	2	R 119	R 238	R 119	R 238
253	Light meter Digital (Lux 0.1 - 50,000)	3	R 4 500	R 13 500		R 13 500
254	Long Nose Electronic pliers	3	R 125	R 375	R 125	R 375
255	Magnifying Lamp	2	R 850	R 1 700	R 850	R 1 700
256	Mini socket set	3	R 450	R 1 350	R 450	R 1 350
257	Mirror (Dental)	4	R 65	R 260		R 260
258	MTT4 Tensioning Tool for stainless steel ties and metal banding	4	R 2 750	R 11 000		R 11 000
259	Multimeter	3	R 2 500	R 7 500	R 2 500	R 7 500
260	Opti-logic Laser Range Finder	3	R 6 500	R 19 500		R 19 500
261	Petrol Generator with starter 7KVA	2	R 15 500	R 31 000		R 31 000
262	Pocket files	3	R 85	R 255	R 85	R 255
263	Pop Rivet	3	R 125	R 375	R 125	R 375
264	Precision Cutter	3	R 125	R 375	R 125	R 375
265	RST Tensioning Tool for cable ties 3.6 - 9mm Hellermann Tyton	4	R 2 750	R 11 000		R 11 000
266	Side cutter (small)	3	R 65	R 195	R 65	R 195
267	Socket Wrenches - 6/9SET Hellermann	4	R 350	R 1 400		R 1 400
268	Solder	7	R 135	R 945	R 135	R 945
269	Solder Station (SMD Rework Station)	2	R 3 500	R 7 000		R 7 000
270	Spirit level small	3	R 85	R 255	R 85	R 255
271	Spot light (Portable)	3	R 675	R 2 025	R 675	R 2 025
272	Spot lights (Desk type)	4	R 225	R 900		R 900
273	Steel files	4	R 65	R 260		R 260
274	Steel Rule 300mm	4	R 35	R 140		R 140
275	Switch mode Power Supply 12VDC 4-6Amp	4	R 750	R 3 000		R 3 000
276	Tape measure 5 meter	3	R 35	R 105	R 35	R 105
277	TDR Pulser (Multifunction cable meter)	2	R 6 500	R 13 000	R 6 500	R 13 000
278	Tone Generator & probe (Cable tracing)	2	R 4 500	R 9 000	R 4 500	R 9 000
279	Tool Box	6	R 350	R 2 100	R 700	R 2 100
280	Transformer 16.5AC 60VA	4	R 250	R 1 000		R 1 000
281	Tweezers - bent point	4	R 47	R 188		R 188
282	Tweezers - straight point	4	R 35	R 140		R 140
283	Trolly	1	R 850	R 850	R 850	R 850
284	Universal Key (electric panels, etc)	3	R 75	R 225	R 75	R 225
285	Universal Tin Snips	4	R 85	R 340		R 340
286	Utility Knive (Carpet knive)	3	R 60	R 180	R 60	R 180
287	WAP High Pressure	1	R 8 000	R 8 000		R 8 000
288	Wire Stripper for RG59 cable	4	R 125	R 500		R 500
289	Battery 6VDC lithium	120	R 65	R 7 800		R 7 800
290	Battery 9VDC	120	R 25	R 3 000		R 3 000
291	Battery AA	240	R 4	R 960		R 960
292	Battery AAA	240	R 3	R 720		R 720
293	Battery D-Cell	180	R 11	R 1 980		R 1 980
294	Battery Lead Acid 12VDC 102Ah	8	R 640	R 5 640		R 5 640
295	Battery Lead Acid 12VDC 26Ah	4	R 370	R 1 480	R 740	R 1 480
296	Battery Lead Acid 12VDC 7Ah	28	R 105	R 2 940	R 210	R 2 940

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Item	Description	Qty	Unit Cost	Budget Total	Must Have Entry Level	Nice to have Professional Level
297	Banzane	2	9	R 18		R 18
298	BNC Barrel Connectors	24	6	R 144		R 144
299	BNC Crimp-on connectors	200	7	R 1 400		R 1 400
300	Bubble Wrap	100	3	R 300		R 300
301	Cable ties - 150 x 3.6mm	24	50	R 1 200		R 1 200
302	Cable ties - 205 x 4.7mm	24	55	R 1 320		R 1 320
303	Cabtyre 1mm 3-core	600	9	R 5 400		R 5 400
304	Capacitors	100	4	R 400		R 400
305	CAT5e UTP cable	1000	4	R 4 000		R 4 000
306	Connector Blocks 10Amp	36	8	R 288		R 288
307	Connector blocks 3Amp	30	5	R 150		R 150
308	Connector Blocks 5Amp	36	6	R 216		R 216
309	Crocodile clips (Red & Black)	48	6	R 288		R 288
310	DC Jacks 12Vdc	60	4	R 240		R 240
311	Diodes	60	2	R 120		R 120
312	Double sided tape	100	11	R 1 100		R 1 100
313	Drywall screws	150	1	R 150		R 150
314	Duct putty	10	200	R 2 000		R 2 000
315	Duct tape	36	15	R 540		R 540
316	Earth Strapping	60	10	R 600		R 600
317	Electret microphone (Knowels)	50	180	R 9 000		R 9 000
318	Ferrule 6mm	400	1	R 400		R 400
319	Glue (Pratley Putty, Bostic, etc)	50	15	R 750		R 750
320	Insulation tape M3	48	9	R 432		R 432
321	Male BNC to Female RCA Connectors	60	7	R 420		R 420
322	Male RCA to Female BNC Connectors	24	7	R 168		R 168
323	Multiplugs 3-way	12	69	R 828		R 828
324	Multiplugs 5-way	24	110	R 2 640		R 2 640
325	Mylar cable 1 pair .22 (Video or audio only)	2000	4	R 8 000		R 8 000
326	Mylar cable 2 pair .22 (Video and audio)	1000	8	R 8 000		R 8 000
327	3-Core Cabtyre	200	8	R 1 600		R 1 600
328	3-Core 316STQ (heat resisting) 15 A	100	15	R 1 500		R 1 500
329	Cables : Equipment Wire 2491X csa 0.5mm Black	100	2	R 200		R 200
330	Cables : Equipment Wire 2491X csa 0.5mm Red	100	2	R 200		R 200
331	Cables : Equipment Wire 2491X csa 0.5mm Yellow	100	2	R 200		R 200
332	Cabling (Voice, data, video & power)	100	21	R 2 100		R 2 100
333	Nail-in	450	1	R 450		R 450
334	Prestic	60	10	R 600		R 600
335	RCA Connectors (Solder type)	120	3	R 360		R 360
336	Relay-board 12VDC 10Amp	36	35	R 1 260		R 1 260
337	Resistors	1000	1	R 1 000		R 1 000
338	RG59 BNC Boots	100	1	R 100		R 100
339	RG58/RG174 Cable	500	5	R 2 500		R 2 500
340	Selfdrilling screws	300	3	R 900		R 900
341	Selftapping screws	300	1	R 300		R 300
342	Silicon	20	30	R 600		R 600
343	SMD-components	500	1	R 500		R 500
344	Spray paint	36	30	R 1 080		R 1 080
345	Three prong plug	60	9	R 540		R 540
346	Transistors	200	7	R 1 400		R 1 400
347	Video cassette	60	15	R 900		R 900
348	Woodscrews	450	1	R 450		R 450
349	Surveillance vehicles	2	260 000	R 520 000	R 1 300 000	R 520 000
350	Operational vehicle with Aerial Work Platform	1	650 000	R 650 000		R 650 000
351	Operational vehicle : Electronic Surveillance -With crew bus c/w low bar, inverter, roofrack, table, chair, tool boxes, etc.	1	480 000	R 480 000		R 480 000
352	Operational vehicle : Toyota Raider 4x4 V6 4.0l c/w canopy & Winch (R)	1	365 000	R 365 000		R 365 000
353	Operational vehicle : Motorcycle 650 - 800cc	2	120 000	R 240 000		R 240 000
	SUB TOTAL			R 16 532 552	R 2 519 017	R 15 618 102
	Vat 14%			R 2 314 557	R 352 682	R 2 172 634
				R 18 847 108	R 2 871 699	17 690 636

Annexure

SARS

Name: David Khumalo
Ref No: 7603152608086
Card No: 0020
Expiry Date: 2007/12/31

AUTHORITY TO CONDUCT INSPECTION / AUDIT / INVESTIGATION

The person whose name, photo and unique reference number appears on the reverse side of this card is a SARS officer duly appointed in terms of the SARS Act, 1997. The person is hereby authorised to exercise the duties conferred upon him or her in terms of the legislation administered by the Commissioner of the South African Revenue Service, as listed in Schedule A to the SARS Act, 1997, and is further authorised to conduct an inspection, audit and/or investigation as contemplated in, and in order to administer, the aforesaid Audit.

Issued by the Commissioner: SARS

Verification telephone number: 08. ... ...
(If this card is found, please contact SARS on telephone number provided above for details on how to return the card).

SARS SARS SARS SARS SARS SARS

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National research unit

Mandated to focus its activities into any action required by the Enforcement Division executive where any or a combination of the following are apparent will be assigned:

• Scope:

o The focus of the unit will be directed towards cases (current or potential) where activities of taxpayers fall within the ambit of organized crime. A particular emphasis will be placed on cross-border and corruption-related activities;

o Activities will be in accordance with Enforcement policies and procedures as approved and amended from time to time.

o The unit will have a national mandate and will be active in all geographic areas in South Africa.

• Activities:

o Actions will primarily be any or a combination of:

§ The identification of key role-players in the illicit economy and collecting sufficient information about them in order to allow SARS to:

• Consider the revenue and customs related non-compliance consequences of their activities

• Focus and prioritizes which activities to direct law enforcement actions towards.

• Additional activities:

o Cases may also be referred to the unit that are under investigation by enforcement units (based on executive approval and prioritization) in SARS that may benefit from information gathered such as:

§ The customs border control unit

§ The national investigations

§ The integrated customs enforcement teams

§ Criminal investigations

§ Internal corruption investigations unit

§ Cases referred to SARS by means of external formal law enforcement units that may necessitate or benefit from our techniques.

§ Cases of such a nature that pre-determined outcomes may necessitate the deviation from current standards and norms.

Annexure 5.1

SEQ 29/2021-2618

Projects list			Project A	Project B
LICIT ECONOMY			Team leader	Team leader
Organised tax and customs evasion schemes found within legitimate businesses	1		Danie	Danie
"Corporate theft" e.g. persons within businesses that steal and defraud the shareholders and investors	1		Itu	Itu
Investor fraud associated with share dealings, property, evaluations	1		**Keith**	Sipho
Schemes aimed at abusing the trust of ordinary citizens through investments e.g. pyramid schemes	1		Itu	Itu
Fraud associated with procurement and tenders; government incentive schemes	1		Itu	Itu
Taxi industry and the crimes associated with certain persons in this area.	1		Sipho	Sipho
ILLICIT ECONOMY				
Illegal drugs	1		Danie	Danie
Smuggling and counterfeit activities	1		**Keith**	**Keith**
Tobacco (counterfeiting and smuggling)	1		Danie	Danie
Alcohol (illegal mixing and smuggling)	1		Itu	Itu
Illicit vehicles (stolen/hi-jacking/roundtrips/smuggled)	1		Sipho	Sipho
Abalone	1		Danie	Danie
Illegal activities associated with arms, explosives, terror,	1		Danie	Danie

mercenaries)				
Illicit diamond dealing	**1**		**Keith**	**Keith**
Clothing/textiles	**1**		**Keith**	**Keith**
Fraud against the banking system (stolen cheques and false credit cards)	1 1		Itu Sipho	Itu Sipho

A74

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BROOKLYN CAS 427/05/2015

ERIC KHULEKANI KHWELA states under oath in English

1.

I am an adult African male id no.5610065844087 residing at 1108 Paff Road Booysens Pretoria and employed by South African Revenue Service as a Legal Specialist with our offices situated at 40 Matroosberg Road Ashelea Gardens, Riveralk building Menlyn, with work landline no.012-4333196.

2.

I am the former MK and South African Air Force member. During 2002 I was recruited by Mr Sihle Mbongwa to join SARS as an investigator under Organised Revenue Crime Unit which the unit was dealing with high profile investigations.

3.

During 2003 I attended KROLL training at CSIR on high profile investigation. The training was coordinated by Piet Richer. The instructor was Mr Andries Janse van Rensberg and other. The Training lasted for three months. We were plus or minus 18 members.

4.

After the training our unit was based at Hatfield. Its manager was Mr Sihle Mbongwa and I was a Team Leader. Our unit comprises of auditors, lawyers and investigators and we relied on NIA for intelligence collection. Our mandate was to investigate Tax evaders' related cases.

5.

I became a manager in 2004 after Sihle Mbongwa was moved to SARS head office.AS a manager my mandate was to run the unit effectively.

6.

Mid 2004, the unit was moved to SARS Megawatt Park in Midrand. National Enforcement Unit was formed. The unit mandate was to source cases>I was reporting to Mr Mohamed Latiff a Senior Manager. His office was at Megawatt Park.

7.

During 2007 a Special Project Unit was formed within SARS. Mr Ivan Pillay was a General Manager Enforcement. I approached Mr Ivan Pillay and asked him to allow me to join the SPU.I then stepped down as a manager and moved to SPU.The unit was investigating the illicit cases. Andries Janse van Rensberg was the manager.

8.

I attended the psychometric assessment test which lasted for 2-3 days. Andries Janse van Rensberg was a coordinator while Charl Fourie conducted the test.

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BROOKLYN CAS 427/05/2015

ERIC KHULEKANI KHWELA states further that:-

8.

After the assessment we were briefed how we were going to operate. We were told to operate from our homes. I was issued with two SARS identification cards. The unit conducted meetings at private places.

9.

places at Hatfield, Iren and Midrand. Sometimes the unit met at Johan de Waal's house at Willows where the members discussed about operations and successes.

10.

I was involved in a surveillance operations where the unit observed the movement of people from the house in Boksburg. I was given a pen with memory stick.

11.

I moved to Durban in 2008 due to the reason that I was underutilised and my mother was sick. I destroyed the SARS identification cards

12.

While I was still a member of SPU I noticed that the unit was operating like an intelligence unit. The unit was doing intelligence work. The unit was involved in conducting surveillance. The plans were design for intelligence collection.

13.

I know and understand the content of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding upon my conscience.

EK Khwela

Deponent's signature

I certify that the deponent has acknowledged that he knows and understand the content of this statement. This statement was sworn to before and the deponent's signature was placed thereon during my presence at Pretoria on the 2016-06-20 at about 13:30

Signature of Commissioner of Oath

COMMISIONER OF OATH

MAGEZI FREEDY SEWELE

DIRECTORATE FOR PRIORITY CRIME INVESTIGATIONS (CATS)

CAPTAIN, 218 VISAGIE STREET, GENERAL PIET JOUBERT BUILDING, **PRETORIA**

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BROOKLYN CAS 427/05/2015

Nora Pitsi states under oath in English

1.

I am an adult female 54 years of age with identity number 611113 0719 080 and employed by the National Department of Home Affairs as Director with our offices situated at 230 Johannes Ramokhoase Street, Pretoria Central with Telephone number (012) 406 4347 and mobile phone no.071 462 1475.

2.

My duties entails that of Prevention and Detection under the Branch, Counter Corruption and Security Services, Gauteng at the Department of Home Affairs (hereinafter referred to as Head Office) which is the state mandated Detection and Prevention to conduct evaluation on all DHA processes in order to identify loopholes in the systems, security breaches and prevention of vulnerabilities from fraud and corruption activities within the department.

3.

Before employed by the Department of Home Affairs I was employed by the South African Revenue Services (SARS) from 3rd January 2003 up until 30 November 2010, as a Senior Investigator for Tax and VAT. By virtue of my position, I assumed overall responsibility to investigate irregularities in both Tax and VAT related matters, gather and manage information regarding tax evaders and draft reports and prepare case dockets for prosecution.

4.

On assuming duties by SARS I underwent conducive training by Kroll International, where we were trained in: Report writing, Information analysis, Ground and Technical surveillance and Financial Investigation. The training took a period of approximately 8 months with intervals.

5.

In 2006 I was seconded for two (2) weeks to a unit under the leadership of Mr Eben Schoeman, which we were conducting interception of telephone conversations of public

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BROOKLYN CAS 427/05/2015

Nora Pitsi states further that

5

member from KZN community who were involved in defrauding SARS and DHA in (identity) for purpose of obtaining grants.

6.

In 2007 to 2009, I was again seconded as per my request to a newly formed unit named National Research Unit (NRG) under the leadership of Mr Skollie, whom after two (2) weeks of my joining the unit resigned and Johan van Loggerrenberg was called to take over the responsibility of that unit.

7.

My duties were in the unit to conduct surveillance on public members, who were involved in Illicit Cigarette, and counter fake goods under the leadership of Mr Sipho Nkomo. We were working from home and held meetings on weekly basis at either; Brooklyn Guest House or Irene Farm to discuss progress on investigations conducted from different units. I once again received short training on surveillance conducted by Mr Helgard Lombard for a period of a week.

8.

Equipment allocated in the unit were laptops and two-way phones for purposes of communication during surveillance. In my unit of Illicit Cigarette, we worked at KZN identifying places where there was possibilities of conducting illegal production or manufacturing of cigarettes, I also worked on surveillance or information gathering on counter fake goods and pirating of goods in the area of Johannesburg for purposes of ensuring that businesses conducted were legal or illegal and then submit a report to head of unit, Mr Sipho Nkomo. In 2009 the unit was disbanded and we were told that everybody has to go back to their normal work places, and most of SARS personnel were relocated to a unit named Illicit Economy. However, Mr Charl Fourie had relocated to Australia with his family, Mr Itumeleing Leeuw was said to have been working for DTI, Mr Keith was said to have gone back to SAPS where he worked before joining NRG and Mr Nkomo went back to Metro Police.

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BROOKLYN CAS 427/05/2015

Nora Pitsi states further that

9

I then got a post at DHA as Director Prevention and Detection where I'm working up to date.

10.

I know and understand the contents of the statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

_____ N Pitsi
(Deponent's signature)

I certify that the deponent has acknowledged that she knows and understand the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on the 2016-07-11 at about 12:00

_____
(Signature of Commissioner of oath)
COMMISSIONER OF OATH
MAGEZI FREEDY SEWELE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (CATS)
218 VISAGIE STREET GENERAL PIET JOUBERT BUILDING,**PRETORIA**
CAPTAIN

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BROOKLYN CAS 427/05/2015

DILLO DANIEL NYAPHUDI states under oath in English.

1

I am an adult male 42 years of age id no.7402035467084 residing at 721 Prosperity Road Roodepoort and currently employed by the South African Revenue Service (SARS) as a Senior Manager with our offices situated at 41 Matroosberg Road Ashley Garden Pretoria. My mobile number is 082 461 7052.

2.

The facts and /or circumstances herein contained fall within my own personal knowledge unless otherwise stipulated and to the best of my believe true and correct.

3.

On the 3rd June 2016, I was served with a subpoena in terms of section 205 of the Criminal Procedure Act 51 of 1977 by Captain Freddy Sewele, the investigating officer of Brooklyn CAS 427/05/2015.I was requested to provide information about the my role as a former member of the South African Revenue Service (SARS) unit known as the National Research and any other information related to the establishment of the unit. The subpoena listed eleven questions that had to be answered in the form of a sworn statement.

4.

Around 2006, I was a team leader in the National Enforcement Unit (NEU) of SARS. My line manager was Eric Khwela (Jabu). Jabu indicated during that time that he does not want to continue as a Manager. He then approached Mr Ivan Pillay (IP) to convey his wish to step down as a Manager. Ivan Pillay informed him about the new Unit that will be formed soon and asked him to submit his CV. Jabu requested my CV and submitted it with his. Both of us were called in for an "assessment" in Pretoria with 38 other candidates. The assessment took place from the 5th to the 7th December 2006. The schedule of the assessment is attached as **Annexure A.**

5.

About 22 candidates (including myself and Jabu) were selected to form a new unit called Intelligence Operations Unit (IOU).I was appointed as a Specialist and Andries Janse van Rensburg (Skollie) was in charge of the Unit. Skollie was also using the name Pieter Steenkamp. Skolie was reporting to directly to IP. The team started operating in January 2007 but the members were formally appointed in February 2007. Normal SARS recruitment policy did not apply when I was recruited. According to SARS Policy, the following should be done prior to the appointment of staff members:

GSM

BROOKLYN CAS 427/05/2015

DILLO DANIEL NYAPHUDI states further that:

5.

5.1 Candidates to be appointed in grade 6 and above must first attend an assessment with an independent service provider. The purpose of the assessment is to ascertain the suitability of the candidate for the new role

5.2 The candidates must provide fingerprints for pre-employment screening. The purpose of the screening is to check for adverse credit record, criminal record and .authenticity of qualifications

5.3 Job offer letter signed by Human resources Manager

5.3 Candidates must also be issued with a contract of employment.

None of the above took place when I was appointed in the NRG. The NRG members were appointed as Customs Border Control Unit members but never formed part of Customs. My appointment letter and the lists of the NRG members (excluding Skollie) are attached as **Annexure B and C** respectively. An internal SARS template stipulating the documents required prior to the appointment on an internal candidate in a grade 6 and above is attached as **Annexure D.**

6.

The NRG was responsible for the recruitment of sources, surveillance and exploitation of information on behalf of SARS.The process flow of the Unit is attached as **Annexure E1.** The Project closure template of the unit is attached as **Annexure E2.** A memo outlining the recruitment of a source is attached as **Annexure F.** Other memos that were prepared after surveillance operations are attached as **Annexures G1 and G2.**I was issued with two cards after joining the NRG. The first card has my real name and identity number. The second card has a fictitious name and identity number. It is worth nothing at this juncture that both cards were never issued to other members of SARS. The cards were only issued to NRG members. The card with my correct name and identity number is attached as **Annexure H1** and the card with my fictitious name is attached as **Annexure H2.** The fictitious cards were used in instances where I had to hide my identity from taxpayers or sources.

7.

The NRG did not have offices but used the following venues for meetings:

7.1. Brooklyn Lodge.

7.2. Cypher Wave boardroom in Waterfall Park (Midrand).

GSM

BROOKLYN CAS 427/05/2015

DILLO DANIEL NYAPHUDI states further that:

7.

7.3. Dairy Farm in Irene.

7.4. Various Shopping Malls, i.e. Menlyn Mall.

8.

I was the Project Manager of the following projects while I was a member of the NRG:

8.1. **Project "Dirty Water"**

I was tasked to conduct surveillance with Eric Khwela on certain individuals. The tasking was given to us by Gerrit Jute. The list of the said individuals is attached as **Annexure I.** I was also given profiles of the same individuals. The profiles were obtained from South African Police "SAPS" CAS system. I am not aware if the information was obtained legally from SAPS. The profiles were provided to me by Frans van Niekerk, who was a member of NRG. The profiles are attached as **Annexure J.** The report on the project is attached as **Annexure K.**

8.2. **John Bredenkamp**

The initial tasking from Mr Johann van Loggerenburg was to look at Mr Bredenkamp alleged cigarette smuggling and non-declaration of income. The investigation later included his involvement in the Arms Deal.

8.3. Corro Pump (CK: 1987/28228/23).

The first case allocated to me by Gerrit Jute. I was tasked to handle the source (Andre Leichner with mobile number 0826535964) with Jabu. The source wanted SARS to intervene in his fight against Corro Pump director (Voster).The source wanted SARS to close down Corro Pump so that he may get his machines and stock. The document explaining the above is attached as **Annexure L.** The document was given to me by Jute. Jute instructed me to make sure that Enforcement institutes an audit on Corro Pump as matter of urgency. I asked him to put the request in writing. He then gave me an unsigned memo. The source also handed a file with Corro Pump documents via Jute. I refused to action the case. Prior to leaving the NRG I took the file to Jute and he denied any knowledge of the file. I still have a copy of the file.

8.4. Surveillance Operation in Johannesburg CBD

I was part of a team that conducted surveillance on vendors that were suspected of manufacturing counterfeit DVDs. The team included Itumeleng Leeuw, Kenny Mphahlele and Nora Pitsi. The report was given to Johann van Loggenburg

BROOKLYN CAS 427/05/2015

DILLO DANIEL NYAPHUDI states further that:

9.

I did not receive any formal training whilst I was a member of the NRG, as I have previously attended Intelligence training provided by Kroll SA in 2003. I completed the following modules on intelligence in 2003:

9.1 Intelligence and Evidence-**Annexure M1.1**

9.2. Technical Security, Technical surveillance and TSCM- **Annexure M1.2**

9.3 Operational Security and operational Surveillance **-Annexure M1.3**

9.4 Interviewing skills and psychological profiling- **Annexure M1.4**

I was also provided with the following informal training in the NRG:

8.5 Intelligence 101--**Annexure M1.5**

8.6 Surveillance-**Annexure M1.6**

8.7 Influence Technology-**Annexure M1.7** Operational Security and operational Surveillance **-Annexure M1.4**

The informal training was provided by various members of the NRG .Although I am aware of a list that was compiled to procure bugging and surveillance equipment, I did not use any undercover equipment while I was a member of the NRG.I only used digital cameras when conducting surveillance.

10.

I know and understand the content of this statement

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding upon my conscience

DD Nyaphudi

(Deponent's signature)

BROOKLYN CAS 427/05/2015

I certify that the deponent has acknowledged that he knows and understand the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on the 2016-07-14 at about 13H45.

Capt

(Signature of Commissioner of oath)

COMMISSIONER OF OATH

MAGEZI FREDDY SEWELE

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (CATS)

218 VISAGIE STREET, GENERAL PIET JOUBERT BUILDING, **PRETORIA**

CAPTAIN

GSM

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Gsma9

BROOKLYN CAS 427/05/2015

DANIE LE ROUX states under oath in English

1.

I am an adult male, 57 years of age with id no. 5911105035086 residing at 27 Avenue 562 Villieria, Pretoria and employed by the South African Revenue Service (hereafter referred to as "SARS") as an Investigator at Preliminary Investigations and Enquiries, Tax and Customs Enforcement Investigations based at Riverwalk, Pretoria, with work telephone number is (012) 340 3395 and cell phone number 082 451 0219.

2.

The full contents of this affidavit fall within my personal knowledge and are, unless otherwise expressly stated, both true and correct.

3.

I joined SARS as an investigator during 2006(estimated). I initially reported to Mr Peter Richer and was involved in internal investigations, mostly concerning the misappropriation of SARS equipment and property, such as theft and robberies of laptops and system breaches by SARS employees (we were a team situated in A Block) I also conducted research on illicit second-hand vehicles, vapour detection RFID and Bio Metrics. The following Electronic equipment was issued by IT Security for the purposes of investigation that I have mentioned above:

1 Cannon camera, in blue canvas caring bag.

1 digital recorder in Pelican case.

1 set of Njala voice transmitters set of 4 units in one Pelican case

1 Sting button video recorder, in protective case

Computers

Printers

Scanners

Network Switches

Gsm

BROOKLYN CAS 427/05/2015

DANIE LE ROUX states further that:

The purpose of each item:

The camera was used for the photographing of evidence in relation to investigations conducted into theft of SARS equipment, and abalone, illicit tobacco products, as well as drug seizures.

The digital recorder was used in the above mentioned investigations in relation to interviews of witnesses or suspects. The recordings were then used for report writing and also for knowledge management of SARS understanding of these illicit activities.

The Njala voice transmitters was intended for use within SARS offices which were under the threat of alleged corrupt officials who were engaged in breaching/hacking of SARS systems. This equipment however was never used and remained safe storage until I returned same to Tony Apsey in October 2014.

The sting button video recorder was also intended for use during seizure investigations as mentioned above, for the capturing of video footage of crime scenes and also to assist in the compiling of reports. This equipment however had defects with the audio and therefore was never used for the intended purposed. It was also kept in safe storage until I return it to Tony Apsey in October 2014.

4.

After Mr Richer left SARS I was transferred to the Customs Modernisation Programme and I was further made responsible to manage all official firearms in SARS as an accredited official institution on 30 December 2007.At that stage, Tonny Appsey instructed me to safeguard the equipment until he requested them back and kept them in SARS firearm safe.

5.

Early 2007 I was approached by Frans van Niekerk and he formed me about the new unit which was to be established at SARS.I became interested and I

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BROOKLYN CAS 427/05/2015

DANIE LE ROUX states further that:

5.

in submitted my CV/ application. I was selected and then I was transferred to the National Research Group, (NRG) and remained a member of the NRG until it was disbanded in 2009. After I joined NRG I attended a tree days evaluation of psychometric test, observation skills and interviewing skills at Montana Absa building. The psychometric test and evaluation was conducted by Mr Charl Fourie and Mr Johannes Muller in the presence Mr van Rensburg (Skollie).We were approximately +- 40 members but only 26 managed to pass the test.

6.

Whilst I was in the NRG I initially report to Mr Andries Janse Van Rensburg (Skollie) and thereafter to Mr Johan Van Loggerenberg. I was mostly responsible to conduct research, assist in projects and the investigation of the illicit trade in cigarettes, abalone, and drugs. I assisted other members of the unit with; their research in Taxis and legal DVD's. My allocated areas of research were;

- Organised tax and customs evasion schemes found within legitimate businesses.
- Illegal drugs.
- Tobacco (counterfeiting and smuggling)

BROOKLYN CAS 427/05/2015
DANIE LE ROUX states further that:-

6.

- Illicit trade in Abalone
- Illegal activities associated with arms, explosives, terror.

7.

The Unit did not have an office and we were told to work from home. The Unit conducted meetings at different places outside SARS premises such as Cipher building in Midrand, Brooklyn Guest house, coffee shops and

BROOKLYN CAS 427/05/2015

DANIE LE ROUX states further that:

7.

restaurants around Pretoria. Mr van Rensburg issued an instruction that members of NRG must have two SARS Id cards, one with the correct names and surname and the other one with false names and surnames to hide our identity. Johan de Waal instructed the NRG members to hand back the SARS real and false id's.

8.

After a project or assignment was concluded a report were drafted and submitted to Mr Van Rensburg and later to Mr Van Loggerenberg. I am not aware of what happened to the projects following the report being submitted, with the exception of the tobacco project.

9.

I was not issued at any stage with any surveillance equipment or listening devices while I was performing functions in the NRG. I am also not aware of any other members of the NRG having been issued with any such surveillance equipment.

10.

During 2009 the Unit was disbanded and I was transferred to the Illicit Economy Research Unit, (IERU). The IERU was also disbanded and I was later integrated into Projects, assisting the Cigarette Project Team..

11.

During 2012, I was transferred to Preliminary Investigations and Enquiries (PI&E) and I am currently performing functions in the Complaints Management and Enquiries (CME) Sub-unit. I report to Mr Nyaphudi who in turn reports to the Mr Posthumus.

BROOKLYN CAS 427/05/2015

DANIE LE ROUX states further that:

12.

During November/December 2013 I was however requested to deliver Notices of Engagement and Requests for Relevant Material to several Tax Payers on behalf of the Tobacco Project Team.

13.

On the 13th October 2014 I handed the following equipment to Tonny Apsey in Riverwalk building:
1 Cannon camera, in blue canvas caring bag.
1 digital recorder in Pelican case.
1 set of Njala voice transmitters set of 4 units in one Pelican case
1 Sting button video recorder, in protective case

14.

Before signing the statement, I have been afforded the opportunity of reading the statement and I am in agreement with the content recorded herein.

15.

I know and understand the contents of this declaration.

I have no objections to taking the prescribed oath.

I regard the prescribed oath as binding on my conscience.

D Le Roux
Signature of deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on 2016-06-07 about 11:55 Capt

Signature of commissioner of oath

COMMISIONER OATH
MAGEZI FREDDY SEWELE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (CATS)
CAPTAIN
218 VISAGIE STREET, GENERAL PIET JOUBERT BUILDING, **PRETORIA**

GSM 30

BROOKLYN CAS 427/05/2015

Francois Van Niekerk states in English under Oath that:

1

I am a 53 year male with identification number 6301275060081, working at the South African Revenue Services in Riverwalk , Matroosberg street , Pretoria as an Enforcement Specialist. Residing at 27 Lyster Street, Croydon, Kempton Park with telephone number 0835661753.

2

I applied for a position at the South African Revenue Service in Enforcement in 2002. I started working at the SARS Woodmead office in Johannesburg.

3

During the period I was based at the National Research Group I never received any training neither was I schooled in covert craft.

4

I was issued with a normal SARS identification card. With regards to identification cards there was a list that I drew up with false names for a specific anti-corruption operation. These identification cards had to have an expiry date and were only supposed to be valid for a period of one month .These cards were never produced and never used.

5

I had a SARS laptop for a period and used that to deliver my products.

6

The meetings were held off site at different venues. We met the Irene farm as it was closed to the residence of my manager at the time, A Janse van Rensburg.

7

I worked from home as there was a pending process to obtain offices space for us.

8

I worked on the following projects:

- Abalone
- White pipe – drugs

9

I had two managers:

- A Janse Van Rensburg
- J Van Loggrenberg

GSM

Francois Van Niekerk states further Oath that:

10

I was paid my normal salary from SARS with no extra benefits. I had no company or additional income.

11

There was a document called the rules of play which clearly stipulated what we were allowed to do. I worked on the illicit economy and was looking at the tax act, transgressions and non-compliance of taxpayers.

12

I know and understand the contents of the above declaration

I have no objection in taking the prescribed oath

I considered the prescribed oath to be binding on my conscience.

F van Niekerk

Deponent's signature

I certify that the deponent has acknowledged that he knows and understand the content of this statement. This statement was sworn to before me and the deponent's signature was placed thereon during my presence at Pretoria on the 2016-06-06 at about 11:30

Signature of commissioner of oath

COMMISSIONER OF OATH

MAGEZI FREDDY SEWELE

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (CRIMES AGAINST THE STATE)

CAPTAIN

218 VISAGIE STREET, PIET GENERAL JOUBERT BUILDING, **PRETORIA**

SEQ 29/2021-2638

SAPS 21

Suid-Afrikaanse Polisiediens South African Police Service

GSM 31

Reference	:	NCSPT CR 06/2016
Enquiries	:	W/O B B B MLUMBI
Telephone	:	012 393 3813/ 078 081 0107
Fax:	:	012-393 3808
EMAIL	:	MlumbiB@saps.gov.za

OFFICE OF THE COMMANDER
SOUTH AFRICAN POLICE SERVICE
MOUNT ROAD LCRC
5TH FLOOR
1-9 LENNOX STREET
MOUNT CROIX

2016-06-06

The Commander
DPCI Head Office
Pretoria

REPORT: BROOKLYN CAS 427/05/2015: SCENE INVESTIGATION AFFIDAVIT.

1 Attached find the relevant reports for the above-mentioned case. Please verify for any discrepancies, including spelling or typing errors for correction.
2 The following investigations were performed:
2.1 Diverse Scene: Photos (pointing out)
3 The following reports are attached:
3.1 Affidavit
3.2 Photo Album & Key
3.3 Covering Minute
4 Additional reports can be requested with four (4) weeks notification. The following documents are awaited by this office:
4.1 None

f/COMMANDER: NATIONAL CRIME SCENE MANAGEMENT

South African Police Service **ACKNOWLEDGEMENT OF RECEIPT**

BROOKLYN CAS 427/05/2015 **NCSPT CR 06/2016**

Receipt is hereby acknowledged of report by CAPT. M FSENGELE on 2016-06-24

Signature: Recipient

GSM

BROOKLYN CAS 427/05/2015

Suid-Afrikaanse Polisiediens South African Police Service

SOUTH AFRICAN POLICE SERVICE

PROVINCIAL CRIME SCENE INVESTIGATION TEAM PORT ELIZABETH

Affidavit in terms of Section 212 of The Criminal Procedure Act 51 of 1977:

BANDILE BRIGHT BAIN MLUMBI declares under oath in English in accordance with Section 212(6) and (8) (a) of the Criminal Procedure Act 51 of 1977, as follows:

1

I am a Warrant Officer, with PERSAL number 53663837, employed by the State in the South African Police Service and attached to the NATIONAL CRIME SCENE MANAGEMENT at the 7th Floor SOTHONGO PLAZA WEST 271 FRANCIS BAARD STREET PRETORIA CENTRAL, with telephone umber, 012 393 3813. I am employed as a Criminalist Expert, proficient as a scene investigator, . police photographer, video camera operator, draughtsman, forensic fieldworker, laboratory technician, bloodstain pattern analyst, crime scene reconstruction analyst, and fingerprint/shoe print expert.

2

Presently I have 8 years service in the South African Police Service with 6 years employment as a crime scene investigator and CRC functional member. I have completed the three-year Criminalist Expert training program (2009-2011) as presented by the Criminal Record Centre and have been granted fingerprint expert status on 2011-04-15. I have successfully completed the following training courses and programs:

2.1. Advanced Crime Scene course
2.2. Forensic Fieldwork which included: Biology; Toxicology; Ballistics; Fire scene; Firearm Related Chemistry; Metallurgical investigation courses.
..3. Forensic Fingerprint Laboratory Technician course
2.4. Crime Scene Management course: Processing of major crime scenes
2.5. Forensic Biology: DNA Evidence Recovery Crime Scene Examiner course
2.6. Shoe and Tyre tread recovery course
2.7. Poliflare Plus2 and Digital Photography course
2.8. Fingerprint Developing using Chemicals
2.9. Spheron 360 degree Camera Course

3

My daily tasks are the documenting and processing of crime scenes and exhibits for evidence according to the established methodology of forensic science. This includes the comparing and identification of fingerprints, shoeprints and other impression evidence as well as the reconstruction of

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events with the sound principals of scientific method. I regularly present expert testimony of my findings in court. My tasks also include the evaluating and re-investigation of scenes to develop further investigation avenues. I conduct research on a structured basis as well as attend workshops. I regularly present, training intervention, workshops and in-service training in the various fields.

4

On 2016-05-25 at 18:00 on request of Lieutenant Khuzwayo, of National Crime Scene Management, I documented/photographed a pointing out, at DPCI offices Creswell Street, Silverton, Pretoria regarding to a Brooklyn CAS 427/05/2015

5

The pointing out was conduct by Colonel Tshabalala, of Gauteng Tshwane East Detect Coordinator. I photographed the points as instructed by Colonel Tshabalala.

6

On 2016-05-25 at 23:05, after completing photographing the pointing out, I departed.

7

All the photographs were captured digitally with file nr BBM_0597 - BBM_0728. The images were downloaded and authenticated with VeriData iDem software. The master copies are kept as exhibits in safekeeping at the National Crime Scene Management Digital Lab. I prepared a photo album and key from selected images. I confirm that the images are correct and forms part of this affidavit.

8

I know and understand the contents of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

Warrant Officer B.B.B. Mlumbi 5366383-7

I certify that the deponent has acknowledged that he knows and understands the content of this statement. The statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on 2016-05-26 at 12:05.

COMMISSIONER OF OATHS
NAME: Lieutenant Colonel Khuzwayo
NATIONAL CRIME SCENE MANAGEMENT
7TH FLOOR BOTHONGO PLAZA WEST
271 FRANCIS BAARD STREET
PRETORIA CENTRAL
RANK: Capt
SOUTH AFRICAN POLICE SERVICE

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BROOKLYN CAS 427/05/2015
NCSPT CR 06/2016

Compiled by: W/O BBB MLUMBI
CRIME SCENE MANAGEMENT

Suid-Afrikaanse Polisiediens South African Police Service

SOUTH AFRICAN POLICE SERVICE
KEY TO ALBUM

DPCI, Creswell Street, Silverton, Pretoria
2016-05-25 @ 18:00 till 23:05

Photo 1-2	-	Show office at DPCI where the pointing out was held.
Photo 3	-	Shows Colonel Tshabalala with the witness and the witness' attorney.
Photo 4-7	-	Show witness pointing out some points at some of DPCI offices before departure.
Photo 8	-	Shows kilometre reading of the vehicle before the pointing out at NPA offices.
Photo 9-10	-	Show occupants of the vehicle.
Photo 11-35	-	Show witness pointing out some points at some of NPA offices.
Photo 36	-	Shows kilometre reading of the vehicle after the pointing out.
Photo 37-38	-	Show Colonel Tshabalala and the witness signing the pointing out documents.

_____ WARRANT OFFICER
NATIONAL CRIME SCENE MANAGEMENT
BBB MLUMBI 5366383-7

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PHOTO: 1

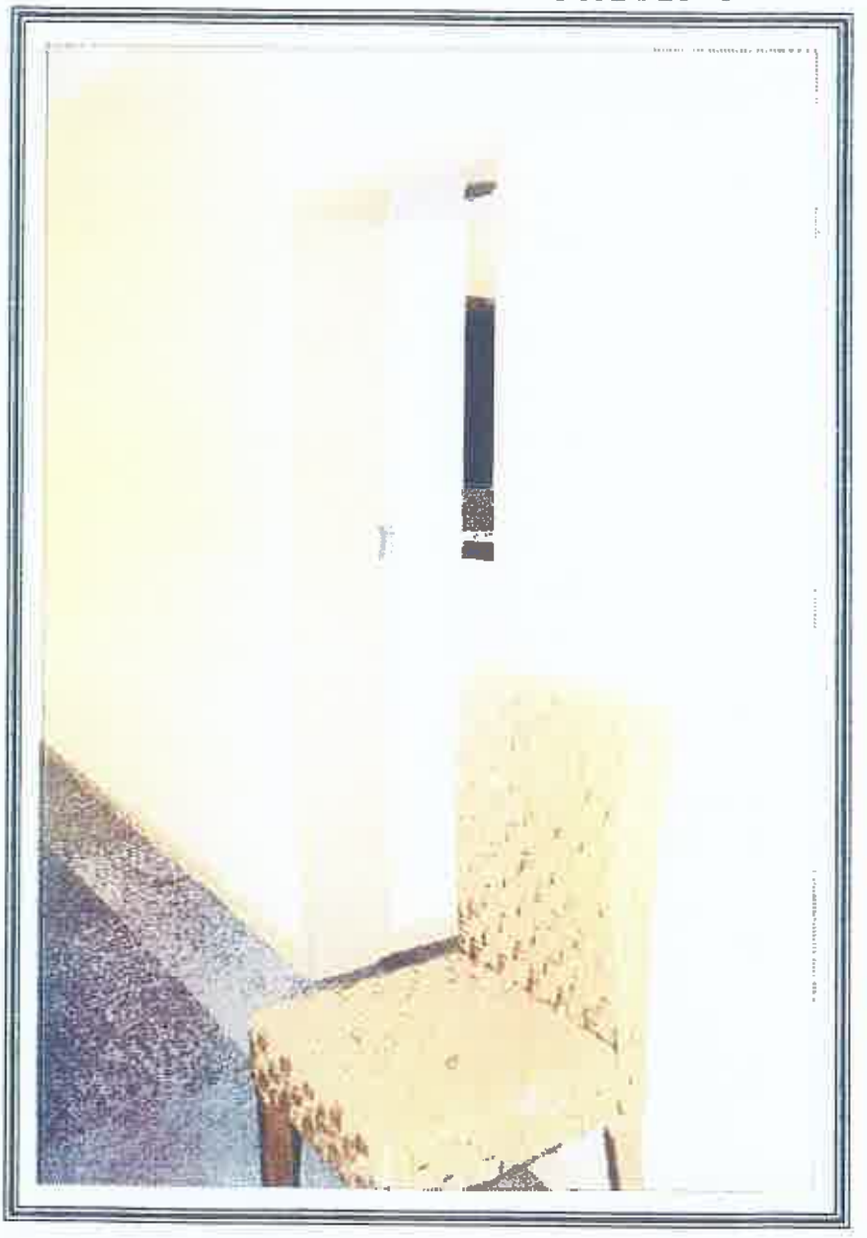

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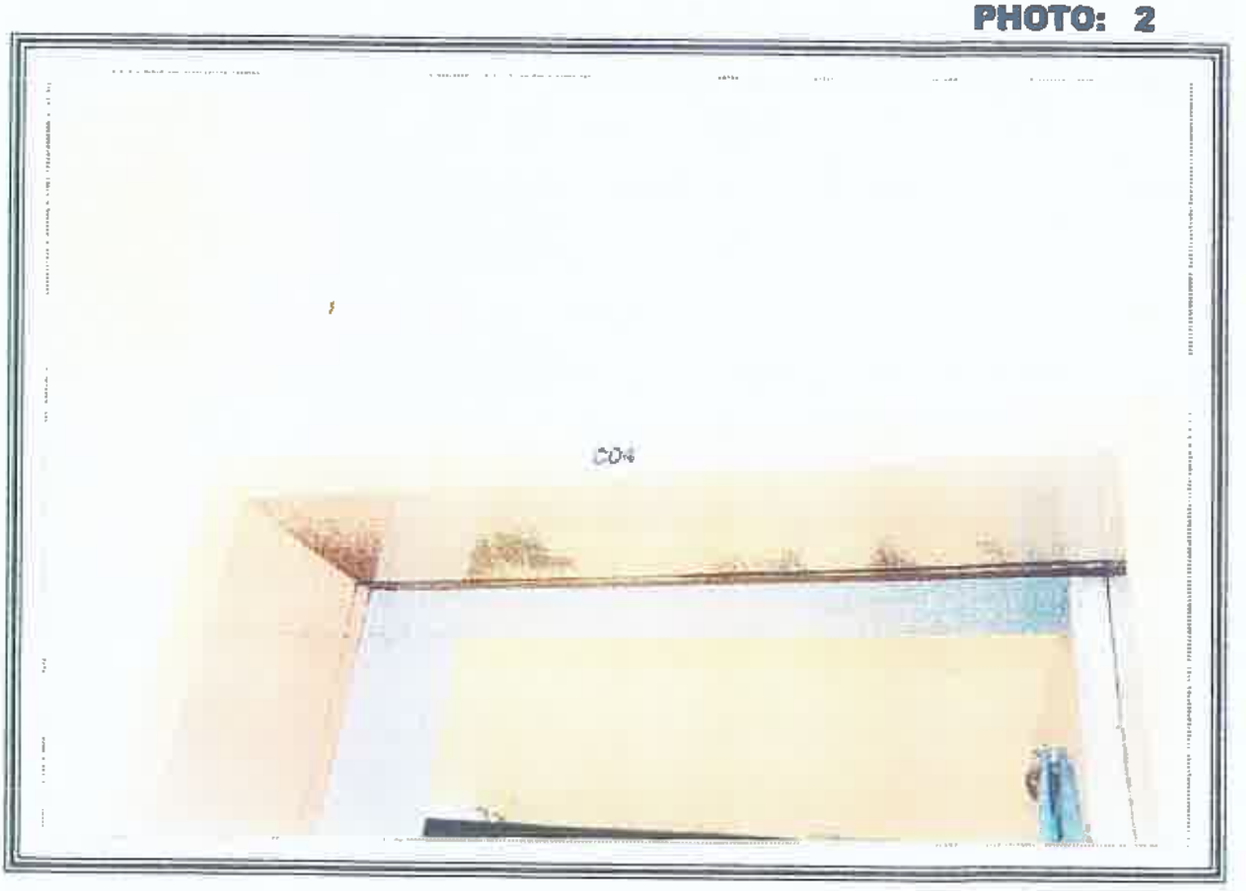
PHOTO: 2



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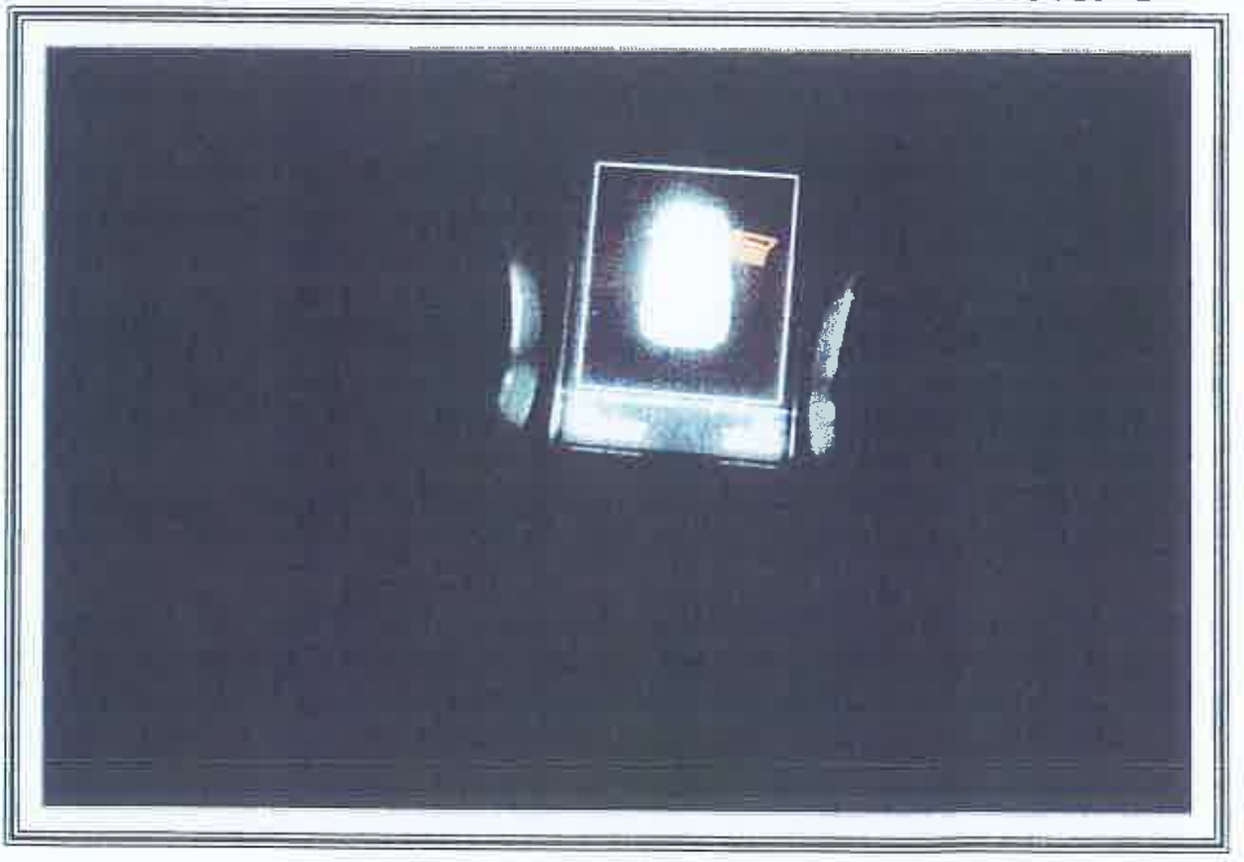

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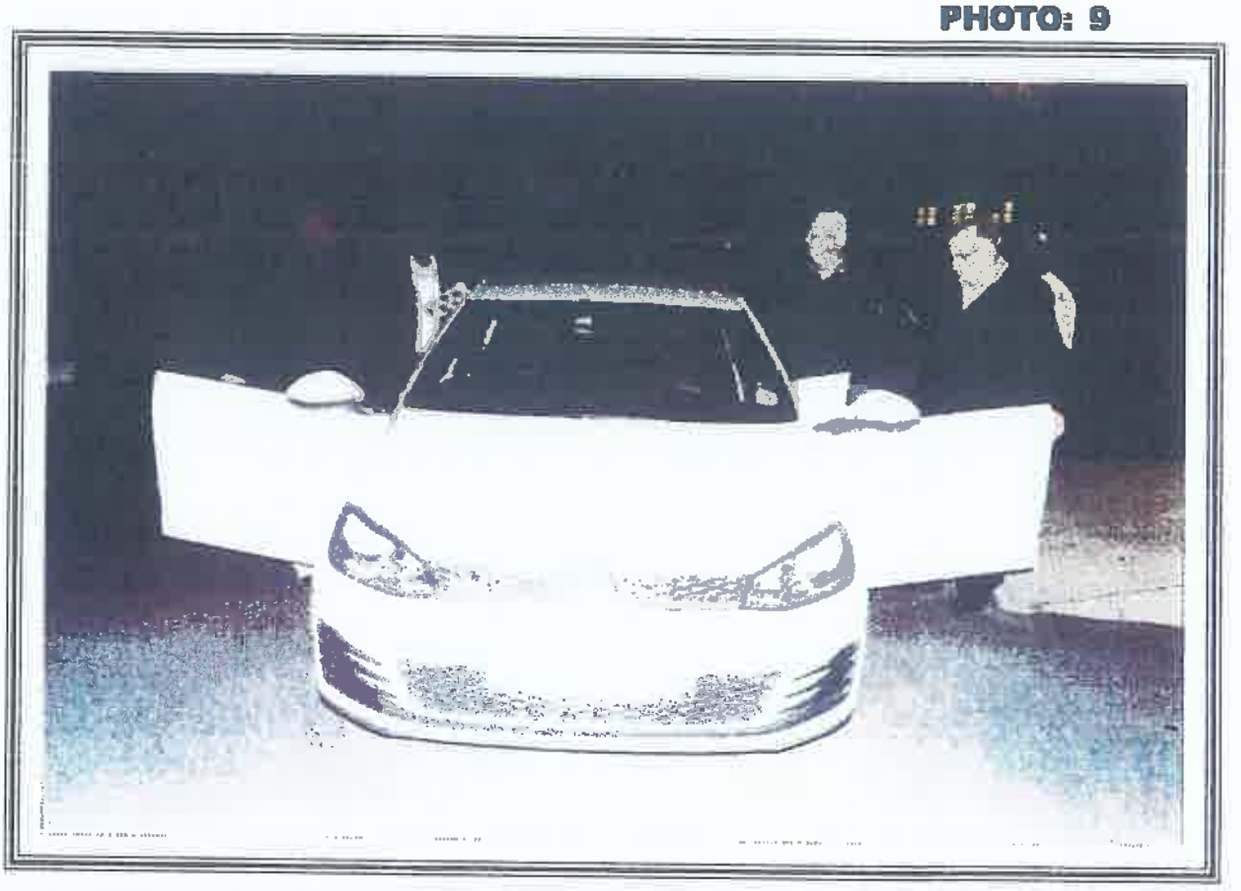

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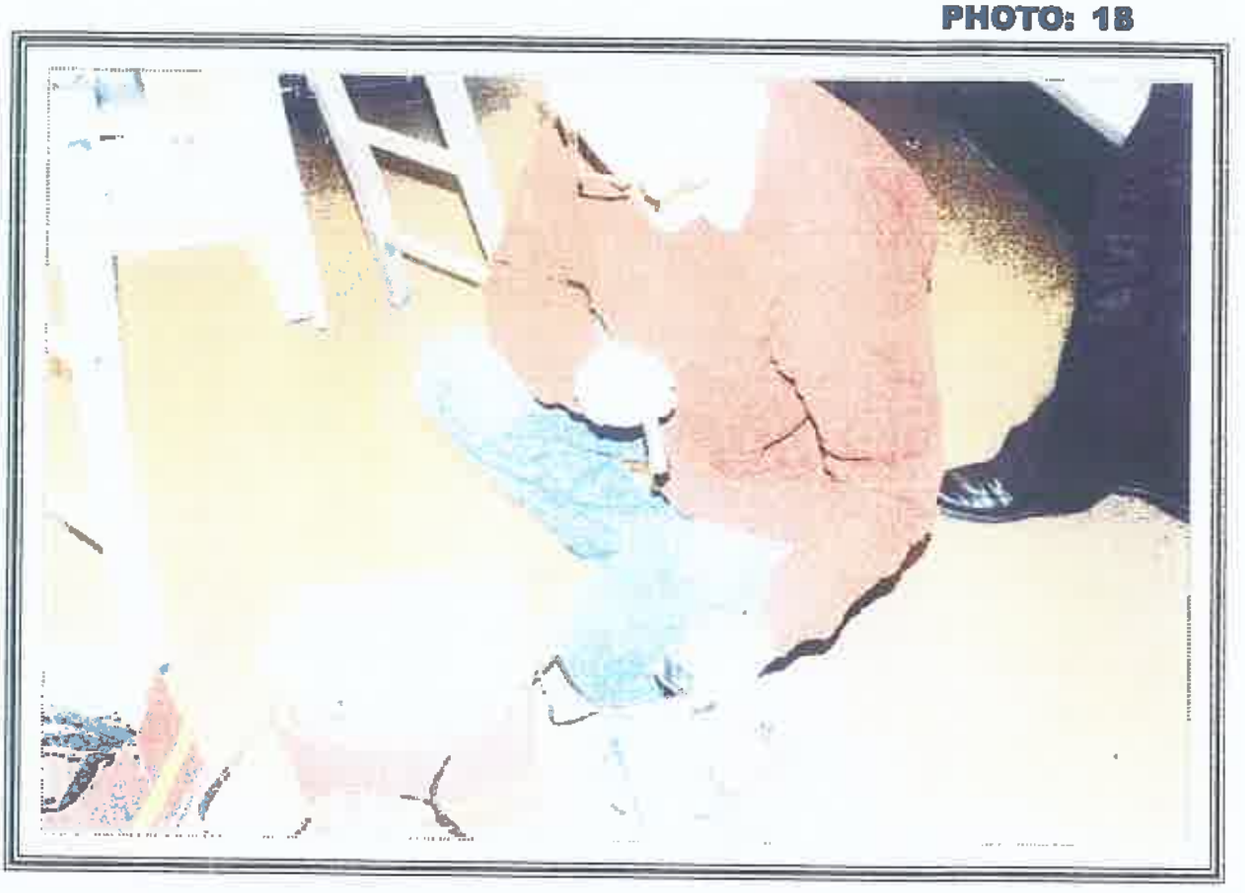

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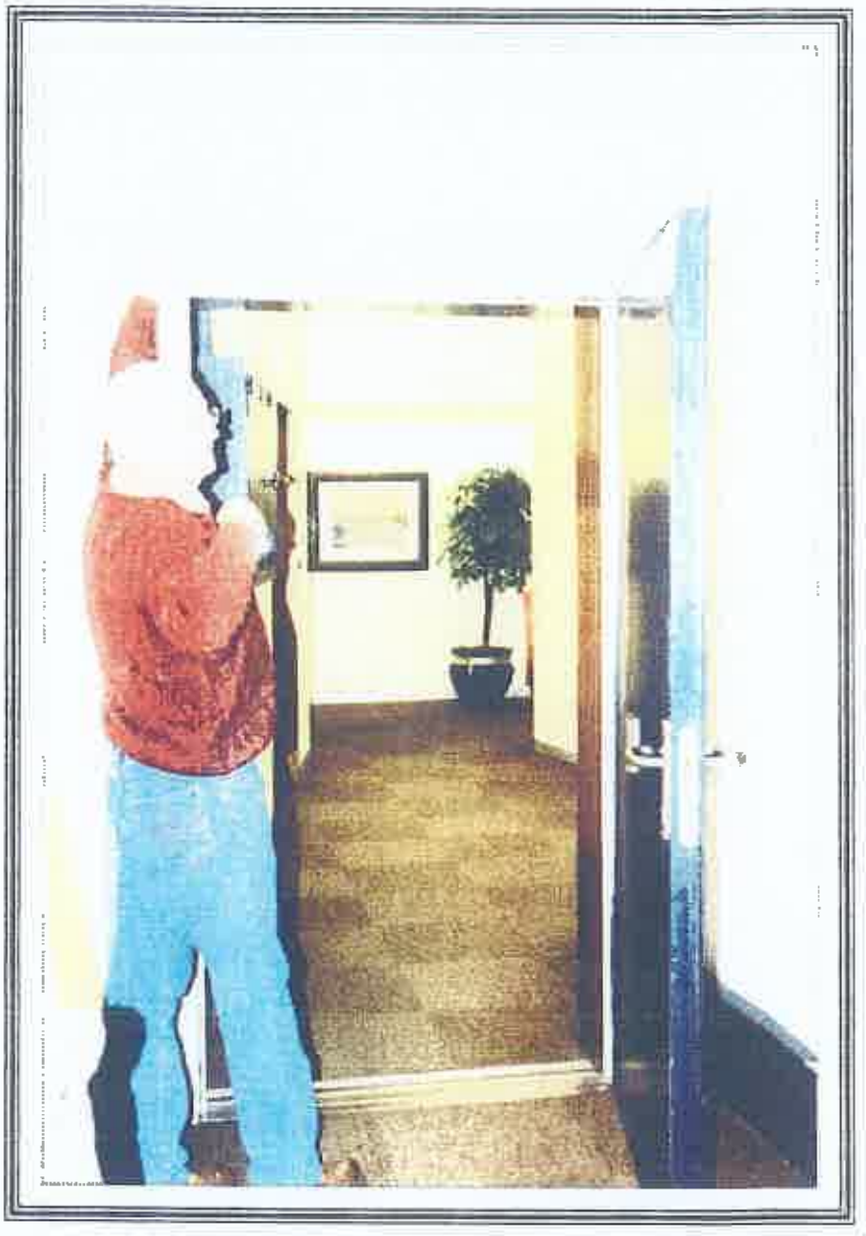

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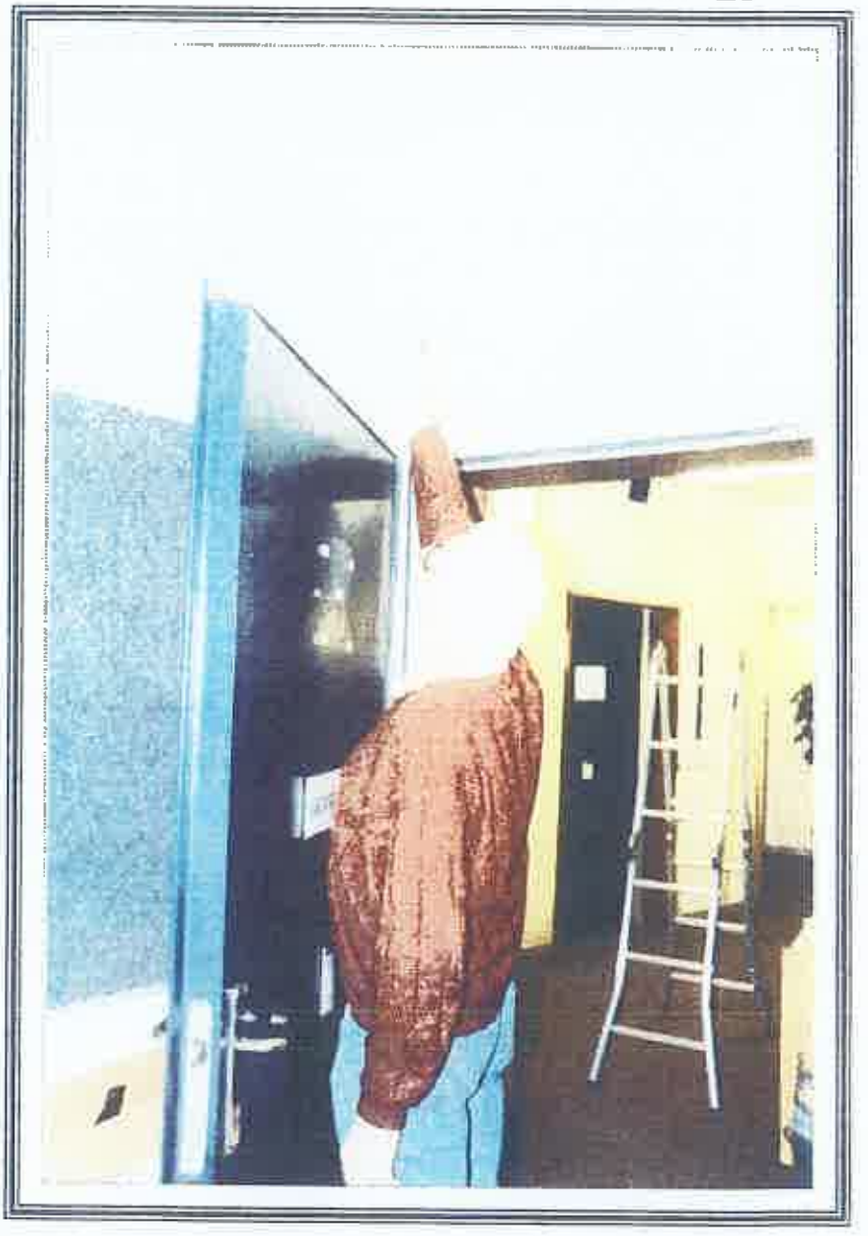

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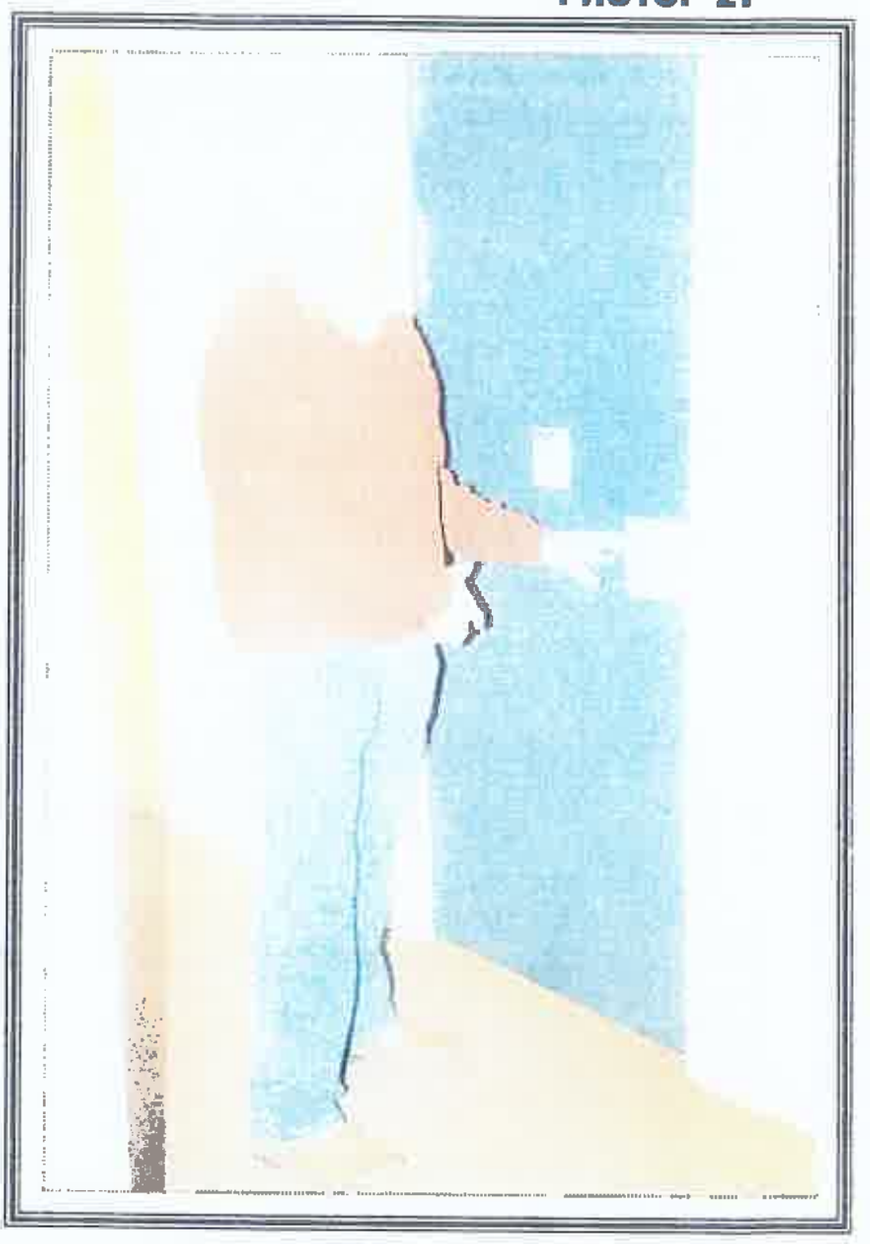

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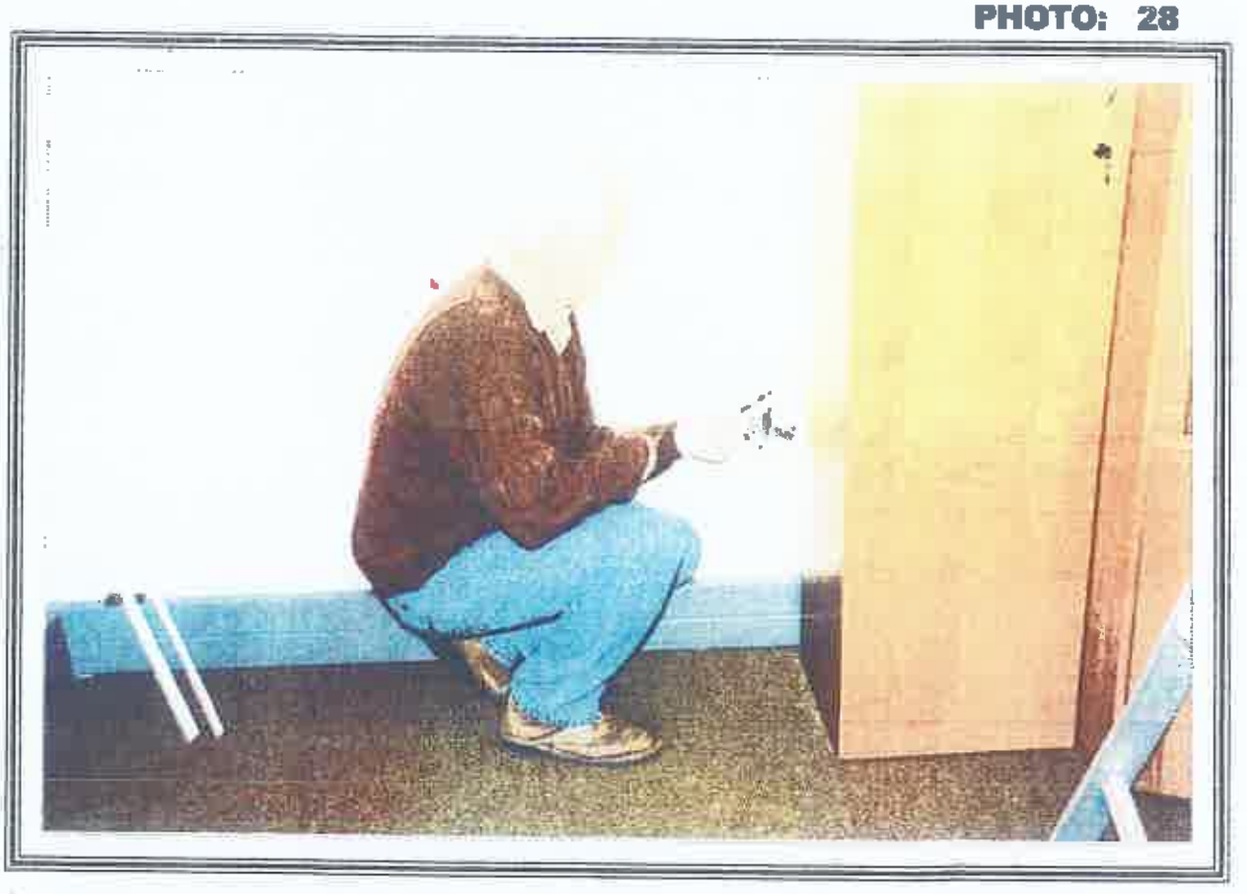

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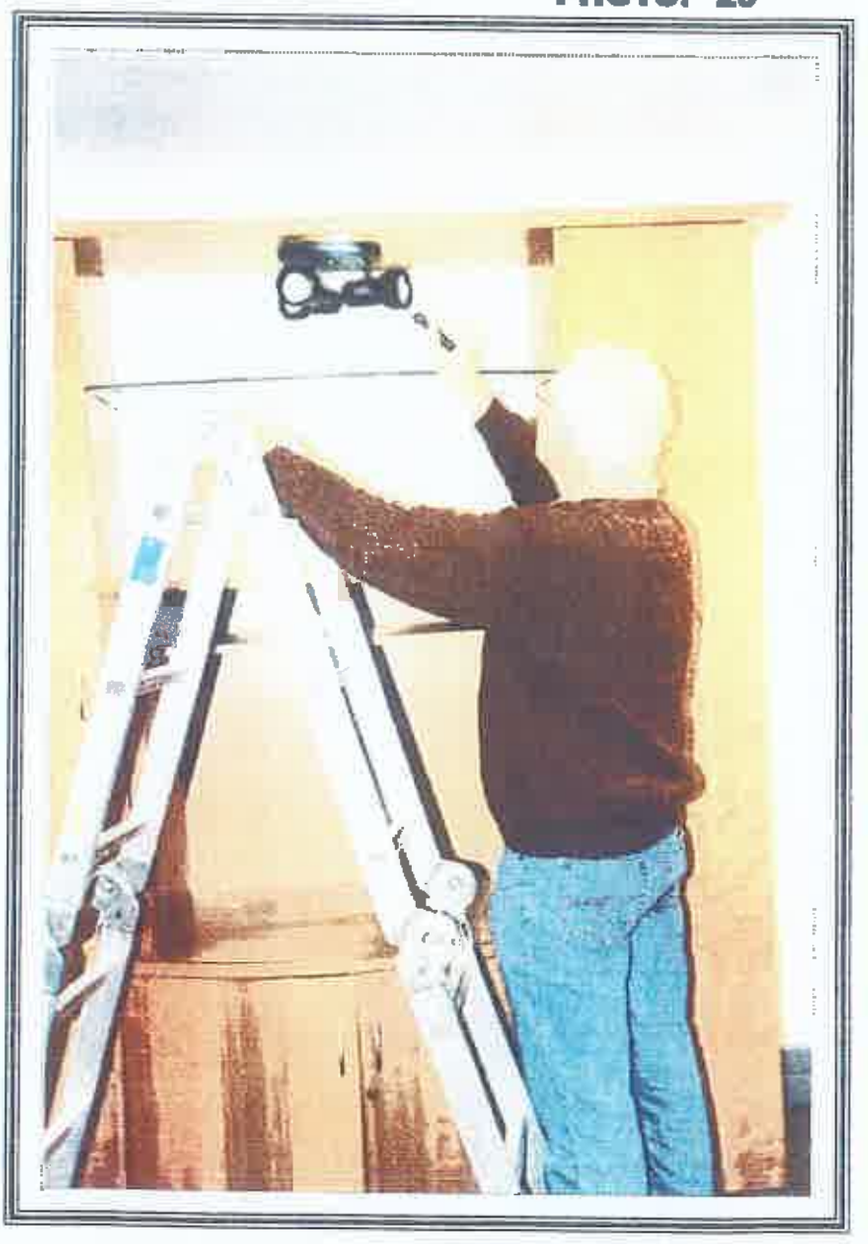

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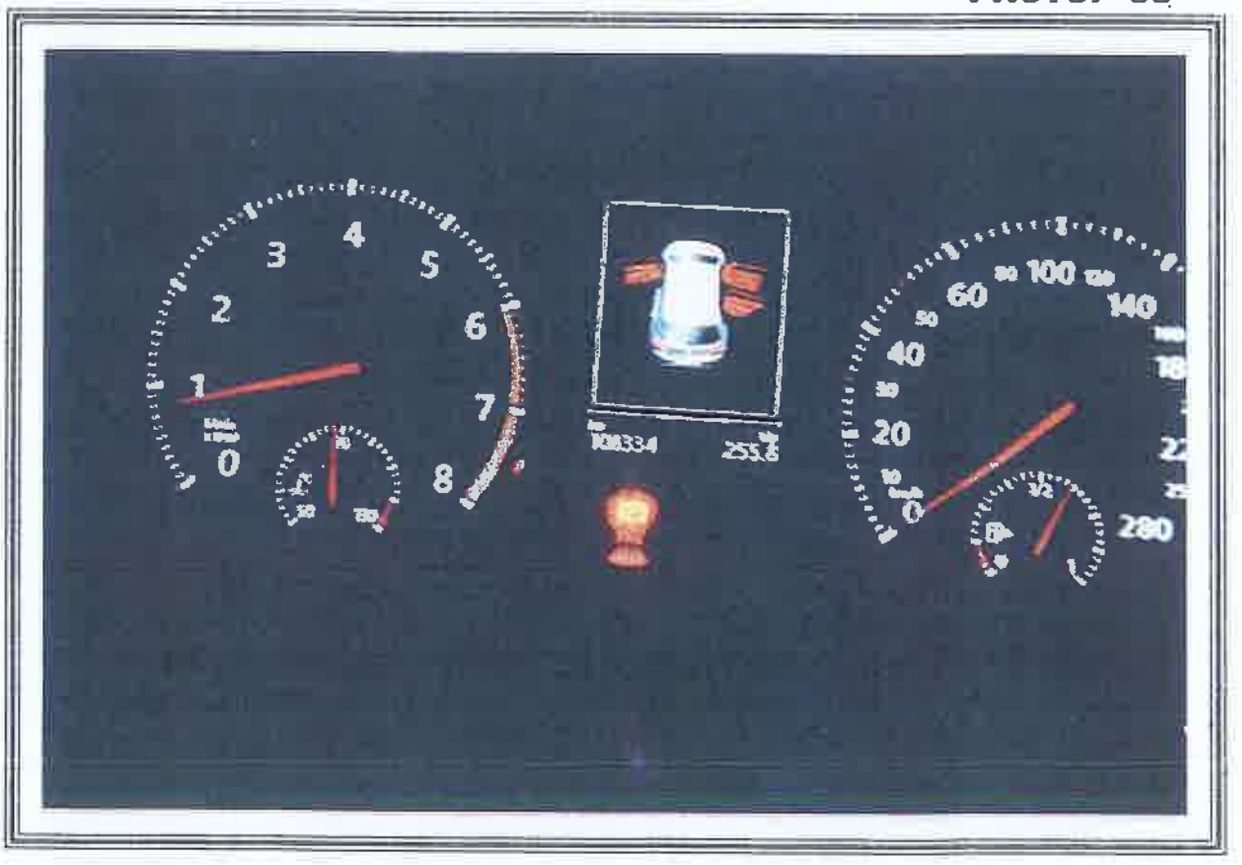

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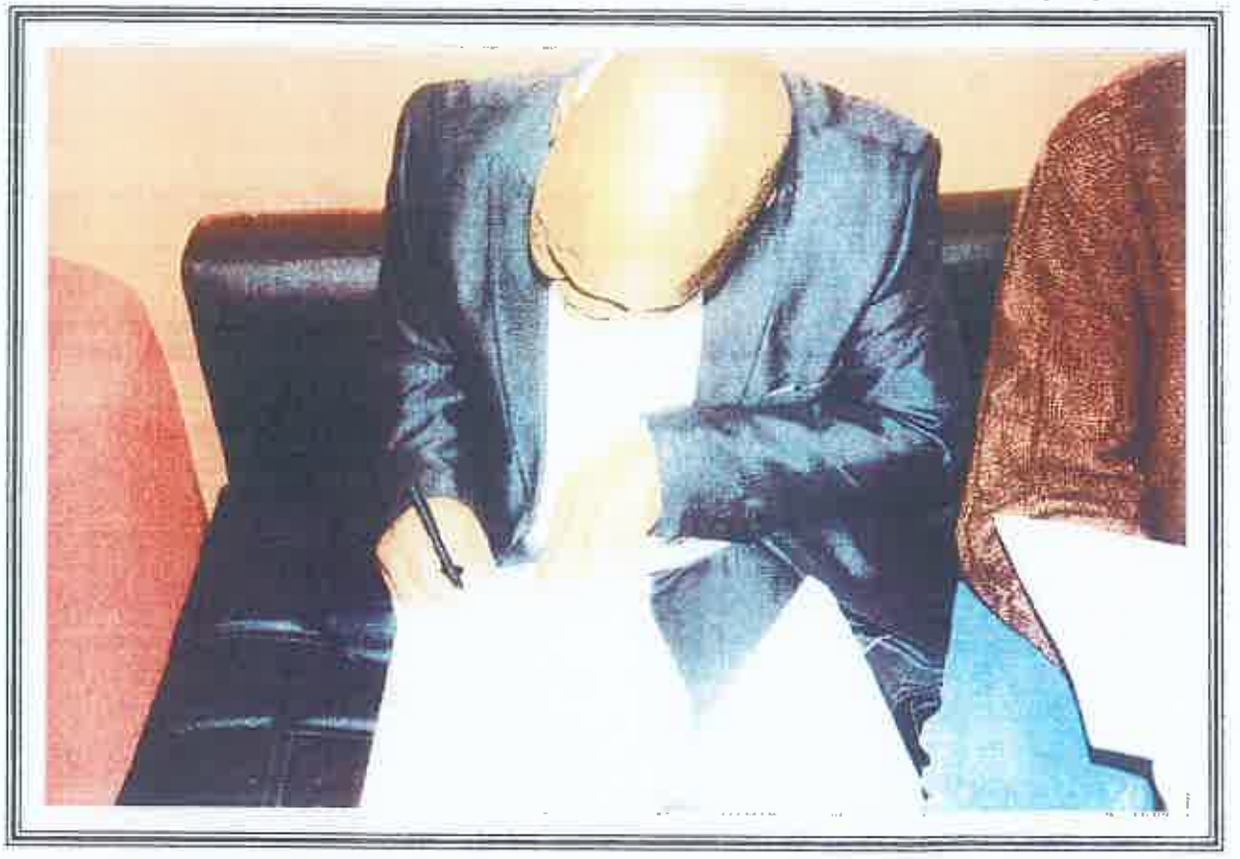

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Suid-Afrikaanse Polisiediens South African Police Service

Reference	:	NCSPT CR 06/2016
Enquiries	:	W/O B B B MLUMBI
Telephone	:	012 393 3813/ 078 081 0107
Fax:	:	012-393 3808
EMAIL	:	MlumbiB@saps.gov.za

OFFICE OF THE COMMANDER
SOUTH AFRICAN POLICE SERVICE
NATIONAL CRIME SCENE MANAGEMENT
7TH FLOOR BOTHONGO PLAZA WEST
271 FRANCIS BAARD STREET
PRETORIA

2016-07-05

The Commander
DPCI Head Office
Pretoria

REPORT: BROOKLYN CAS 427/05/2015: SCENE INVESTIGATION AFFIDAVIT.

1 Attached find the relevant reports for the above-mentioned case. Please verify for any discrepancies, including spelling or typing errors for correction.
2 The following investigations were performed:
2.1 Diverse Scene: Photos
3 The following reports are attached:
3.1 Affidavit
3.2 Photo Album & Key
3.3 Covering Minute
4 Additional reports can be requested with four (4) weeks notification. The following documents are awaited by this office:
4.1 None

7018779-7 CAPTAIN
S M MPHUSU

f/COMMANDER: NATIONAL CRIME SCENE MANAGEMENT

South African Police Service **ACKNOWLEDGEMENT OF RECEIPT**

BROOKLYN CAS 427/05/2015 NCSPT CR 06/2016

Receipt is hereby acknowledged of report by _____

Signature: Recipient

BROOKLYN CAS 427/05/2015

Suid-Afrikaanse Polisiediens South African Police Service

SOUTH AFRICAN POLICE SERVICE

NATIONAL CRIME SCENE MANAGEMENT: PRETORIA

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4

On 2016-06-02 at 09:00 on request of Lieutenant Colonel Ngoma, Acting National Crime Scene Management Section Commander, I documented/photographed some security items, at NPA offices, Silverton, Pretoria regarding to a Brooklyn CAS 427/05/2015

5

The items were indicated to me by Colonel Maluleke, of DPCI Head Office.

6

On 2016-06-02 at 12:40, after completing photographing the items, I departed.

7

All the photographs were captured digitally with file nr BBM_1067 - BBM_1222. The images were downloaded and authenticated with VeriData iDem software. The master copies are kept as exhibits in safekeeping at the National Crime Scene Management Digital Lab. I prepared a photo album and key from selected images. I confirm that the images are correct and forms part of this affidavit.

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I have no objection to taking the prescribed oath.

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Warrant Officer B.B.B. Mlumbi 5366383-7

' certify that the deponent has acknowledged that he knows and understands the content of this statement. The statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on_____ at _____.

COMMISSIONER OF OATHS
NAME: _____
NATIONAL CRIME SCENE MANAGEMENT
7TH FLOOR BOTHONGO PLAZA WEST
271 FRANCIS BAARD STREET
PRETORIA CENTRAL
RANK: _____
SOUTH AFRICAN POLICE SERVICE

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SEQ 29/2021-2684

BROOKLYN CAS 427/05/2015
NCSPT CR 06/2016

Compiled by: W/O BBB MLUMBI
CRIME SCENE MANAGEMENT

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Suid-Afrikaanse Polisiediens South African Police Service

SOUTH AFRICAN POLICE SERVICE
KEY TO ALBUM

NPA Offices, Silverton, Pretoria
2016-06-02 @ 09:00 till 12:40

Photo 1	-	Show 2nd floor passage.
Photo 2-3	-	Show security control system.
Photo 4-6	-	Show eyes of the security system.
Photo 7	-	Shows entrance to Willie Hofmeyer's office.
Photo 8-11	-	Show eyes of the security system.
Photo 12-15	-	Show eye of the security system in 2nd floor boardroom (1st Boardroom).
Photo 16-19	-	Show cables leading to inside ceiling of the 2nd floor boardroom (1st Boardroom).
Photo 20-23	-	Show servers linked to cellphone sim cards inside ceiling of the 2nd floor boardroom (1st Boardroom)...
Photo 24	-	Shows inside one the servers.
Photo 25	-	Shows sim cards recovered inside the servers.
Photo 26	-	Shows 2nd floor passage just little further than on photo 1
Photo 27	-	Shows security control system just outside one of the office in the 2nd floor.
Photo 28-31	-	Show eyes of the security system in one of the offices in the 2nd floor.
Photo 32-35	-	Show cables and servers inside ceiling of the same office on photo 28-31.
Photo 36-37	-	Shows sim cards recovered inside the servers found in same office on photo 28-31.
Photo 38-40	-	Show eye of the security system in 2nd floor boardroom (2nd boardroom).
Photo 41-45	-	Show cables inside ceiling of the 2nd floor boardroom (2nd boardroom).
Photo 46-47	-	Show camera found on ceiling of the 2nd floor boardroom (2nd

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		boardroom).
Photo 48-49	-	Show cables inside the electric covering of the 2nd floor boardroom (2nd boardroom).
Photo 50	-	Shows sim card recovered in the 2nd floor boardroom (2nd boardroom).
Photo 51-52	-	Show inside the ceiling of the NDPP's office.
Photo 53-54	-	Show eye of the security system in NDPP's office.
Photo 55-57	-	Show security control system in NDPP's office.

WARRANT OFFICER
NATIONAL CRIME SCENE MANAGEMENT
BBB MLUMBI 5366383-7

PHOTO: 1

PHOTO: 2

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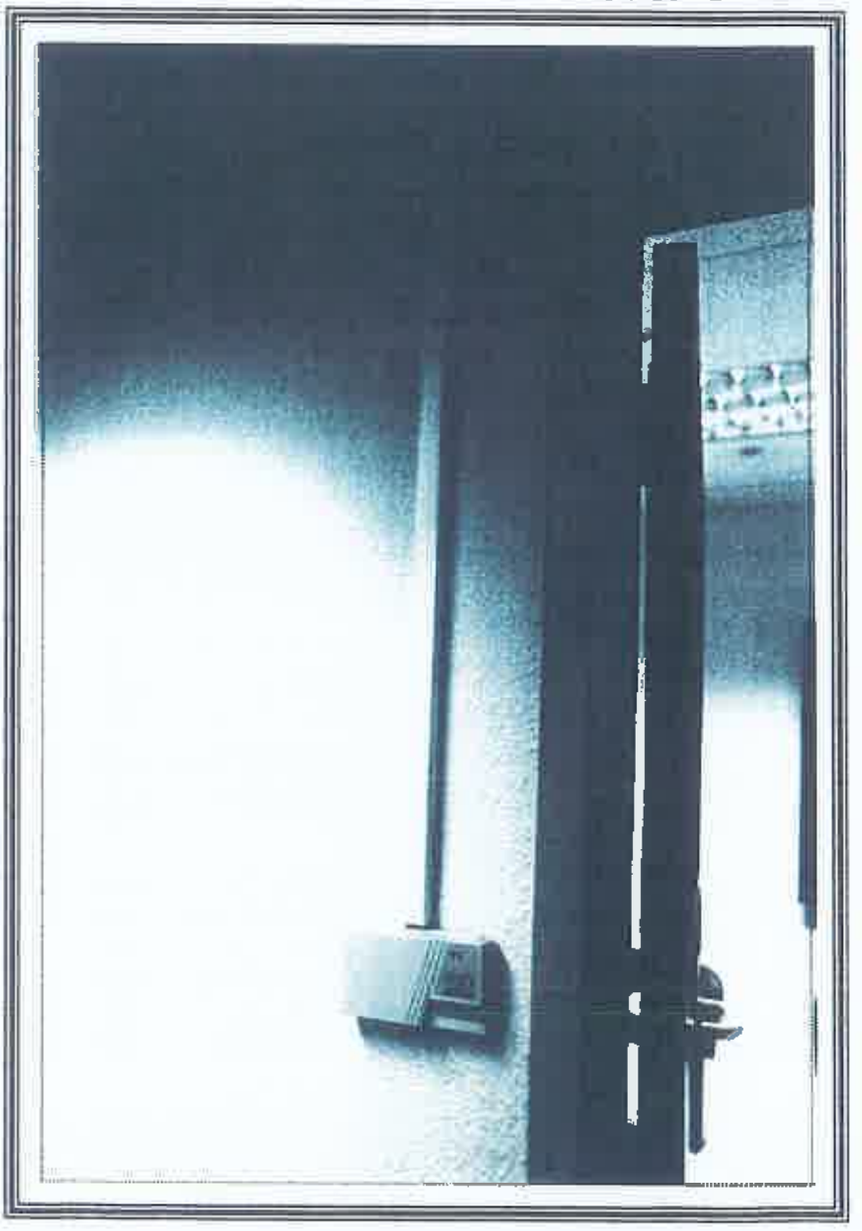
PHOTO: 3



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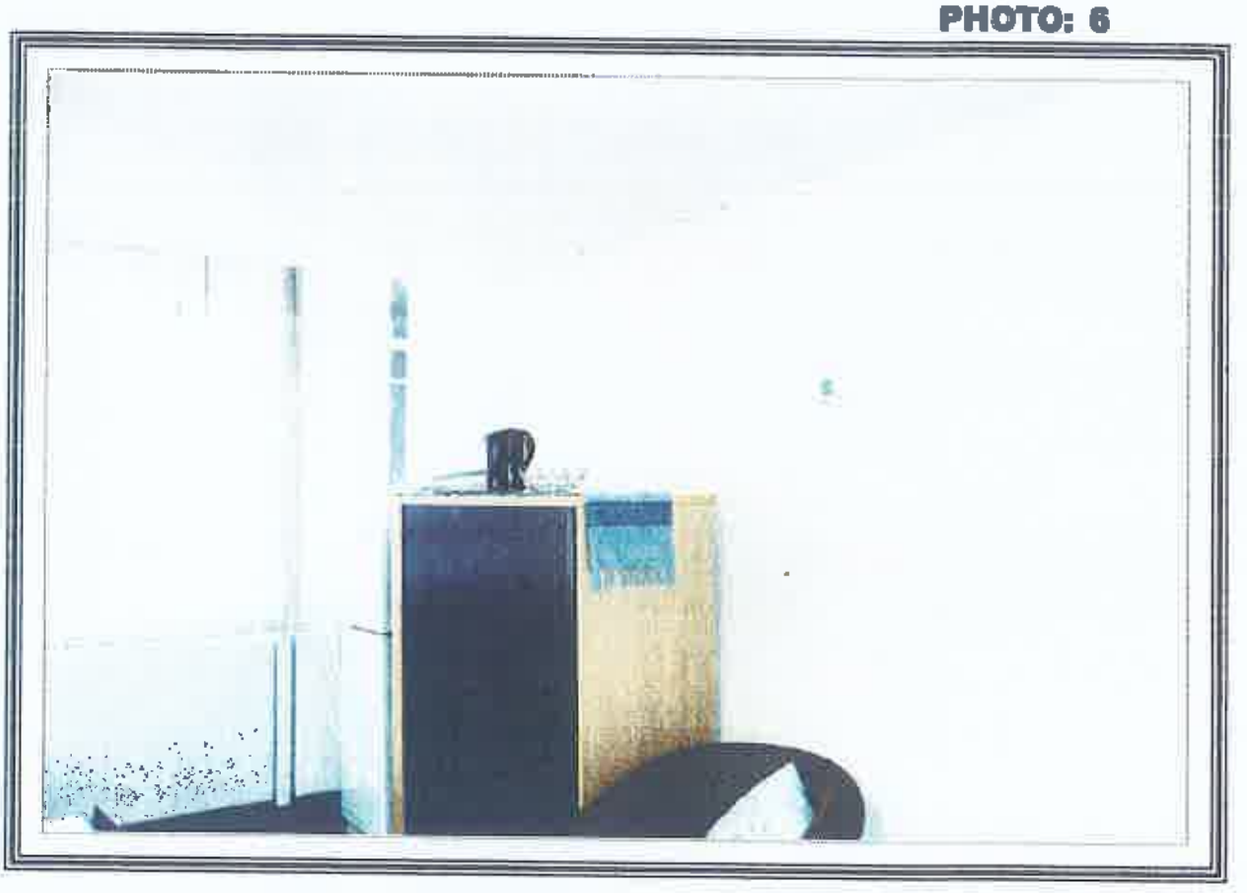

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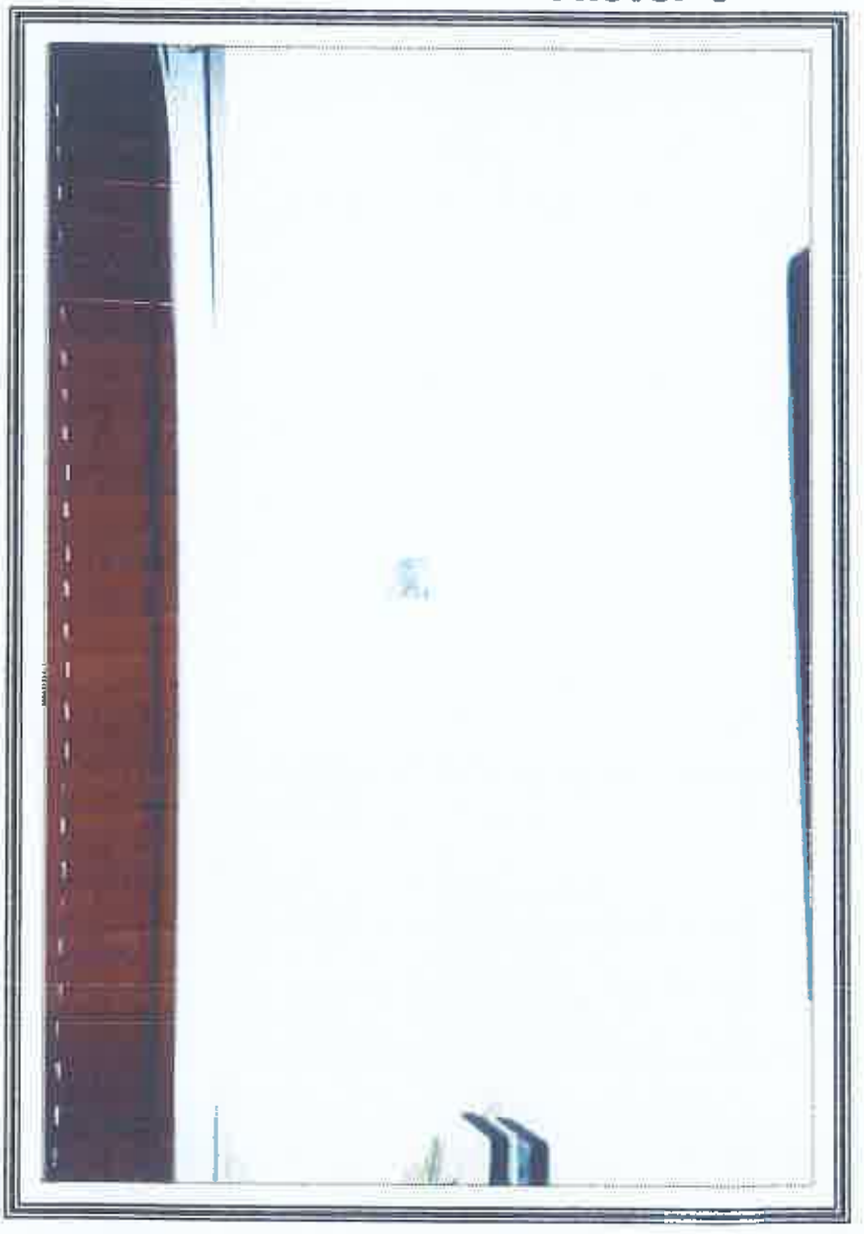

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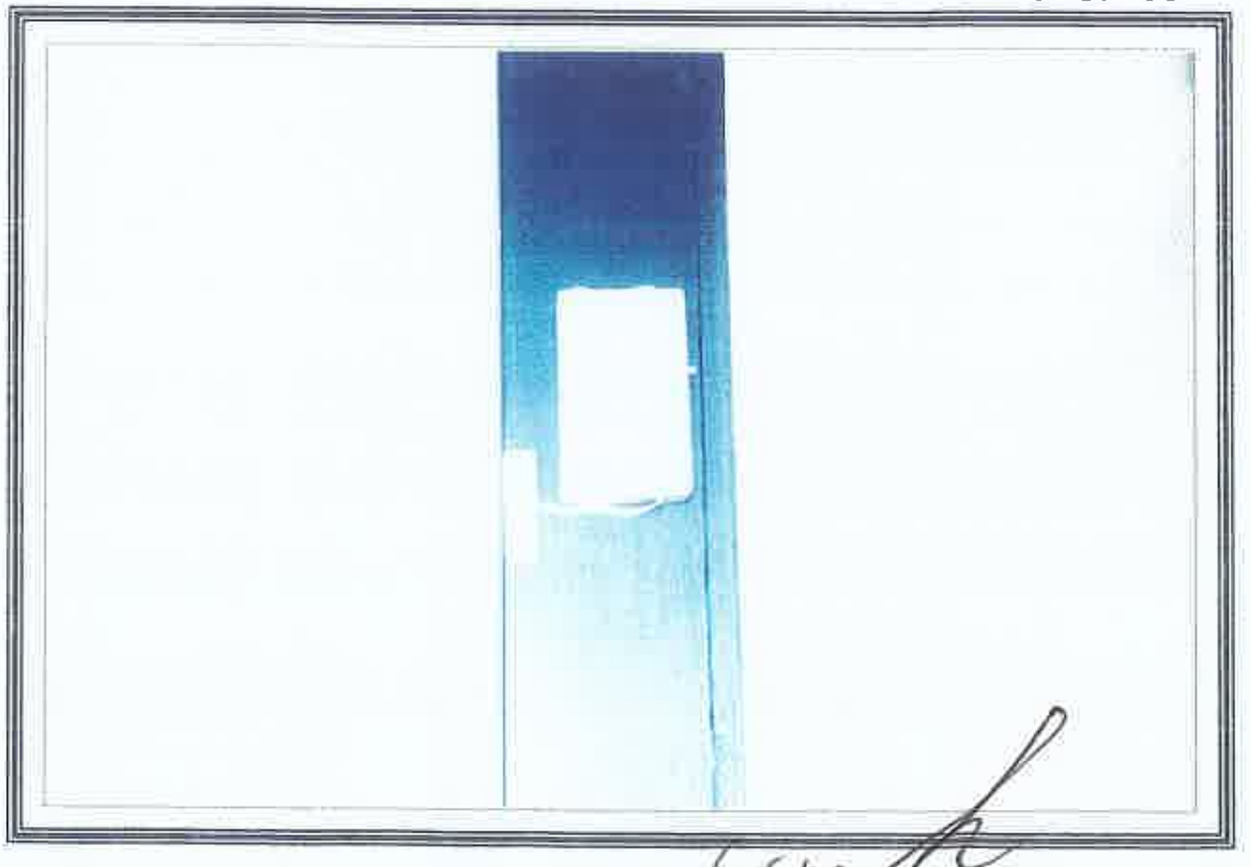

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PHOTO: 12

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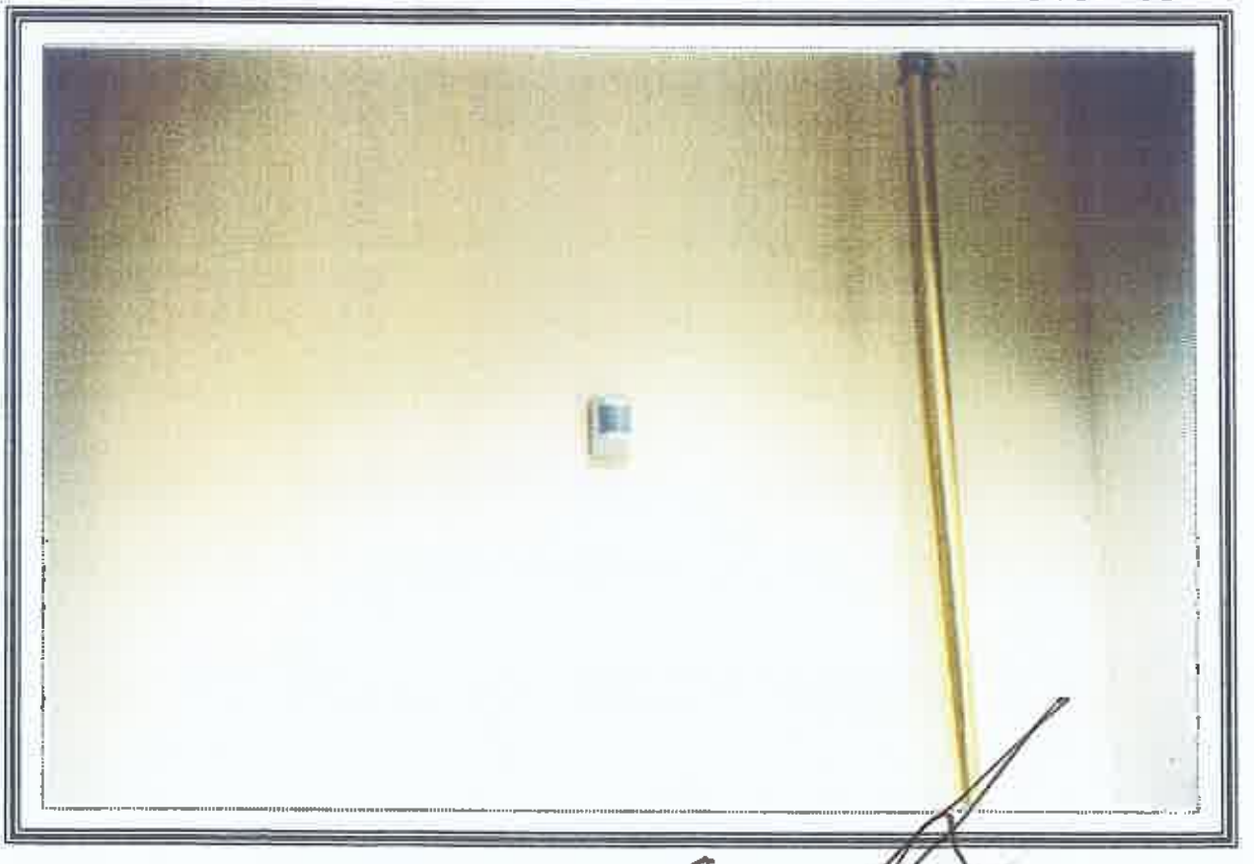

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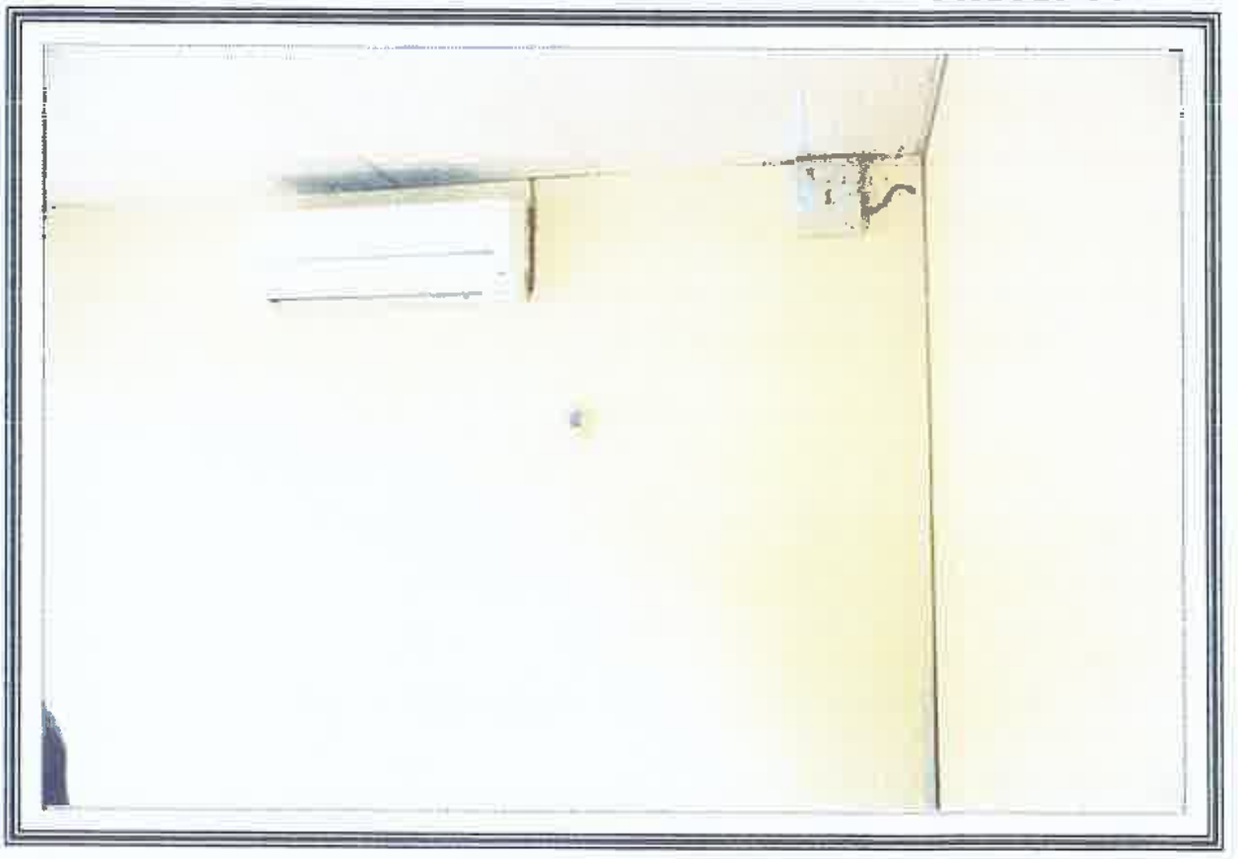

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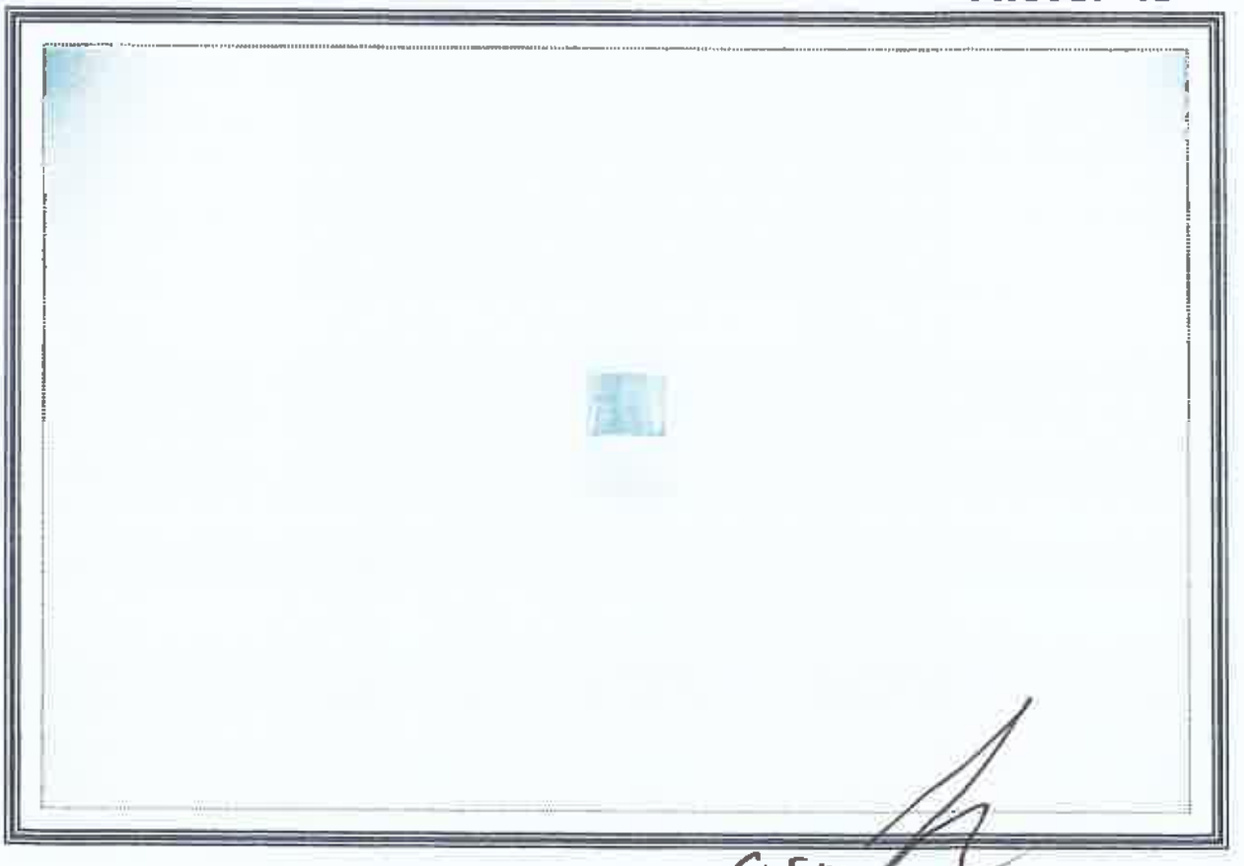

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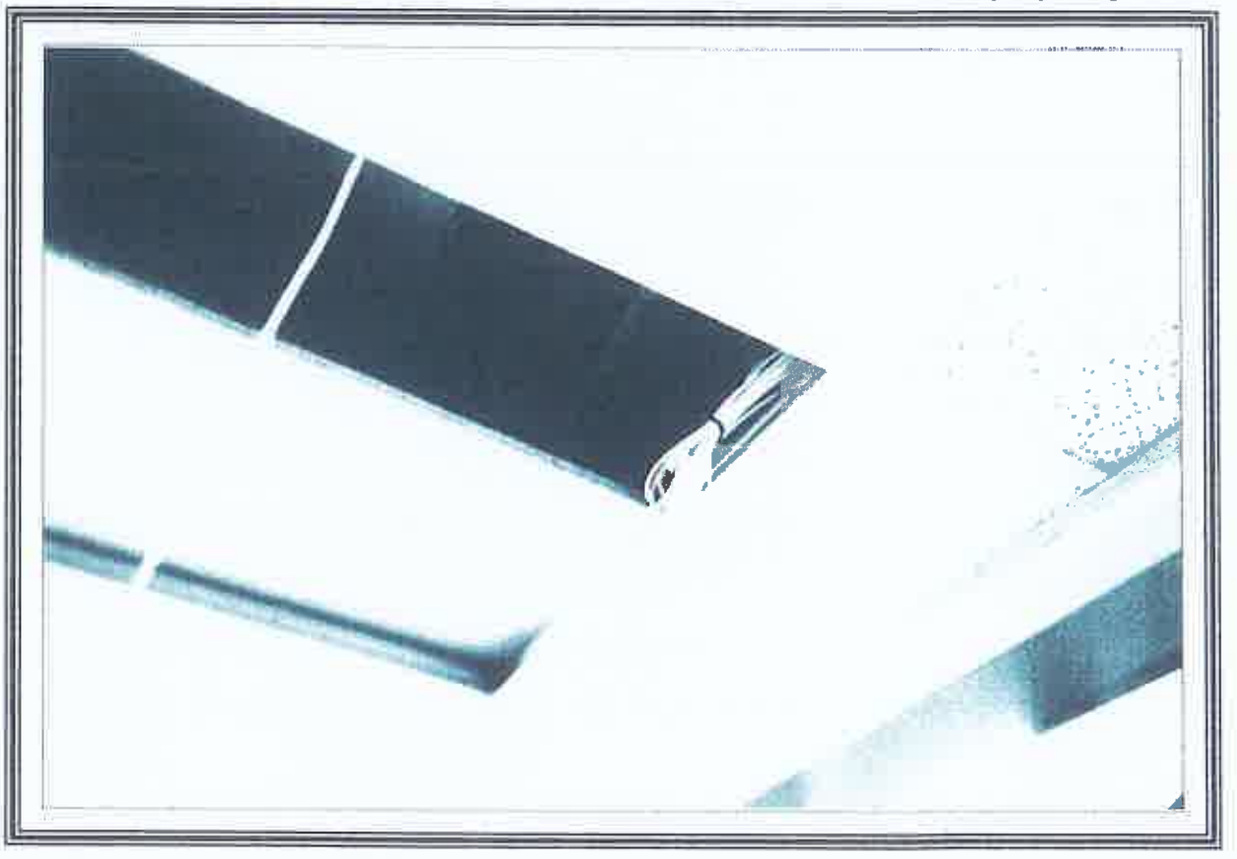
PHOTO: 16



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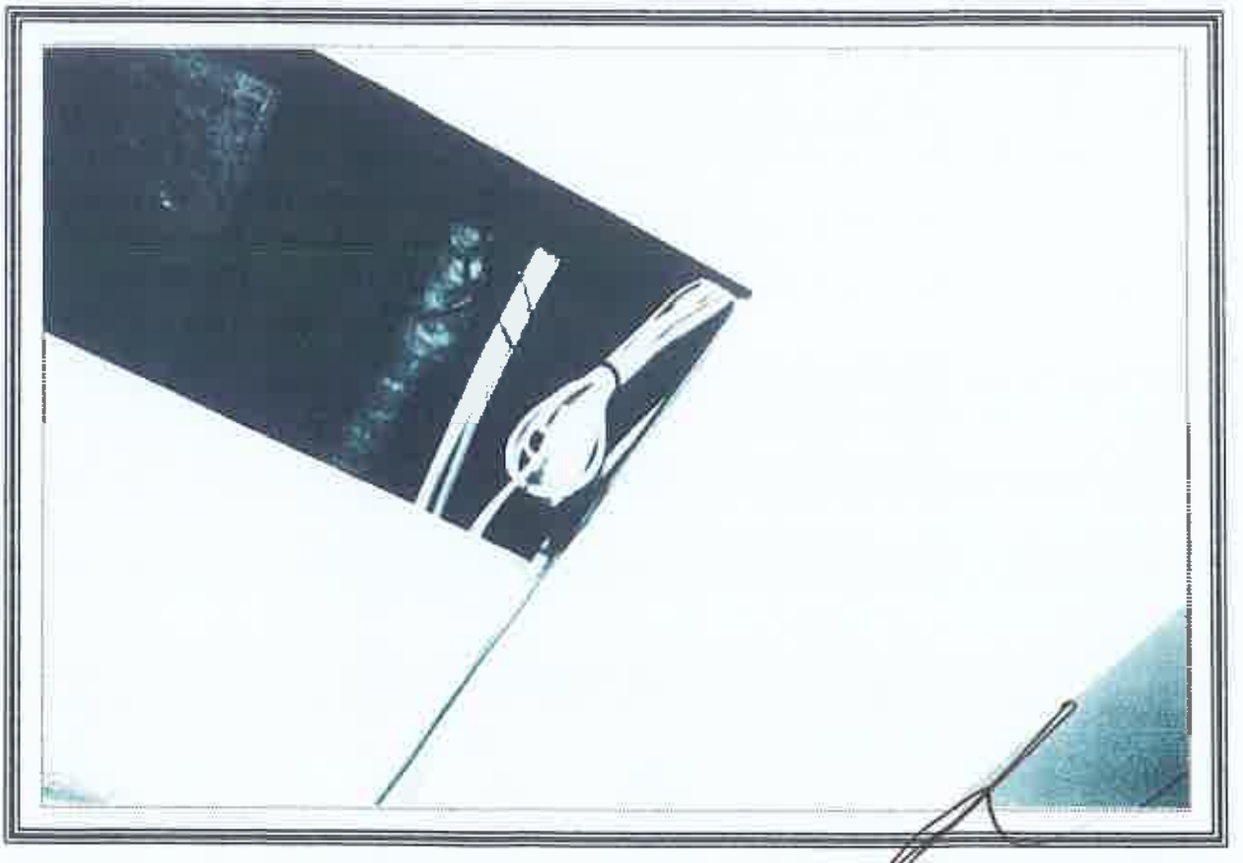

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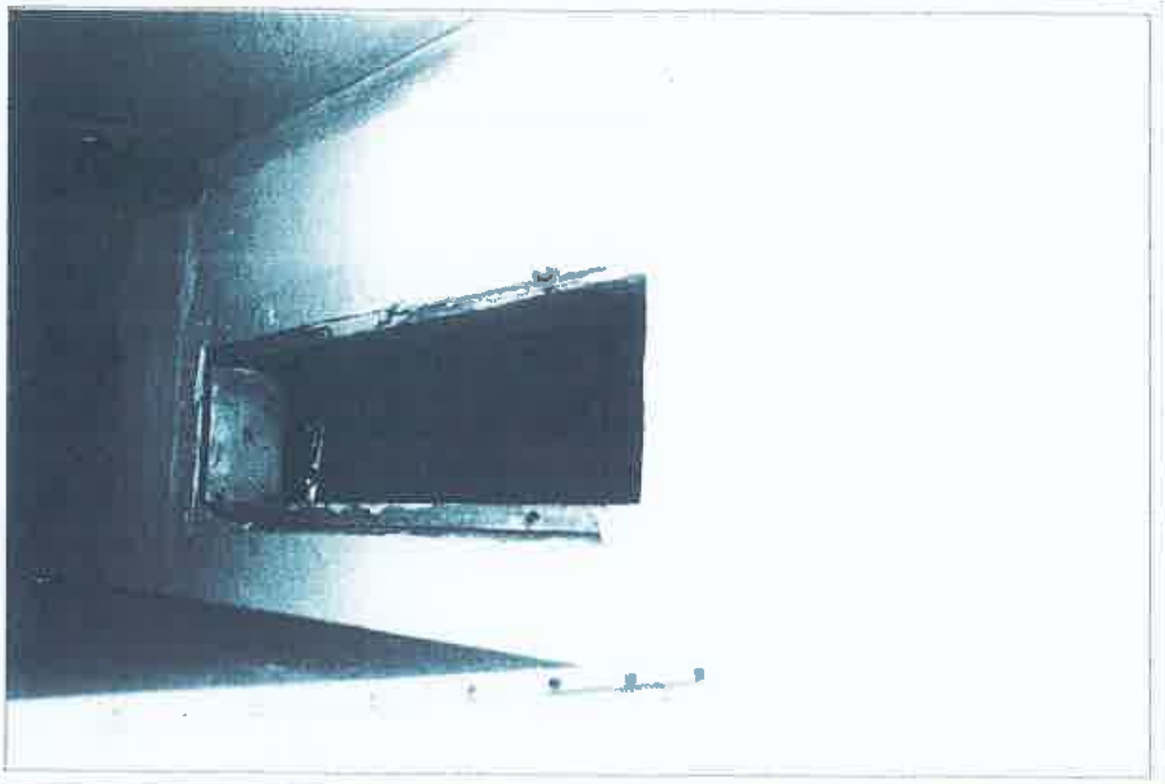

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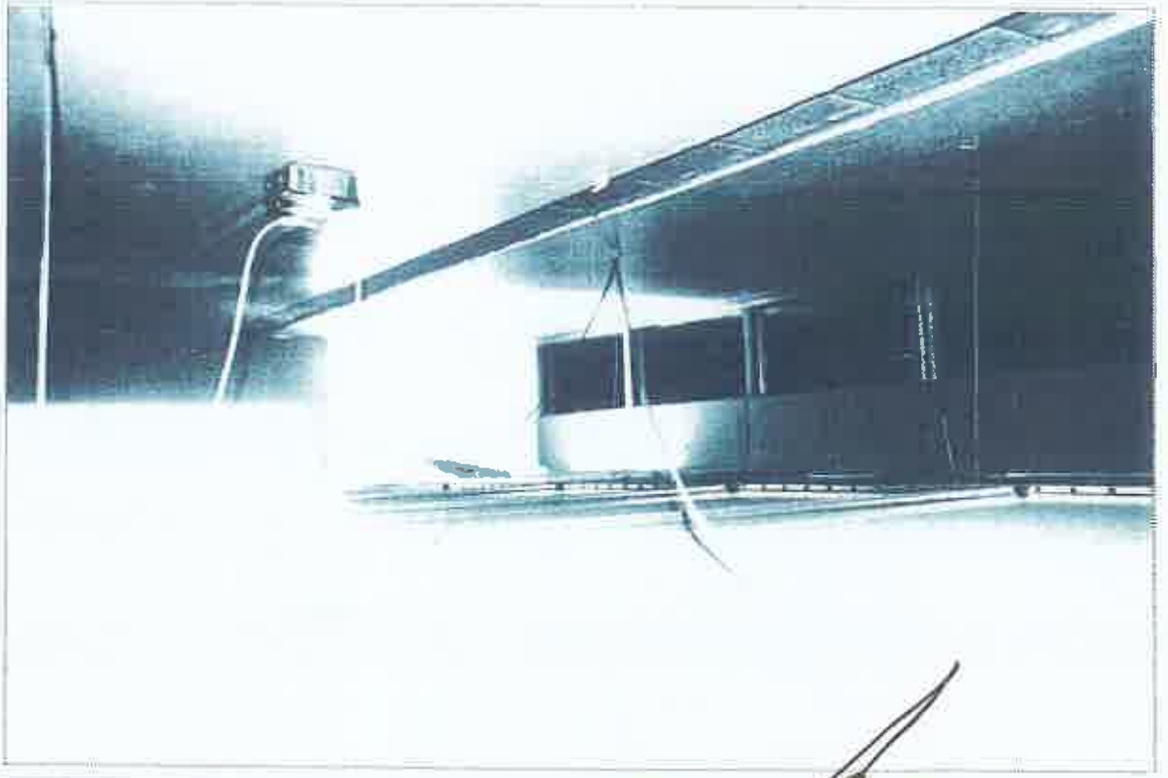

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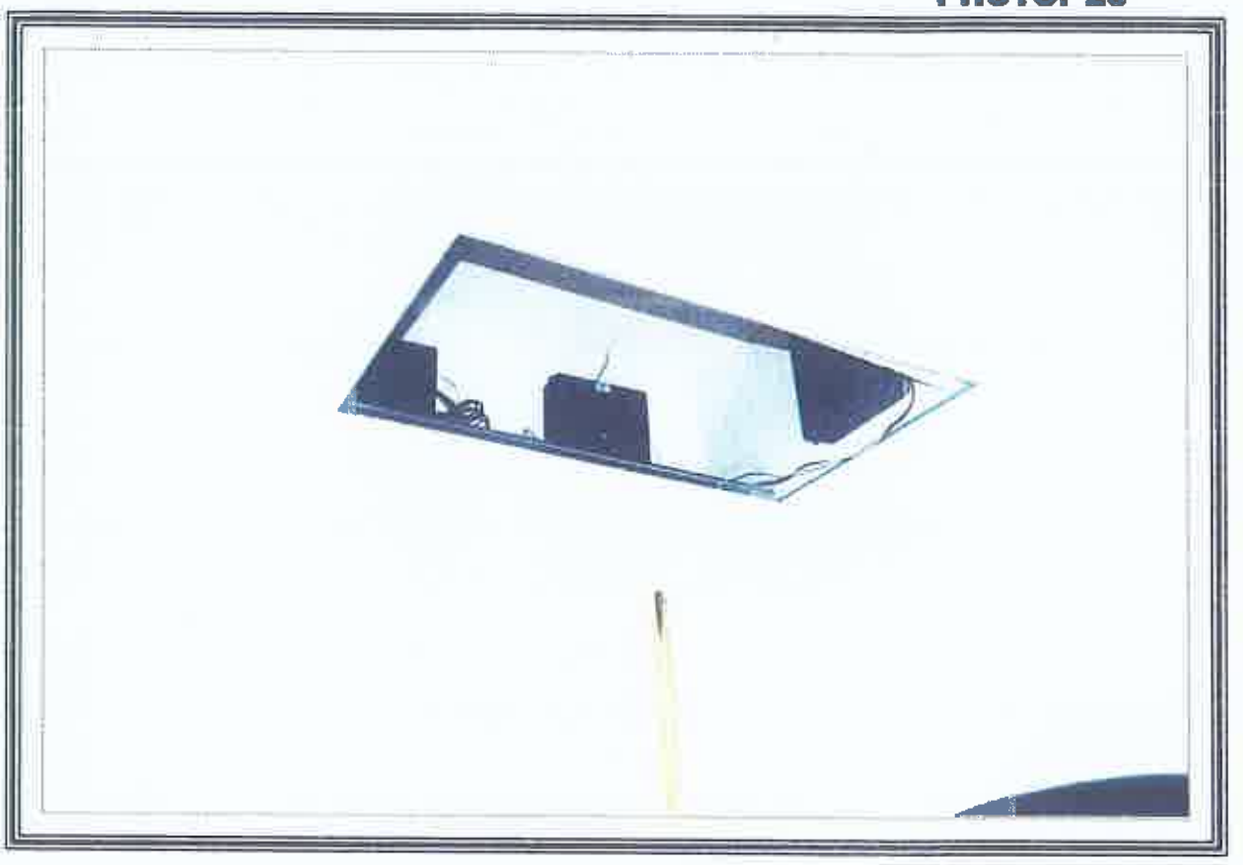

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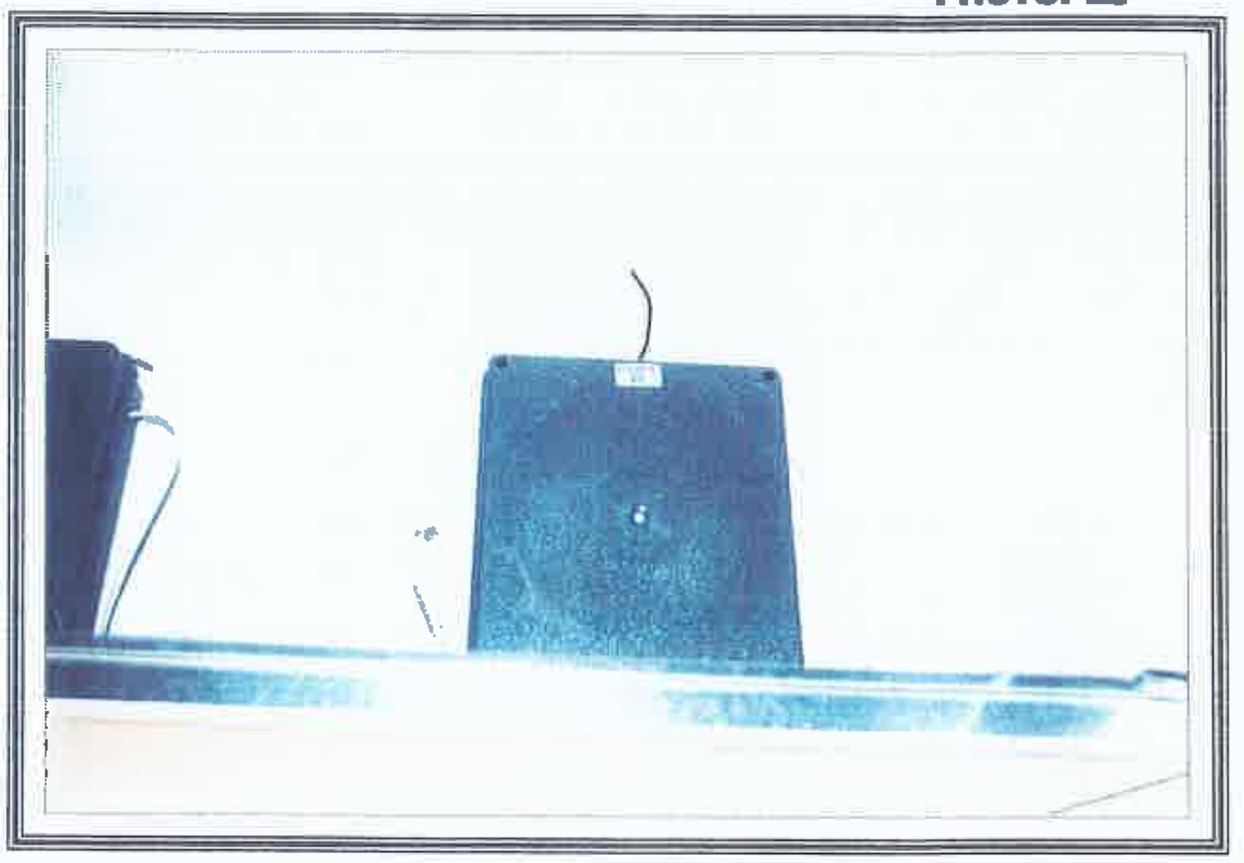

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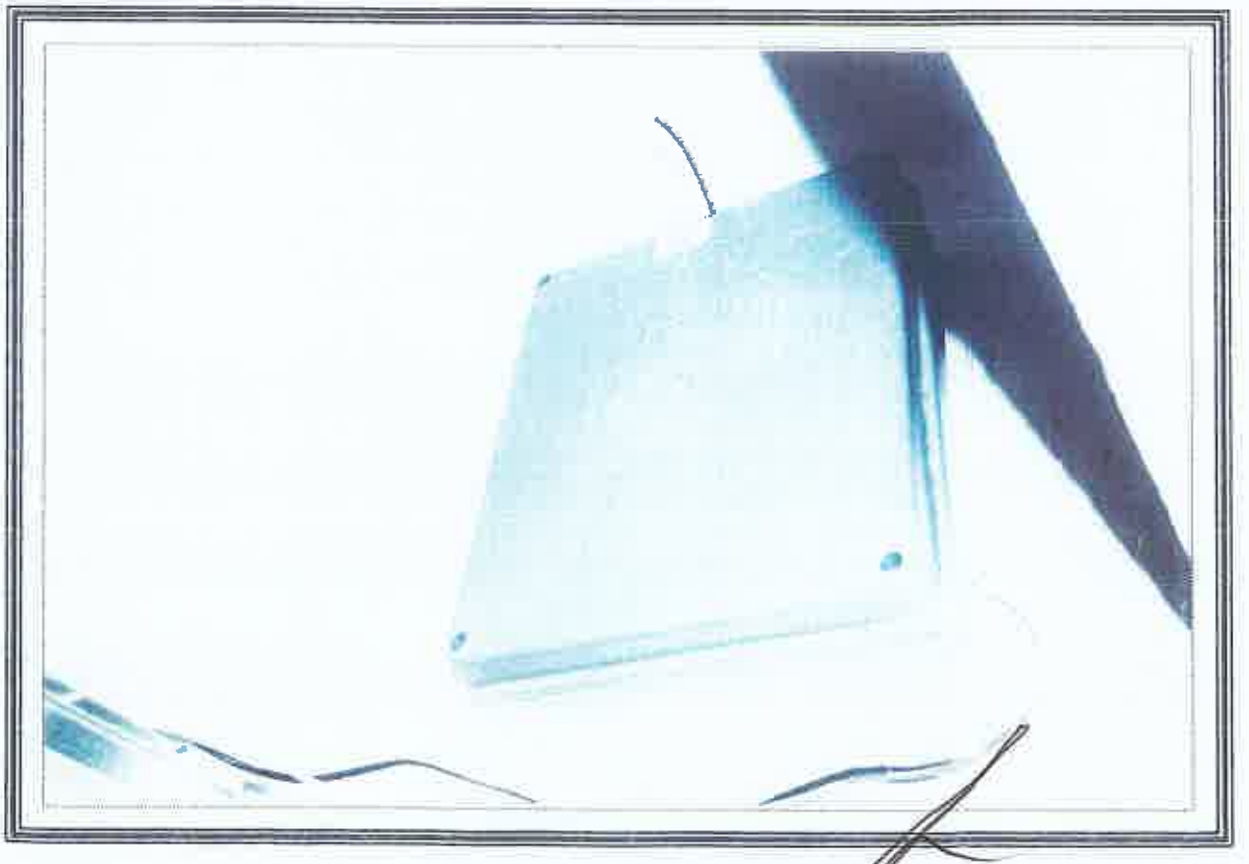

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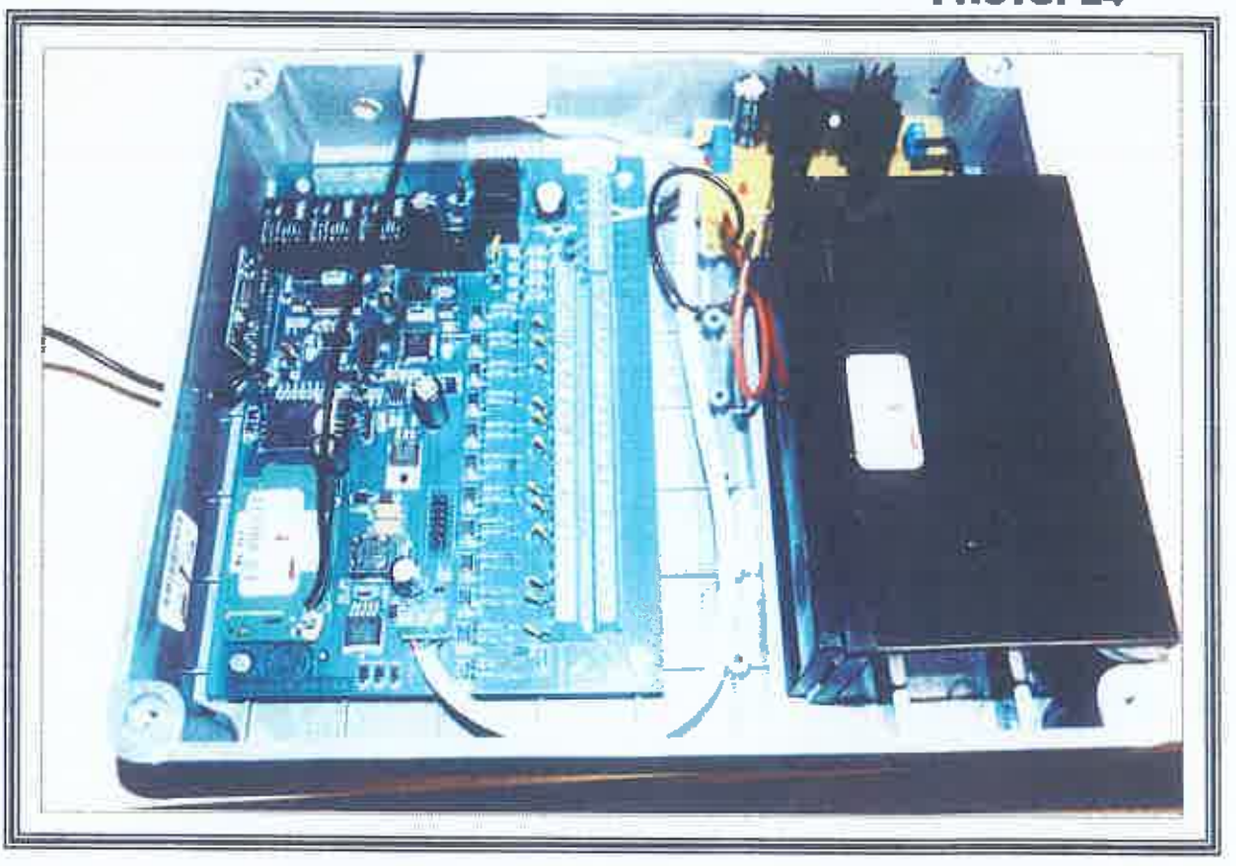

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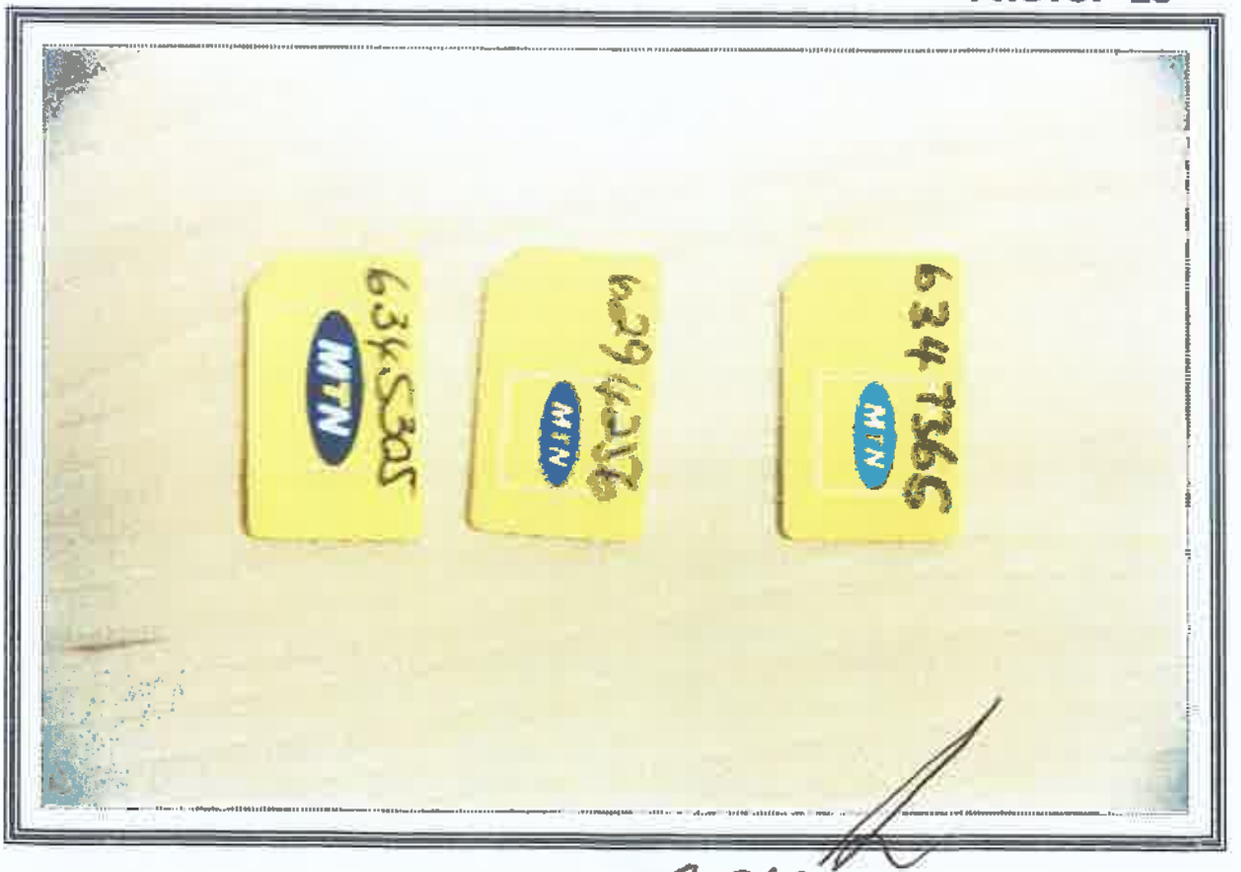

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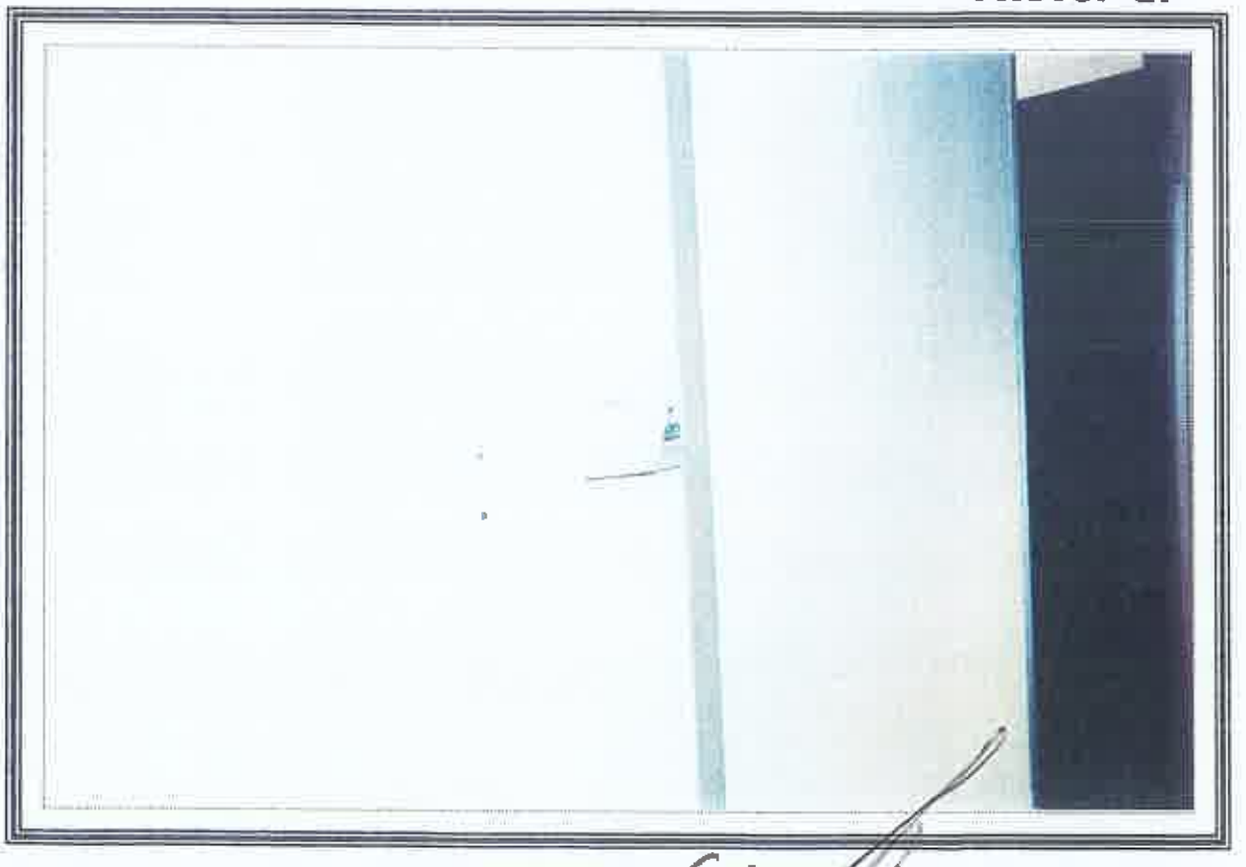

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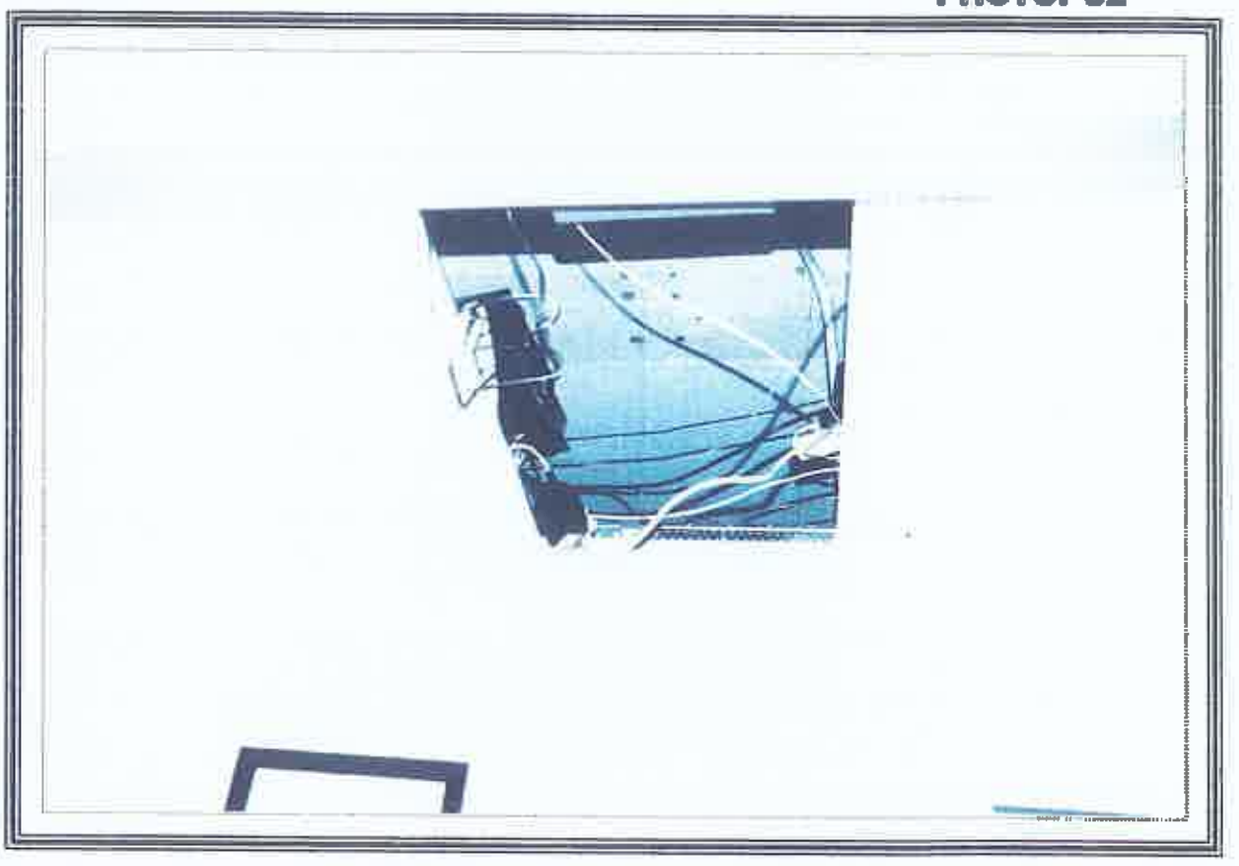

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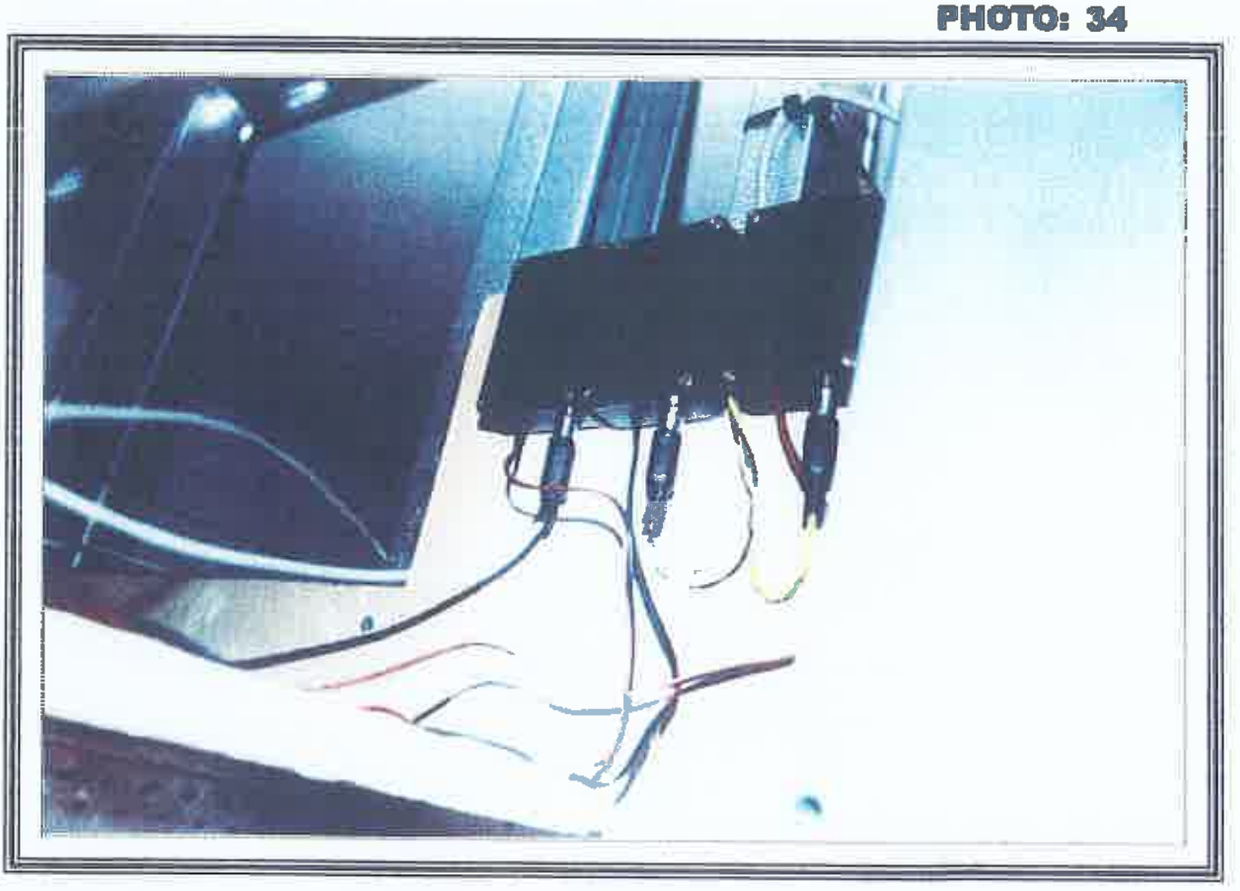
PHOTO: 34



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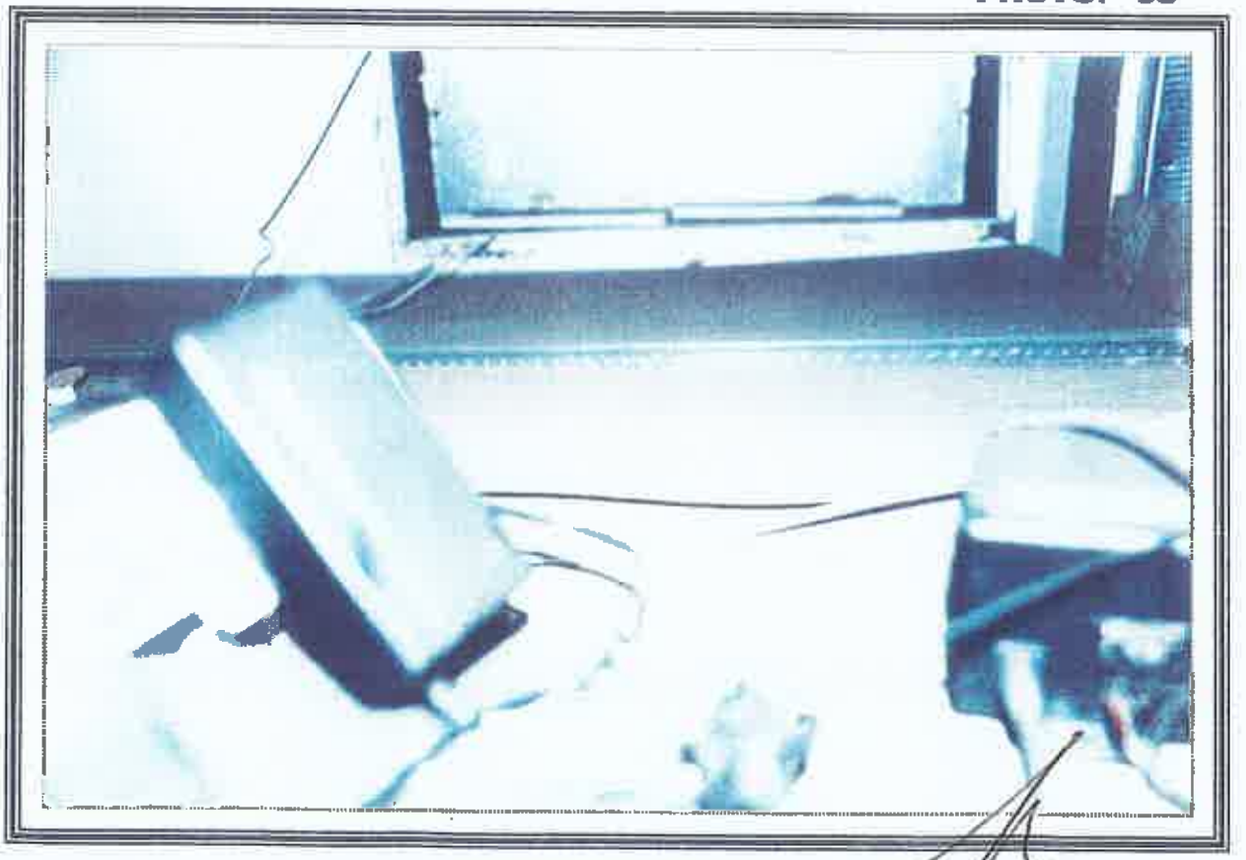

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PHOTO: 36

PHOTO: 37

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PHOTO: 38

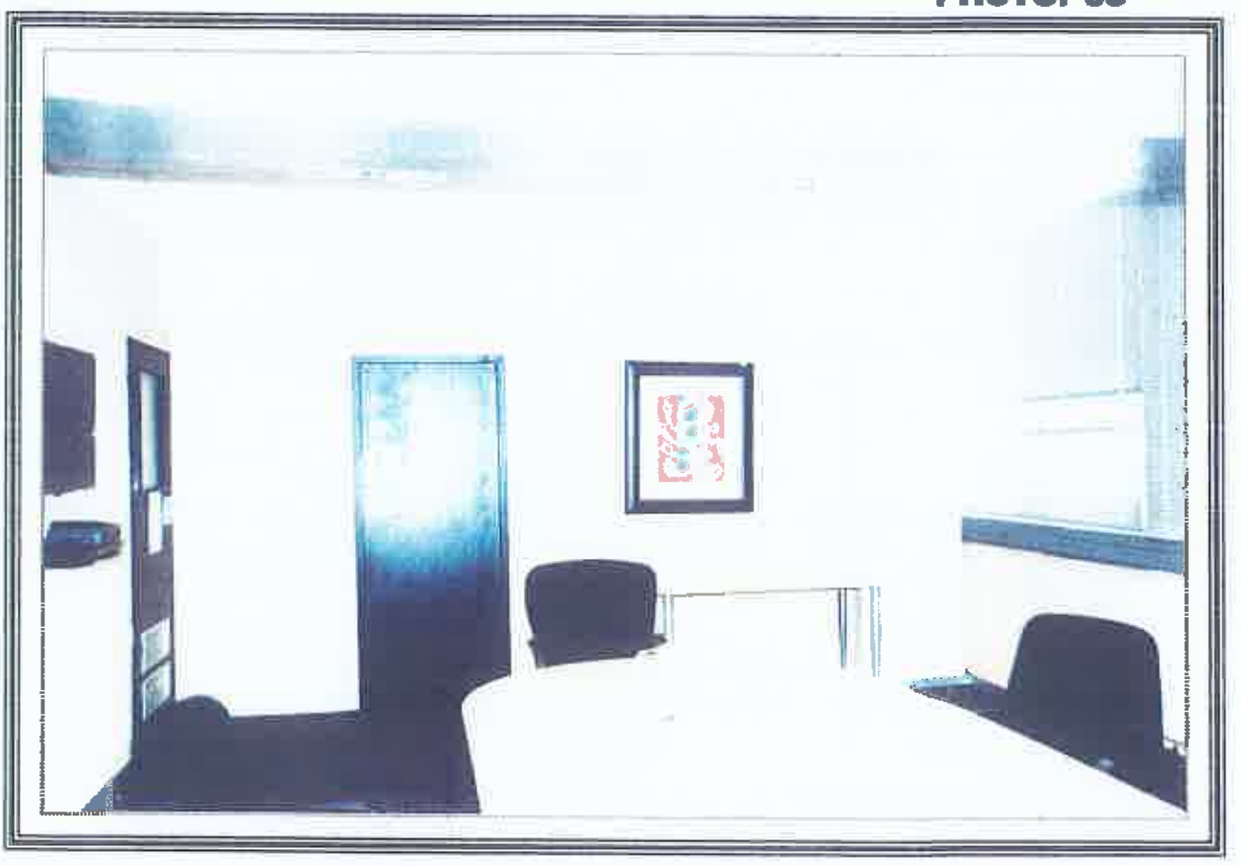

PHOTO: 39

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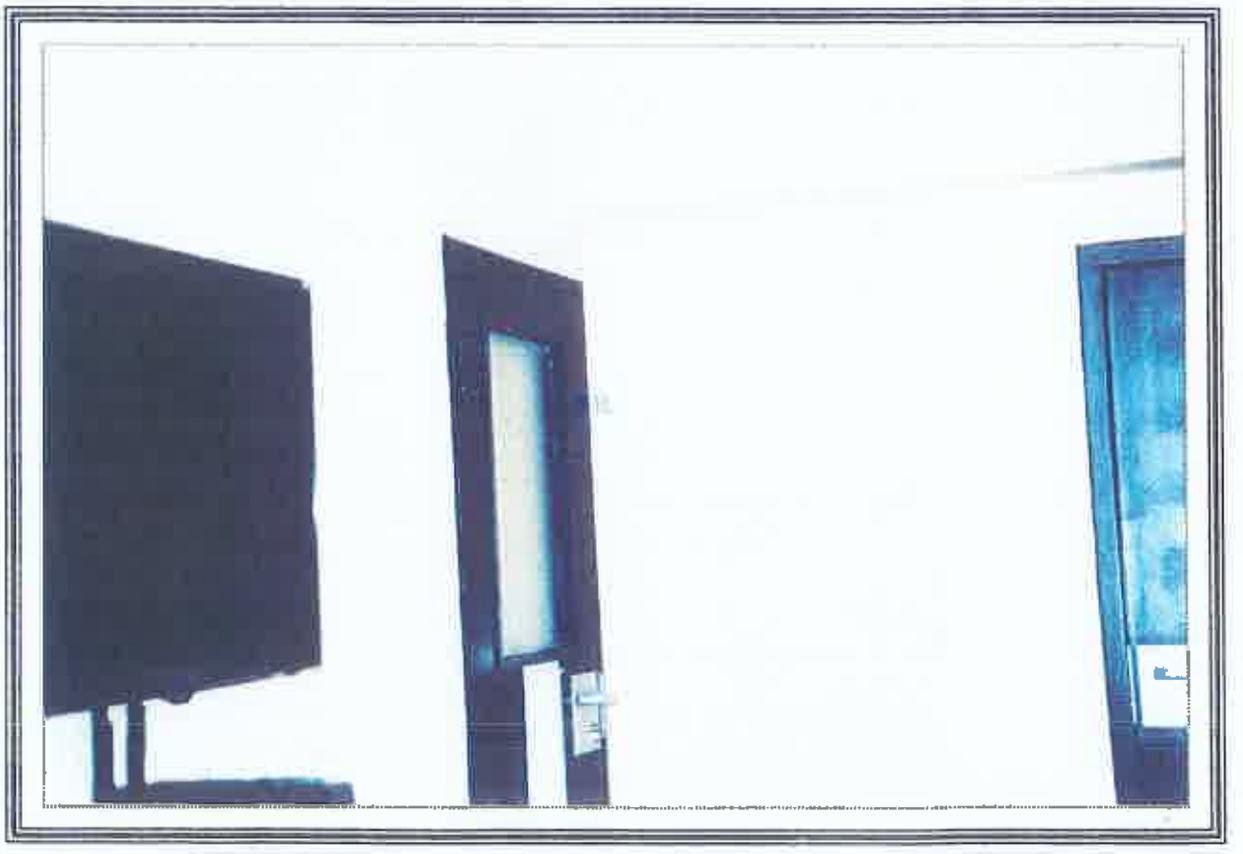
PHOTO: 40



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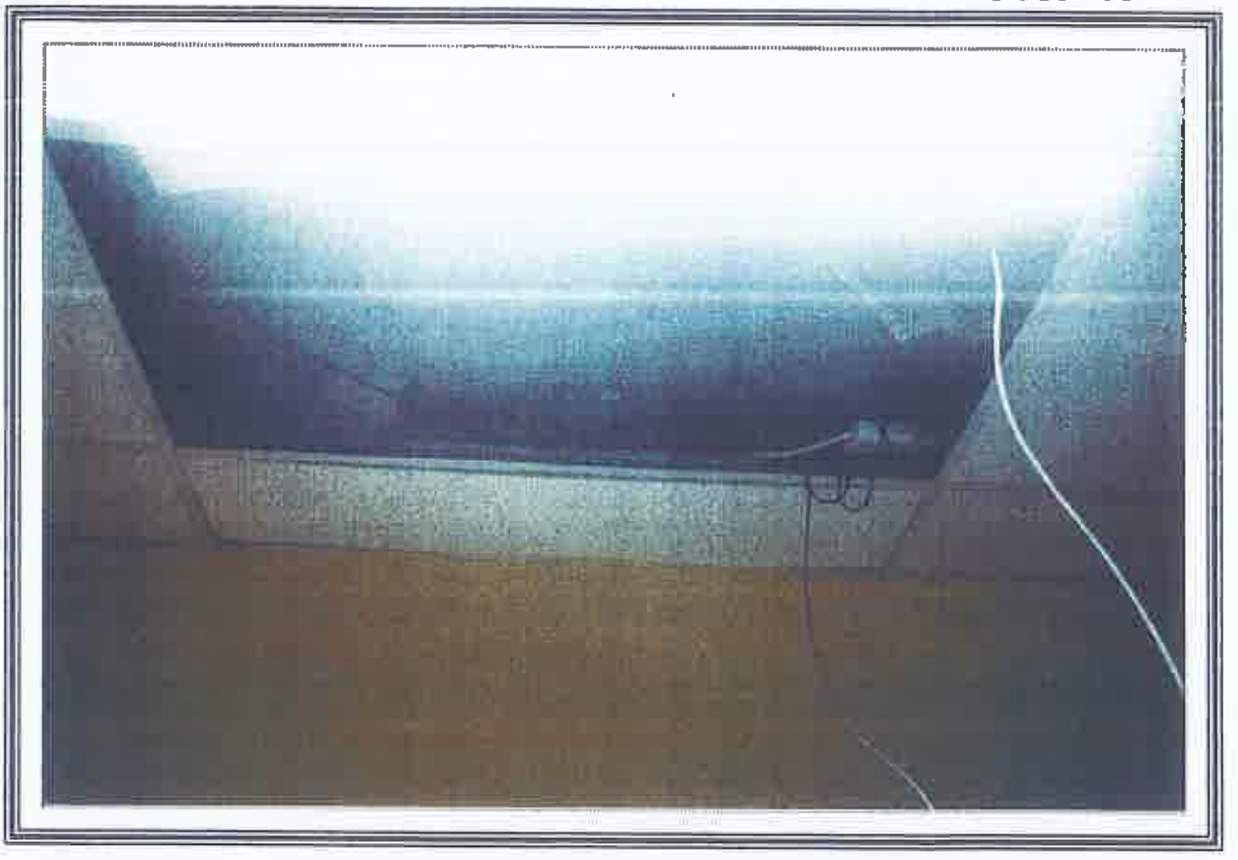

PHOTO: 42

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PHOTO: 43

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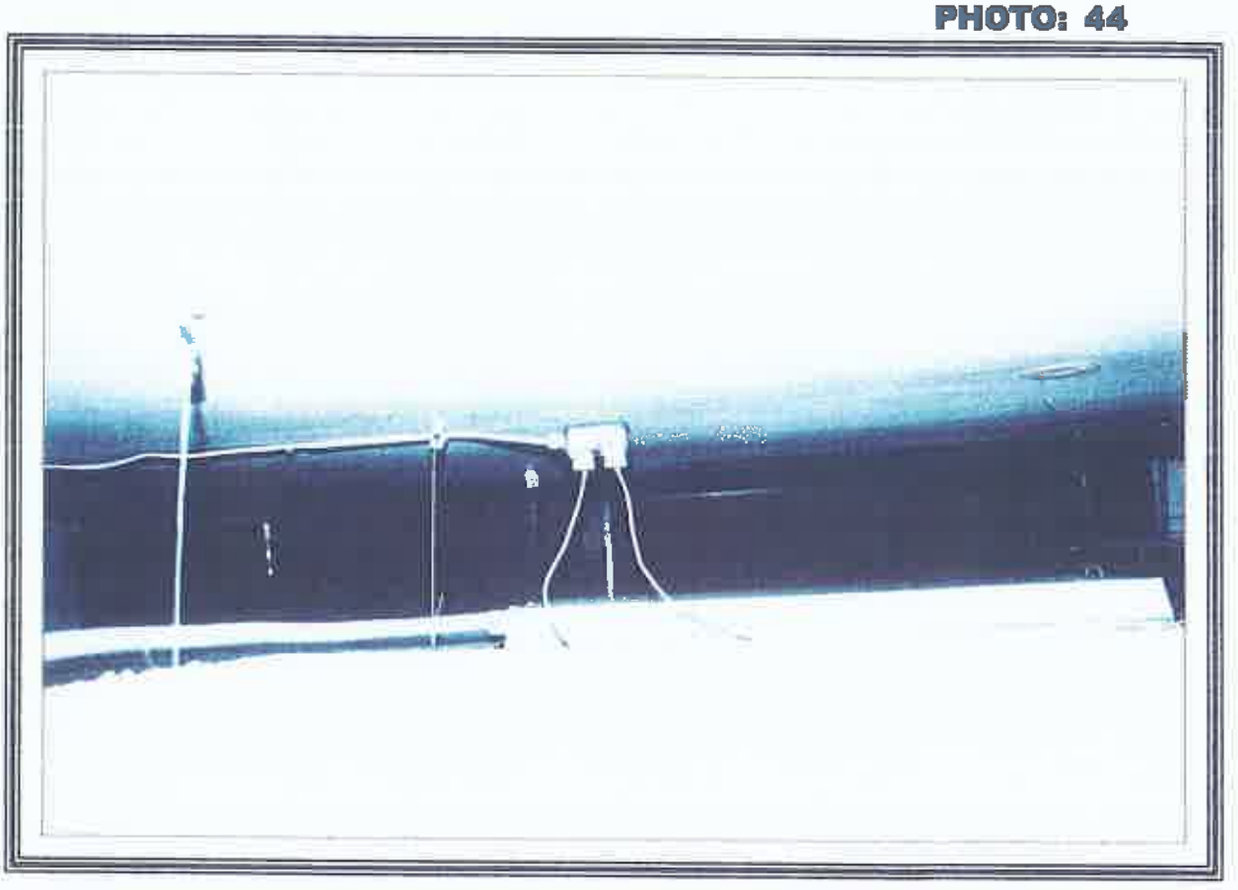
PHOTO: 44



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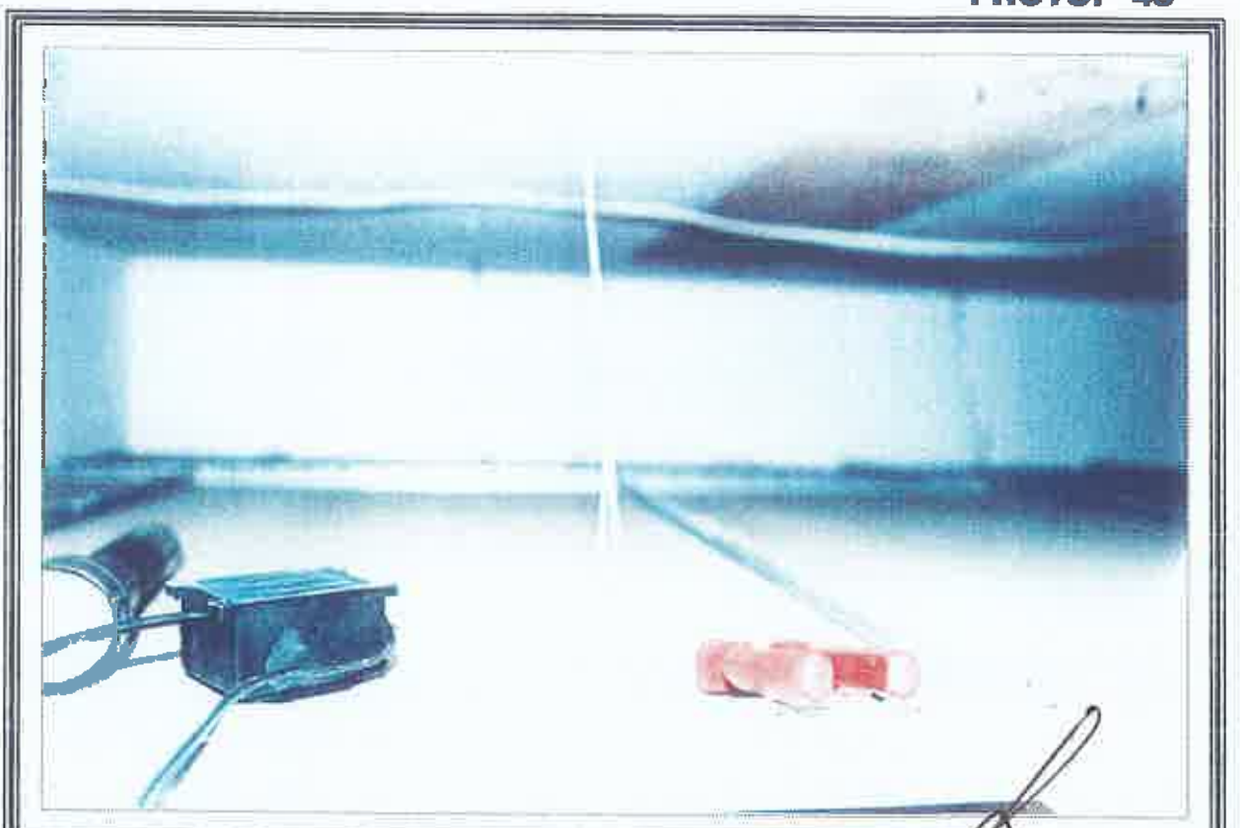

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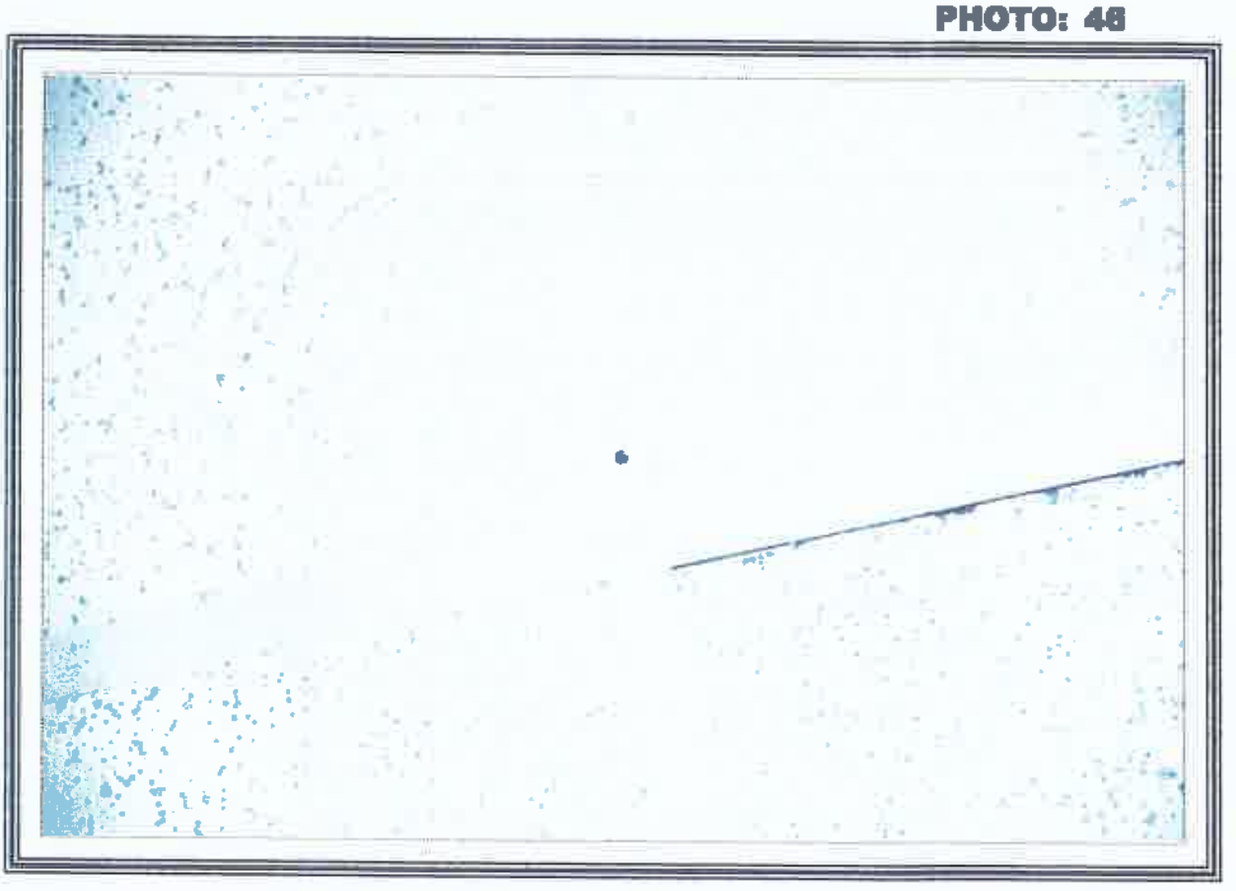

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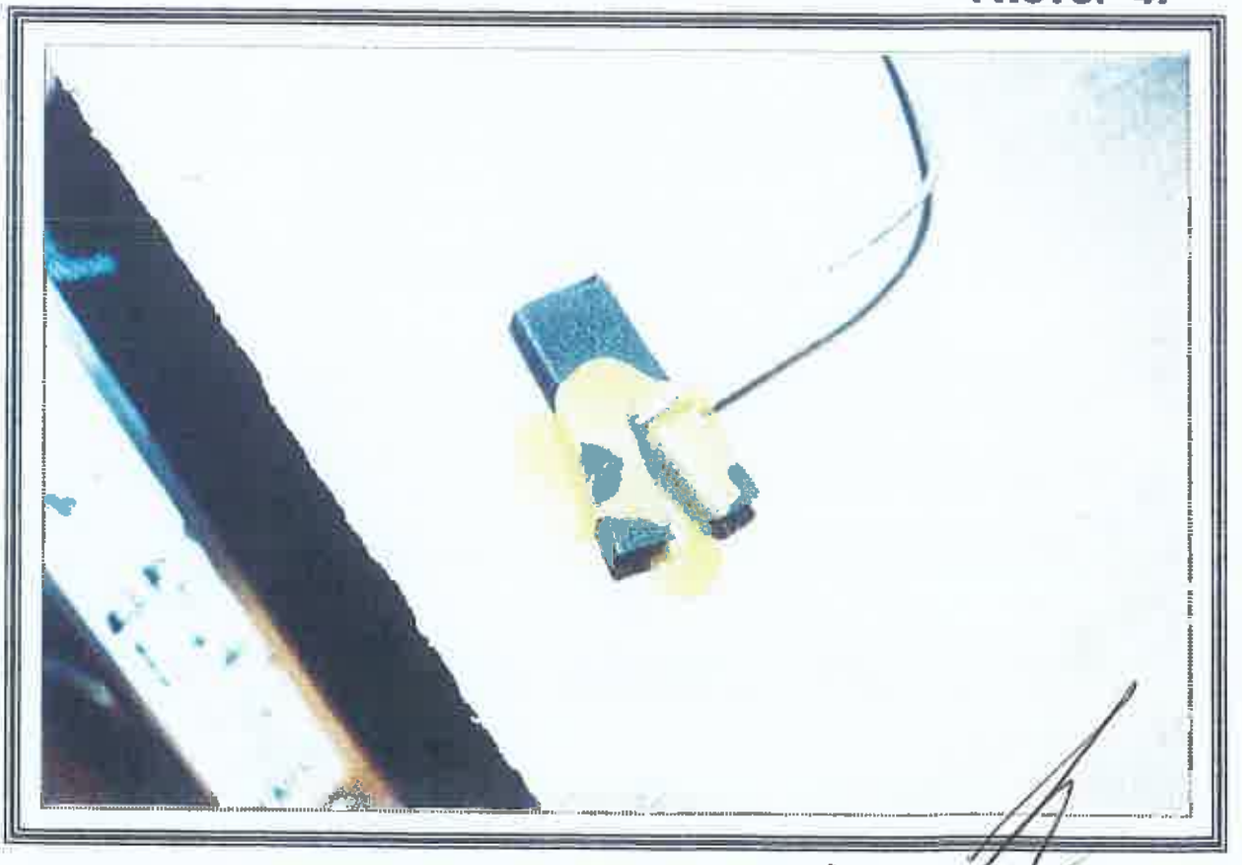

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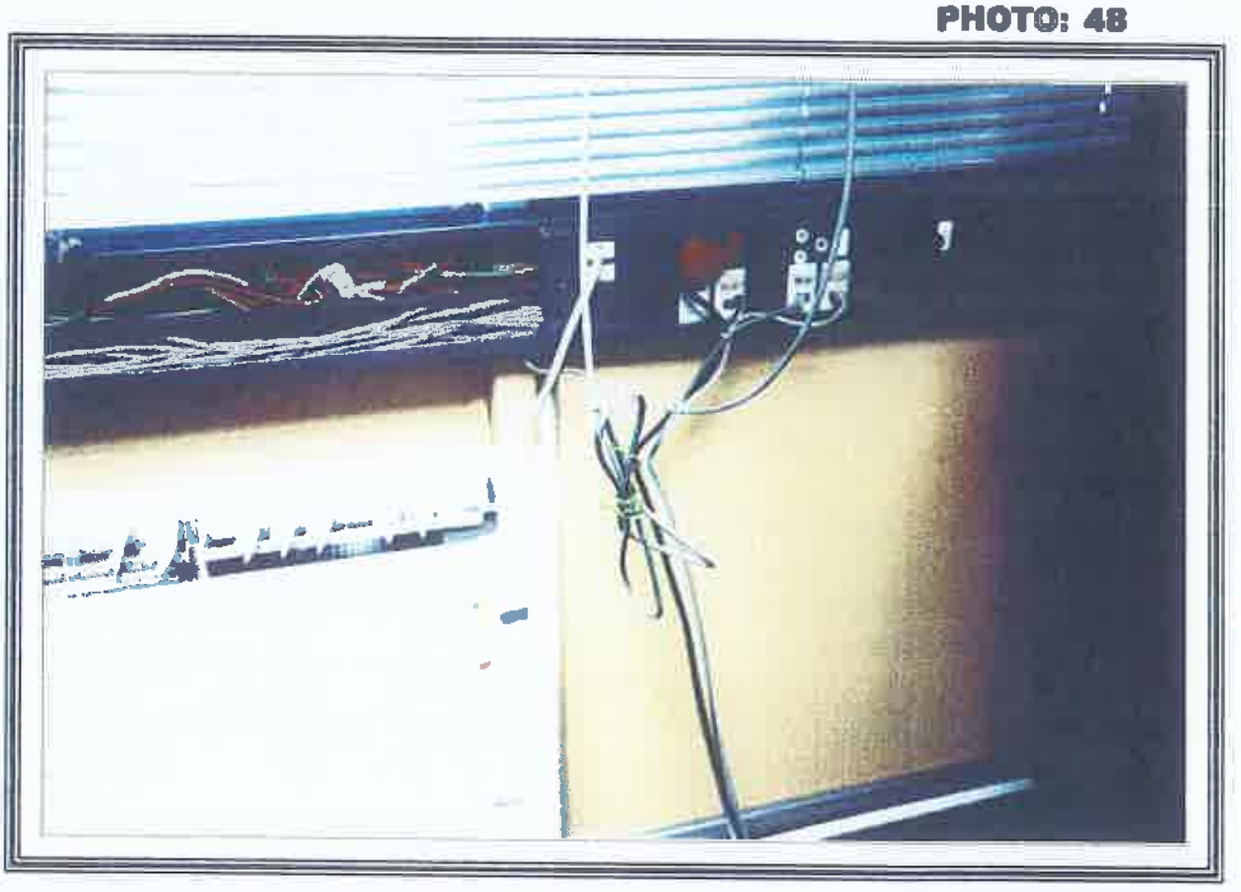

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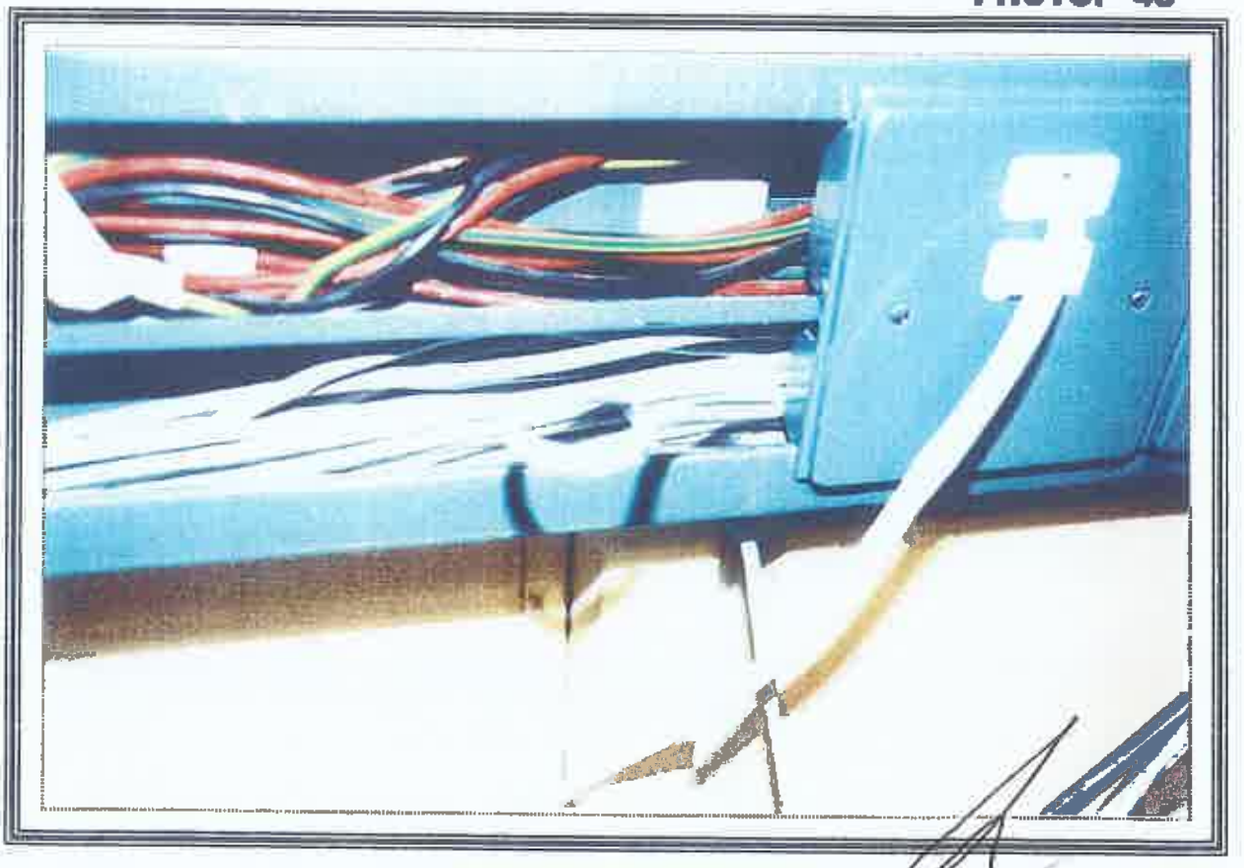

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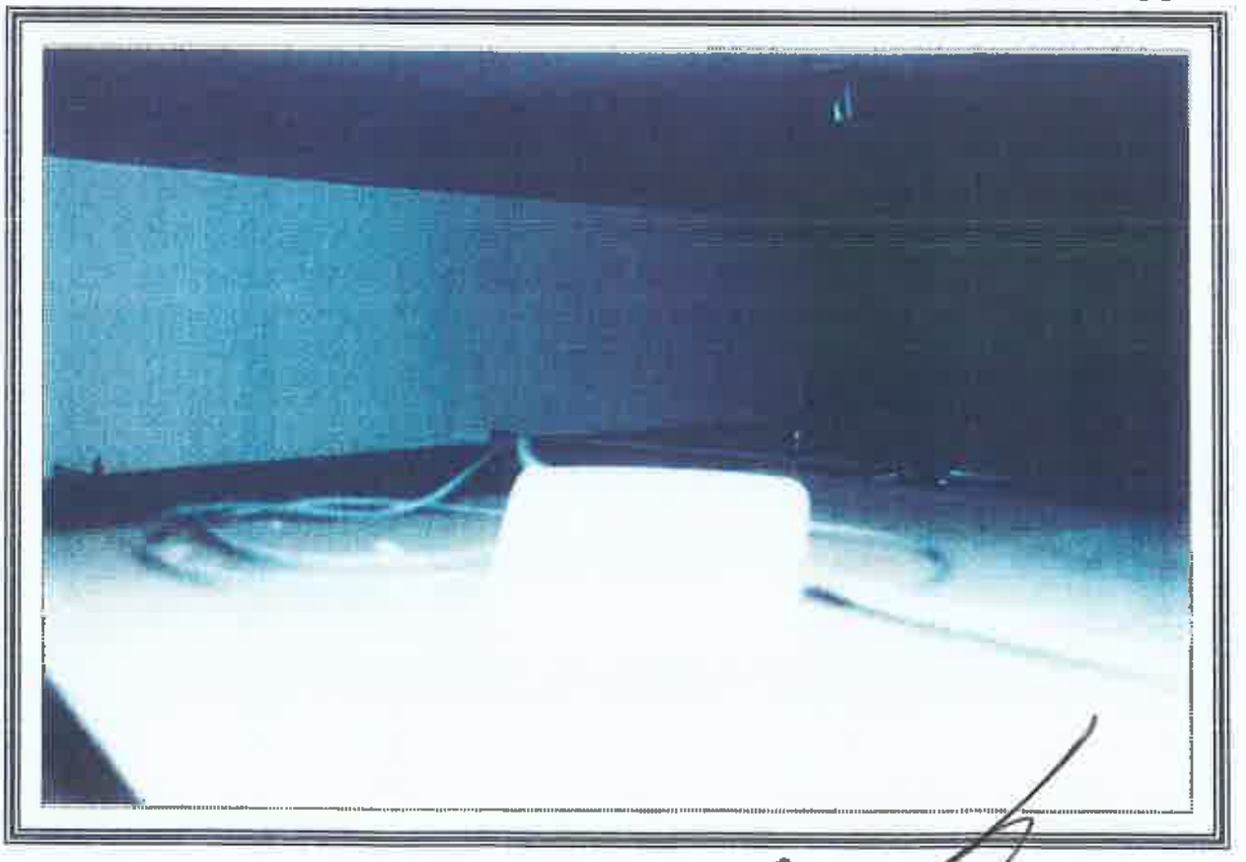
PHOTO: 50

PHOTO: 51



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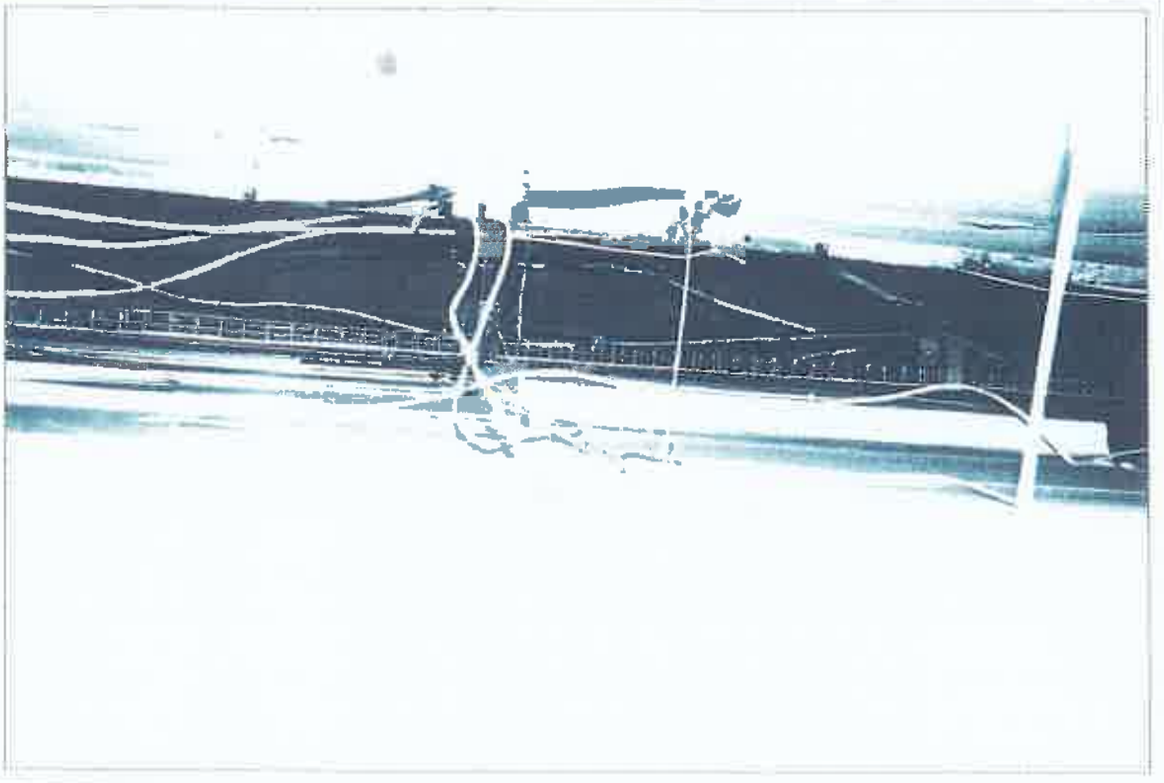

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PHOTO: 53

PHOTO: 54

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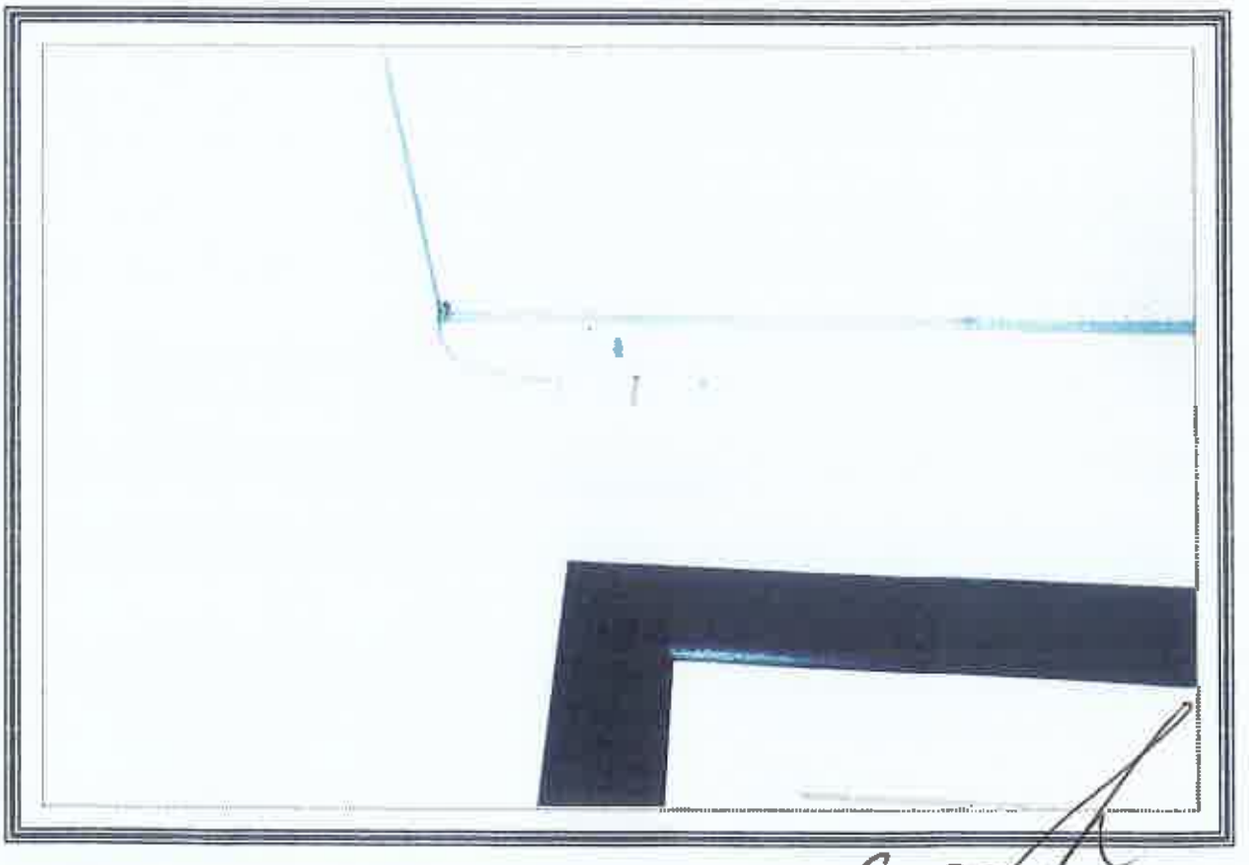
PHOTO: 55

PHOTO: 56



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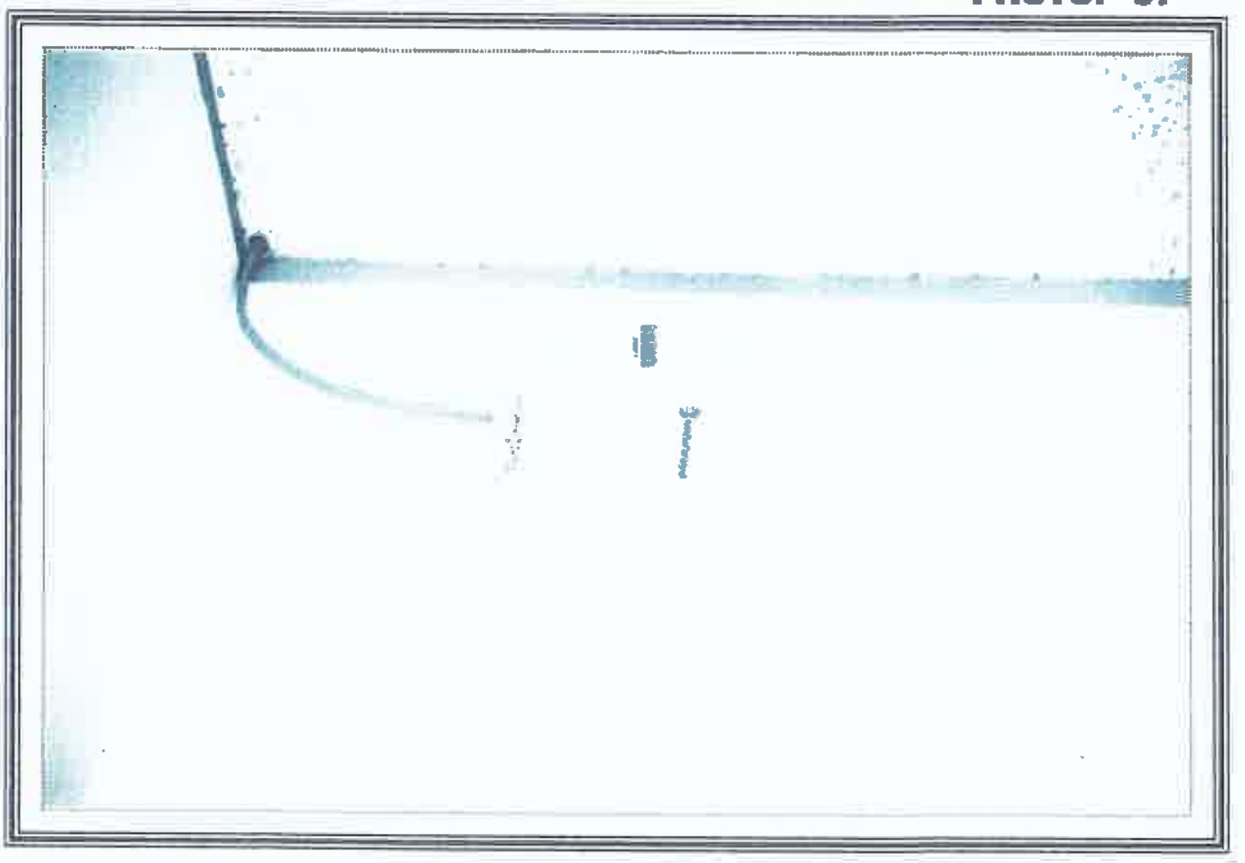

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