

THE INDICTMENT SHEET - AND CHARGES REPORT

IN THE MATTER BETWEEN:

THE ARK CHRISTIAN MINISTRIES CHURCH

AND:

THE ETHEKWINI MUNICIPALITY

THE BACKGROUND: THE ARK CHRISTIAN MINISTRIES CHURCH: THE ARK OF COMPASSION

The Christian Outreach and Disciple School - Church and The Ark Christian Ministries Church were formed by the late Pastor Derich Johann de Nysschen in 1983. At that specific request of the Durban City Council, they were both established in the Point waterfront area in 1987.

This Christian place of worship was developed into a 900-bed transitional housing shelter at 15 Browns Road and provided a wide range of essential services to the homeless of all races and the socially excluded poor who were in need of urgent physical, mental, emotional and spiritual support. This was a selfless service to those who had nowhere else to go in Durban.

The Ark Christian Ministries Church was not required to register with Department of Home Affairs and it was exempt from all levies and taxes by the South African Revenue Services – and the evidence of this can be found in the **Five (5)** Bundles of Supporting Documents upon request. This situation was to change when the institution was requested to relocate to new premises by the same Durban City Council to make way for future commercial development.

The KZN Department of Housing had agreed in 1999 to provide ‘relocation’ grant funding of R10 865 000 for the purposes of re-establishment – provided that the institution ‘satisfied’ the department in a two year accreditation process that began in 1999; and was completed in 2001. One of the criteria was that a Section 21 Company was registered to accommodate both the grant funds and the title deeds of the property that the Durban City Council would assist to identify, secure and enable the accredited institution to occupy; and continue their services to the wider homeless community. The suitable property needed to accommodate 1 000 people including trustees, management, staff and 900 residents under their safe care.

The Durban Ark Concept was registered on the 28th of June 1999 – see Bundle One – Page 1 – and on the 22nd of February 2000 the institution was assured of the support by the Durban City Council – see Bundle One – Page 17. A ‘structure’ of The Ark Christian Ministries Church was made clear on the 23rd of January 2001 – see Bundle One – Page 18 - and this included:

- A.) The Ark Christian Ministries Church – (A.C.M.C)** – religious freedom – and tithes and offerings – congregational accountability – also based on Biblical Christian Standards.
- B.) The Ark Social Concept - (T.A.S.C.)** – with public and wider community - and Receiver of Revenue accountability – and also based on more than 17 years of selfless service.
- C.) The Durban Ark Concept – (T.D.A.C.) – Section 21 Company – funding compliance’.**

On the 1st March 2001, the KZN Department of Housing released the grant funds for use by an accredited institution after a successful two year accreditation process and the notice of the availability of the R10 865 000 was given to the ACMC– See Bundle Two – Page 1. But it defies all logic that these grant funds were paid into the bank account of the Department of Metro Housing; and not the Durban Ark Concept – **T.D.A.C.** – at the time. The ACMC was on the 4th of May 2001 notified by the Metro Housing Department that the R10 865 000 was a funding that was also then all available for use by the institution – See Bundle Two – Page 2.

The Ethekewini Municipality had also assured the ACMC that their full support and assistance would be provided; and that the funds were also available for use, but in more than 4 years, they neither assisted to secure any suitable site – nor would they release the grant funds. It is on record that they were shown more than 35 properties and there is no evidence at all to prove that they assisted in the relocation process; and more than enough evidence exists to prove that it had no intention to assist this institution to re-establish on any site in 10 years.

The Ethekewini Municipality took ownership of the R10 865 000 on the 4th of May 2001 with the pretence, pretext and promise and assurance that it would assist in relocating the ACMC to a suitable site for more than 1 000 people - and from which the institution could continue to provide all the '*essential services*'. Once the grant funds belonging to the ACMC had been received, they proceeded to obtain an **Eviction Notice** - and then destroyed the only chance or opportunity for the institution to relocate to Montclair. Despite numerous pleas, appeals, requests and even demands by the MEC for KZN Housing to release the grant funds, this was ignored. The Eviction Notice was also received from the High Court of South Africa by falsely claiming that the ACMC *was in the way of immediate development*, but all buildings in 2016 remained vacant - and were never demolished. On the 17th of May 2004 the ACMC was then evicted by municipal vehicles that removed some residents - and also all the movable assets.

The Ethekewini Municipality took ownership of the R10 865 000 on the 4th of May 2001; with a promise of assisting to relocate the entire institution – but on the 17th of May 2004 it took ownership of the movable property and assets of the ACMC; and destroyed this 21-year old 900-bed institution. Less than 400 homeless people were taken away from the Browns Road property on the 17th of May 2004 - and the rest of the people under the personal care of the Church and institution were thrown onto the streets. The City of Durban was '*deprived*' of a place of care and compassion and the homeless in the Greater Durban Area were *deprived* of 2 700 meals a day, 900 beds and a **Beacon of Hope** by a small group of office bearers and a City Council that can no longer claim that Durban is a '*caring city*'. It is time for real justice.

The Ethekewini Municipality took ownership of the R10 865 000 on the 4th of May 2001 and it has had the '*unlawful and illegal*' use of this grant funding at terrible cost in human suffering and '*loss of life*'. The Chairman and founder – Pastor Derich de Nysschen – passed away in October 2004 as did many more of the residents, trustees and staff in the past 13 years. On the 15th of June 2005, Dr Peter Christopher Munns was appointed as Chairman of the ACMC and as Chairman of The Christian Coalition has taken the duty to seek that truth and justice!

THE INTRODUCTION: A SUMMARY REPORT: AND THE GENERAL PREAMBLE OF CHARGES:

The Summary of the General Preamble of Charges relating to the theft of the grant funds by the Ethekewini Municipality, the Durban City Council, the Executive Committee; and Offices of the Mayor and City Manager can best be summed up by the reality that this Municipality has all been unjustifiably and illegally enriched and unlawfully gratified since the 4th of May 2001 with the R10 865 000 that was made available to the Ark Christian Ministries Church – after that two year accreditation process by KZN Department of Housing between 1999 and 2001. There is no explanation as to how this municipality could claim ownership of the funds or even how it had come into having possession and control of these relocation grant funds.

The grant funds had been earned by virtue of the ability of the ACMC and institution to care for the 900 homeless people under their care; and the accreditation process demanded that the Durban Ark Concept Section 21 Company be the recipient of these funds and all the title deeds of the property secured with the assistance of this municipality. The municipality had assured the ACMC that they would assist; and had assumed ownership and control of all the funding based on an alleged commitment or pretence; to assist the institution to relocate to a suitable site from which it could provide all the essential services it had provided for more than 17 years. The '*difference*' was it was then a Government accredited institution in 2001.

The Ethekewini Municipality, and the City Council, with their Executive Committee, and their Offices of the Mayor and City Manager and all other support services departments - and the agents – had a legal duty and lawful responsibility and a moral imperative to ensure that this ACMC and its accredited institution were relocated to a suitable site; without any disruption of services or inconvenience to the Trustees, Management, Staff, or residents; from the day it had taken possession or assumed ownership of those grant funds belonging to the ACMC and the trustees, management and staff - and also 900 '*homeless*' people under their care.

The Ethekewini Municipality had that duty and responsibility to the ratepayers of Durban and all the homeless and socially-excluded poor in the Greater Durban Area; and also specifically the Point and beachfront area, to ensure that this Government-accredited institution was all retained for the benefit it provided to the city: and those in need. Despite the assurances, or alleged promises and pretences, the accused failed to perform and it took ownership and all control of these essential finances based on these false pretences and assurances in 2000. It also failed to perform its civic duty and contractual responsibility - to assist the relocation of the ACMC – despite having the property, resources, support services and infrastructure and the power and control to achieve a desired outcome and required result - even before 2001.

The Ethekewini Municipality had that perfect opportunity to do what was decent, right, just; and honourable for the benefit of the City of Durban and those who desperately needed the services of the ACMC and the institution – but there were those in all position of power and control that were of the '*misguided opinion*' and false belief that these grant funds could be retained if the ACMC was totally destroyed - and '*evicted*' from that Browns Road property!

The Ethekekwini Municipality has retained possession all of those grant funds since the 4th of May 2001 and despite numerous requests and demands prior to the eviction in May 2004 - and many more '*appeals*' from 2005 to 2015 *to re-establish this institution* - this municipal entity has retained all this grant funding in an interest-bearing '**Contingency Account**' for its own purposes and use. Meticulous research and careful investigation and constant contact and engagement with the accused and KZN Housing Department and Office of the Premiers since 2008 has provided undeniable evidence that these grant funds were still in their bank – and that they had no interest in assisting the ACMC to ever '*re-establish*' their institution.

The Ethekekwini Municipality has retained possession of all those grant funds since the 4th of May 2001 and they acquired them under false pretences and there has been no sign of any remorse, apology or regret for all the avoidable destruction of the ACMC and their 900-bed institution from anyone in this municipal entity. There is more than sufficient proof and the undeniable evidence that the accused had the opportunity in November 2003 to avoid that destruction of the institution when the **Home of the Good Shepherd** was secured by ACMC Chairman; and the accused then used various methods and fraudulent and corrupt activities to justify the retention of the grant funds – and which they knew would destroy the ACMC!

The criminal acts and activities of the accused have been investigated and exposed - and the National Prosecuting Authority, South African Police Services and the Criminal Courts of this country need to deal with these issues without favour, fear or apology – and the timing is all perfect in terms of the State of the Nation Address by the new President of South Africa and Cyril Ramaphosa made it clear that there was a need for collaborative cooperation to deal in a decisive manner with that fraud, corruption, crime and malfeasance within the municipal and public sectors of our society. We have the reassurance and support of this government!

The losses and damages of the institution have been quantified; and will be dealt with in the High Court of South Africa – and the claim for indemnity, restitution, recovery and all further relief is a matter for those judges and the **Court of Conscience**. There is more than sufficient evidence and proof that the accused had the opportunity to relocate the institution and also allow it to continue with its praiseworthy and selfless service to the needy and the homeless poor of Durban – but it chose to steal the grant funds - and evict and destroy the institution!

But, the loss in human life, including the founding Chairman of The Ark Christian Ministries, and the human rights abuse is a matter that will be decided by a Human Rights Commission; and also in the Constitutional Court of South Africa. Time brings all things to life – and more especially **The Truth**. The High Court of South Africa failed to protect the ACMC and needy in 2003; when it granted the **Eviction Notice** based on the testimony of the City Manager - that the institution stood in the way of '*immediate development*' - but the property at 15 Browns Road was never demolished or occupied - for more than 10 years after the eviction in 2004.

The Public Protector failed to protect the assets or property of the institution at the time of the eviction - when the accused used their vehicles to remove them - and residents in 2004.

THE HUMAN RIGHTS ABUSE: INDICTMENT REPORT: GENERAL PREAMBLE TO ALL COUNTS

AT ALL TIMES relevant to all the criminal charges and activities that are clarified as theft by, and under false pretences – and achieved by abuse of power and public trust – and resulted in the theft of R10 865 000 and the accrued interest since the 4th May 2001. This is currently conservatively estimated as being in the region of R140 million and that was stolen from the ACMC - Ark Christian Ministries Church – and 900 homeless poor that were all in the care of institution at the time of the accreditation and the release of those grant funds in May 2001.

AT ALL TIMES relevant to a contravention of the **PIE ACT** and human rights abuse of all the people that were removed to places unknown by the Chairman of the ACMC – Ark Christian Ministries Church – and who were reliant on the 2 700 meals that were provided and all the physical, mental, emotional and ‘spiritual support’ of the Trustees, Management, Staff - and the infrastructure that the institution had provided - to those in desperate need of services.

AT ALL TIMES relevant to the human suffering and loss of life and opportunity for those who were not provided with ‘*alternative accommodation*’ – and who had relied on the institution for support, employment opportunity, counselling and assistance to re-enter society with all the confidence and dignity that the institution had provided to those under their care at the time of the accreditation, the time of receiving the funds - and up until that eviction in 2004.

AT ALL TIMES relevant to the human suffering and loss of life and opportunity for those who had nowhere to go after the ACMC – Ark Christian Ministries Church – was evicted and then destroyed by the accused - and who were deprived of life-giving and life-changing support in a time of their lives where even their own families and society had abandoned them and the one place that understood their needs had been destroyed - by those lacking in compassion!

AT ALL TIMES relevant to the present claim in the High Court for indemnity, restitution, loss, recovery and damages and further relief sustained as the direct result of the criminal acts or negligence and reckless endangerment by a few municipal public servants who abused their power and positions of public trust to destroy this 21 year-old institution for reasons known only to themselves – and the primary reason to unlawfully take possession of R10 865 000.

AT ALL TIMES relevant to the ‘*unjustifiable enrichment*’ and *gratification* of a few municipal office bearers that failed to take into careful account and mindful consideration of their acts and actions and inactions – and the consequences. The evidence in support of this includes:

- A.) Five (5) Bundles of Evidence – as the result of preparation for the Claim for Damages.
- B.) The United Nations Universal Declaration of Human Rights: youthforhumanrights.org
- C.) The Salvation Army *Seeds of Exclusion* – June 2009 – [seeds of exclusion – June 2009](#).
- D.) The South African Constitution – as adopted on the 8th of May 1996 by the Assembly.
- E.) The Chapter Two of the May 1996 Constitution of South Africa – and a Bill of Rights.
- F.) The Freedom Charter of South Africa – as adopted by the Congress of People in 1955.
- G.) The Indictment Sheet for Criminal Acts – as the result of all this careful investigation.

THE GENERAL PREAMBLE TO ALL COUNTS: HUMAN RIGHTS: LEGAL: AND CRIMINAL ACTS

The General Summary to the Preamble and Course of Action includes the action to be taken against the Ethekewini Municipality, The Durban City Council, and The Executive Committee; and the Offices of the Mayor and City Manager and their agents; that assisted in stealing the grant funds and who also conspired to evict and destroy the ACMC - Ark Christian Ministries Church – in order to gain that unlawful control - and use of all their R10 865 000 grant funds.

At no times did the accused and co-accused in this matter consider the *'actual needs'* of this ACMC or the institution or the 900 people under their shelter, care and counselling. Neither is there any evidence of any of these services being provided to either those who were also removed from Browns Road premises at the time of the eviction by the accused – or any of the people that were not provided with any accommodation or support. The accused did at no time consider the consequences of destroying this institution, or the theft of the funding; that was specifically provided to relocate the entire institution to a suitable property for the provision of all the services that the ACMC had been accredited for between 1999 and 2001.

At no time did the accused and co-accused in this matter consider the actual needs of all the homeless people in the Point Waterfront Area, or the Greater Durban Area, or all those that had some form of social disorder, or were socially excluded, or abandoned by society and all family members and who also needed to recover from drug or substance abuse. While these *'office bearers'* had a duty to uphold the Sanctity of Life and the Constitution of South Africa – and the Bill of Rights – it is evident that the primary aim of all these public servants was to destroy the institution - and take illegal and unlawful possession of R10 865 000 grant funds.

The General Summary to the Preamble and Course of Action includes the following process:

1. **USE THE LAW** – The High Court of South Africa – **Case 919/2013** – to recover all the grant funds and the accrued interest on the R10 865 000 since the 4th of May 2001 – and the Discovered Evidence – **Five (5) Bundles** – will be utilised to expose the deceit and betrayal of trust and abuse of power and position to destroy the institution; and gain unlawful and illegal control of the grant funds. The action will seek to recover all property that is the rightful asset of the Ark Christian Ministries Church and there is a need to seek indemnity, restitution; and further relief for the loss and damage to this institution. The evidence is sufficient to prove that the accused had that opportunity and the resources to relocate the institution – but *'chose'* to evict and destroy it by a relentless and vexatious process; that could only have had one undesirable outcome.
2. **USE THE LAW** – The Constitutional Court of South Africa – **Case to be opened** – to be sure that the accused and the co-accused do not escape from all the crime of human rights abuse - and travesty of justice. It is the Human Rights Commission and a Public Protector and the Constitutional Court that all need to work in close collaboration to see that this crime against humanity does not go unpunished. The abuse of power by a few and the abuse of public trust and a need for greed is something that must end!

3. **USE THE LAW** – The Criminal Court of South Africa – **Case to be opened** – to bring all the accused to justice for the theft of the R10 865 000 in grant funds - and to ensure that justice is seen to prevail. Justice will not be delayed or denied in this matter and it will be the National Prosecuting Authority, the Justice Department - and the South African Police Services that all need to work together in collaborative cooperation to see that justice is achieved for the theft of all money - from an accredited institution.

While the Ethekewini Municipality Office Bearers and the Durban City Council and even those in the Executive Council and Executive Management Committee - and even their agents and legal representation - will all attempt to actually justify their actions, or even attempt to try and justify the possession and ownership of the grant funds that belong to the Ark Christian Ministries Church and the 900 poor in their care at the time of that accreditation process in between 1997 and 2001, there can be no defence against this travesty of justice and crimes.

While the Ethekewini Municipality Office Bearers and their Legal Representation will attempt to justify this crime against humanity and the social injustice as even being defensible on the that basis that they were unable to identify a suitable site for that ACMC 900-bed institution that was fully accredited by the KZN Government Department of Transitional Housing in the period of 1997 to 2001, the evidence that we have is that there was not only a '*suitable site*' in November 2003, but every single barrier was created to ensure that it was never secured.

While the Ethekewini Municipality Office Bearers and their Legal Representation will attempt to justify the withholding of the grant funds belonging to the ACMC and the 900 homeless – on the basis of their City Estates Municipal valuation of the Home of the Good Shepherd at a value established at R6 300 000 for this Montclair property, this can all be disproved by two other '*independent valuations*' of R9 million and more than R20 million by suitably qualified and experienced people in the area of commercial property valuations and their appraisals.

While the Ethekewini Municipality Office Bearers and their Legal Representation will attempt to justify a failed relocation of the ACMC and the 900-bed institution to Albert Park in 2001 and to the Home of the Good Shepherd in Montclair on the 27th of November 2003, there is damning evidence to demonstrate that these Social Assessment Reports were the result of its own manipulation and creation – with the services of their own personnel and agents in the ITrump Urban Regeneration Unit - and that assistance of the ANC Ward Councillor - Vusi Khoza. It is this individual that incited opposition; and a resistance to the relocation process.

While the Ethekewini Municipality Office Bearers and their Legal Representation will attempt to justify the failed relocation of the ACMC and the 900-bed institution on the basis that the attempts to secure a suitable site were exhausted, there is evidence to prove that there was no '*tangible proof*' to demonstrate that it had successfully secured any site – and more than enough evidence to demonstrate that their agents were in fact looking for '*accommodation*' in the Durban and surrounding areas for residents under the care of the ACMC; and its own institution. The evidence proves that the accused were planning to evict and destroy ACMC.

THE INDICTMENT SHEET: THE CRIMINAL ACTS: THEFT BY FALSE PRETENCES: THE ACCUSED:

1. **THE OFFICE OF THE MAYOR: OBED MLABA – (Accused No 1)**
(More comprehensively described in Paragraphs **1-16** of the General Preamble to all charges and applies to all mayors that were appointed to Office since 4th May 2001.)
2. **THE OFFICE OF THE TREASURER: KRISH KUMAR – (Accused No 2)**
(More comprehensively described in Paragraphs **17-32** of the General Preamble to all charges and applies only to him - as he has held this position from 4th May 2001.)
3. **THE OFFICE OF THE CITY MANAGER: MICHAEL SUTCLIFFE – (Accused No 3)**
(More comprehensively described in Paragraphs **33-50** of the General Preamble to all charges and applies to all City Managers appointed to Office since 4th May 2001.)
4. **THE OFFICE OF THE DEPUTY CITY MANAGER: DEREK NAIDOO – (Accused No 4)**
(More comprehensively described in Paragraphs **51-57** of the General Preamble to all charges and applies to all Deputy City Managers in this Office since 4th May 2001.)
5. **THE OFFICE OF THE HOD OF METRO HOUSING: COGIE PATHER – (Accused No 5)**
(More comprehensively described in Paragraphs **58-77** of the General Preamble to all charges and this applies to all HOD's of Metro Housing since the 4th of May 2001.)

GENERAL PREAMBLE TO ALL COUNTS: ALL SUPPORTED BY FIVE (5) BUNDLES OF EVIDENCE:

AT ALL TIMES RELEVANT TO ALL THE CHARGES: THEFT OF FUNDS UNDER FALSE PRETENCES:

1. **Accused No 1** was the Mayor of Durban in the period of the 4th of May 2001 until the eviction of the ACMC and the destruction of the institution on the 17th of May 2004. He is a South African citizen and has served in various positions of public trust - both in South Africa and England – as ambassador for the South African Government. He currently lives in South Africa and was aware of both the receipt of grant funds and the eviction and destruction of the ACMC and the institution on the 17th May 2004.
2. **Accused No 1** held the position of Mayor of the City of Durban - Ethekewini Municipal Region – and was responsible for civic duties attached to this Office – which included the safety: security: planning: development: management: and the general wellbeing of all those people within this geographical area. These people included civil society.
3. **Accused No 1** was well aware of the intentions of the Point Waterfront Development Company to develop the Point Waterfront Area into new commercial and residential nodes and the partners were the Malaysian Companies of Renong and Rocpoint and were equal share partners with the Ethekewini Municipality. Accused No 1 was aware that the Ark Christian Ministries Church had agreed to relocate to another 'suitable' site to also make way for the planned growth and development. It was done in 1999. It was agreed to relocate to another suitable site - if the Durban City Council assisted.

4. **Accused No 1** was also aware of that agreement by the KZN Department of Housing - to provide the grant finance of R10 865 000 to assist with the relocation process and this was conditional that the ACMC was able to pass their accreditation process that satisfied the Department that it was able to care for all the 900 homeless people in a 17 – year old institution situated at 15 Browns Road - in the Point Waterfront region.
5. **Accused No 1** was also aware that these grant funds were the property of the ACMC and were essential to move to a suitable site for the institution, as well as its assets - and all movable property to continue to provide all the services to the 900 homeless people that were under the institutions care and shelter. Accused No 1 was aware it had provided the assurance to the ACMC; that it was able to assist in identifying and securing and facilitating the relocation of the '*entire institution*' on the 22. 02. 2000.
6. **Accused No 1** was also aware that the ACMC had identified property in Albert Park in 2000 - and that the Social Impact Assessment Report had been conducted by an ANC Ward Councillor – **Vusi Khoza** – that was part of the ITrump Planning Committee that operated from the Office of the Mayor and the City Manager from 2000 and that the ward councillor for Albert Park was supposed to be identifying suitable site for ACMC and the institution; as the grant funds had been received in the Metro Housing bank account on the 4th of May 2001. Accused No 1 had agreed to assist in the relocation!
7. **Accused No 1** was also aware that the reason for the grant funds was to relocate the ACMC and the institution and that the Ethekewini Municipality had an obligation and duty to assist in that process – and that the source of the grant funding were the KZN Department of Housing and the use of those funds was specific to relocate the ACMC and the institution; and not to create barriers or identify alternative accommodation for only some of the residents all under care of ACMC and its institution - from 2001.
8. **Accused No 1** was also aware that it had a duty and responsibility to assist in all that successful relocation and yet the Office of the Mayor and the other co-accused did in no way '*assist*' in this desired and required outcome and instead of really assisting, it then '*proceeded*' to apply for an **Eviction Notice** – while those grant funds belonging to the ACMC and the 900 homeless people under their care were in the Metro bank account. The intention of No 1 and all the co-accused was to destroy the institution!
9. **Accused No 1** was well aware that not one single suitable property had been found by the ward councillor and the ITrump entity that had been established; to give that impression that it was also committed to the relocation process – and more than 31 properties were introduced to the Department of Metro Housing and not one in the five year period from 1999 to the time of the eviction in May 2004 was ever secured.
10. **Accused No 1** was well aware of those negative Social Assessment Reports that were compiled by Vusi Khoza in the Albert Park and Montclair areas - and was also aware that this Ward Councillor had been looking for properties for the accommodation of the residents of the ACMC for more than two years before the eviction - and was not in any way committed to securing a site for the institution. We have all proof of this!

11. **Accused No 1** was well aware that the ACMC had identified and secured its own site at the time that ITrump had withdrawn from the relocation process; and the need to find a suitable site before the impending eviction in November 2003 was essential. It is Accused No 1 and other co-accused within the Ethekewini Municipality that caused a Purchase and Sale Agreement to collapse based on the Municipal Valuation of the property – and connived and manipulated by their City Estates Department in 2003.
12. **Accused No 1** was well aware that the Home of the Good Shepherd in Montclair was the only suitable site and it was the only opportunity to avoid the destruction of that institution - through that eviction in May 2004. There is no evidence to demonstrate the Accused and co-accused had any other intention but to evict and destroy and the Ethekewini Municipality City Manager and the HOD for Metro Housing also refused to heed appeals, pleas, requests and demands to release all grant funds in December of 2003 to secure the Montclair property. They refused to listen to the MEC of Housing.
13. **Accused No 1** was well aware of the Report to the Executive Committee by the HOD for the Metro Housing that demonstrated that more attention had been given to the task of securing the '*alternative accommodation*' at the Ethekewini Municipal shelters and other obscure sites for the residents of the institution – than the primary task of relocating the ACMC and the 900-bed institution. This Report was also signed by co-accused who had single-mindedly all taken the decision to evict an entire institution.
14. **Accused No 1** was well aware of the eviction on the 17th of May 2004 and also use of Municipal vehicles to also take possession of the assets and movable property of the ACMC and the institution and the value of all this was in excess of R500 000 – and it also included beds, bedding and linen, food, clothing, stores, equipment and records.
15. **Accused No 1** was the holder of the highest Office in the municipality and was given the mandate and authority to uphold the 1996 Constitution of the Republic of South Africa – as adopted on the 8th of May 1996 - and as amended on the 11th of October 1996 by the Constitutional Assembly and held this position of public trust and had by his actions and behaviour abused this position of power. At no time did Accused No 1 ever display the compassion for the poor or attempt to prevent that eviction when he had all the authority and power to do what was decent, fair, ethical - and moral.
16. **Accused No 1** had been complicit in this theft of grant funds from the institution and the ACMC and there is more than sufficient evidence and proof to prove that he had no intention of assisting in the relocation of the institution; and there is an adequate history of evidence over this period between the time of receiving those grant funds and the time of the eviction - to demonstrate the intentions of this municipal mayor. It is also fair to say that all other '*mayors*' after **Accused No 1** knew of this travesty!
17. **Accused No 2** was, and still is, the City Treasurer of the Ethekewini Municipality - and is an adult male who resides in the area of Durban and is also a South African citizen employed by the Durban City Council. He is a public servant holding a senior position on the Executive Management Committee and was employed in this position at that time of planning for the Point Waterfront Development and was aware of the plans.

18. **Accused No 2** was well aware of the future development intentions of their partners in the Point Waterfront Development and the circumstances relating to the planning and also approval by the Ark Christians Ministries Church and the 900-bed institution to relocate to another suitable site that would be assisted by the Durban City Council and the various departments that could facilitate a relocation process for the ACMC.
19. **Accused No 2** was well aware of that **Agreement** by the KZN Housing Department to provide grant funding to the ACMC to the value of R10 865 000; to assist in the costs to relocate to a suitable site for the institution; and that there was going to be a long accreditation process to satisfy the Department that the ACMC was capable of taking care of 900 homeless and destitute people - that required the services of the housing shelter - and transitional institution. In this office, Accused No 2 dealt with all '*fiscal*' issues and this included being familiar with that accreditation process - that began in 1997 and ended in 2001. Accused No 2 facilitated the grant funds into their account.
20. **Accused No 2** was well aware that the Ethekwini Municipality had also provided the ACMC with the assurance that it would assist the institution to move and relocate on the 22.2.2000 to Albert Park or any other suitable site without inconvenience or that disruption of services. Accused No 2 had also been aware of the grant funds being in the Metro Housing bank account from the 4th of May 2001 – and that all these funds were to be only utilised for the relocation of the ACMC - and the 900-bed institution!
21. **Accused No 2** was well aware that the grant funds belonging to the ACMC had been placed in a '*Contingency Account*' and this had been confirmed on several occasions in the Executive Committee Report in February 2004 and 2008 and December 2016 – when the Office of the Premier and its legal representative – **Linda Zama** - had made contact with Accused No 2 to establish if the funds could be released to purchase the property in Hibberdene to re-establish the ACMC - and also that 900-bed institution.
22. **Accused No 2** was well aware that the grant funds were made available as the result of a two year accreditation process between 1999 and 2001; and that they could not at all be utilised for any other purpose than to relocate the entire institution before the eviction on the 17th of May 2001 – or to re-establish the ACMC and the 900-bed institution for homeless people. This was confirmed by the HOD of Metro Housing – Cogie Pather – Accused No 5 – at a meeting held with the new Chairman in 2008. It was Accused No 2 that had then refused to release the funds once again to ACMC.
23. **Accused No 2** was well aware that more than 31 properties had been introduced to the Ethekwini Municipal decision-makers and office bearers - since the beginning of the accreditation process 1999 – and yet not one single property had been secured to either relocate the ACMC before the eviction in May 2004; or re-establish ACMC.
24. **Accused No 2** and the other co-accused had the only opportunity in November 2003 to release the grant funds to prevent the eviction and destruction of the ACMC and a 21-year old 900-bed fully-accredited transitional housing institution – and also assist more than 1 000 people from being negatively affected – but Accused No 2 did not a single thing to avoid this eviction from taking place. There was no sign of any support

- or assistance but the accused had no challenge in funding legal representation for all the eviction – or to defend their perceived right to the ownership of the grant funds.
25. **Accused No 2** and other co-accused had a duty, responsibility and *'moral imperative'* to ensure that this institution was not destroyed - and yet as soon as all these grant funds had been received, the **Eviction Notice** was applied for and every single barrier was used to ensure that the ACMC and 900-bed institution was never *'relocated'* and never re-established since R10 865 000 had been paid into a Metro Housing account.
 26. **Accused No 2** and other co-accused had signed that Executive Committee Report on the 16th of February 2004 from the HOD of Metro Housing making recommendations that the ACMC be evicted - and that less than 400 homeless people under the care of the ACMC and institution be relocated to premises under that *'management control'* of Ethekewini Municipality. The interest on those 'grant funds' was to be used for this.
 27. **Accused No 2** and the co-accused had no intention to assist the ACMC or institution – but more than sufficient evidence exists to demonstrate that the office bearers of the Ethekewini Municipality had only one singular purpose in mind - and that was the destruction of the ACMC and the theft of the grant funds from the institution. There is no other explanation for the actions and behaviour of the accused in this travesty.
 28. **Accused No 2** and the co-accused at no time demonstrated any remorse or regret or compassion for either the ACMC and their leadership, or the 900 homeless people in their care. This entire process to take possession of the grant funds and then evict all the trustees, management, staff and residents when other options existed was really orchestrated and well planned – and it was achieved in a process of organised crime.
 29. **Accused No 2** and the co-accused cannot demonstrate one single instance of sincere interest in the relocation process that achieved a positive outcome since 1999; and it failed to secure a single property – and even went to great lengths to ensure that the communities of Albert Park and Montclair were opposed to the relocation of poor or socially-excluded people and the institution moving to these areas in 2001 and 2003.
 30. **Accused No 2** and the co-accused worked together to ensure that the grant funds in 2001 were never paid into the bank account of the ACMC or the Section 21 Company that had been established and registered in June 1999 at the specific request of KZN Housing. This was the **Durban Ark Concept** and it could only have taken collaborative cooperation and influence at the highest levels to get the funds into Metro Housing.
 31. **Accused No 2** and the co-accused could not have achieved this without some form of cooperation and assistance from the Department of Housing – and the influence that was required to bypass the payment of the grant funds into the Durban Ark Concept Company bank account took influence and support - at the highest levels of control!
 32. **Accused No 2** and the co-accused had a close working relationship within the Durban City Council, Ethekewini Municipality, and the Executive Management Committee and also in the Offices of the Mayor and City Manager. Both that ITrump Urban Renewal entity and the 2000 Social Assessment Report were the by-products of that planning that gave the impression of assisting the relocation process; but created the barriers.

33. **Accused No 3** is an adult male and was City Manager of Durban at the time of both the receipt of the grant funds into the Metro Housing bank account in May 2001 and the eviction on the 17th of May 2004. He is a South African citizen and former activist and lecturer at the University of Kwa Zulu-Natal and an active member of both ANC – and South African Communist Party; and has demonstrated anti-Christian and also a lack of compassion for the poor and homeless - in this matter relating to the APMC.
34. **Accused No 3** was featured prominently in the **Manase Report** and also responsible for the awarding of the failed Metro Billing System that was awarded to the dubious contractor who had failed to perform - and which had cost the ratepayers of Durban in excess of R750 million. He had a '*close relationship*' with all members of the past Executive Management Committee and Council that include Accused 4 – Deputy City Manager in Procurement and Infrastructure Development; and Accused 2 - Treasurer and Accused 5 – the HOD for Metro Housing Department. Accused 3 and Accused 1 – the City Mayor – had established ITrump; and the Social Assessment Report of their *Environmental Interface 2000* entity that was managed by Richard Dobson and Ward Councillor Vusi Khoza – who operated from the Office of the Mayor and answered to Accused No 3. Accused No 3 had established all these entities - and also the eviction!
35. **Accused No 3** is presently a consultant to the Ethekewini Municipality and has formed the company – City Insight (PTY) Ltd. He was also responsible for building the Moses Mabhida Stadium at a cost of R4.8 Billion within two years and yet failed to secure a single property for the APMC and the institution within that period of more than 6 years from 1997 to 2004. He had also sold that Natal Command site to a film studio developer that had an actual market value of R375 million for a mere R15 million and yet it was this same person that refused to release the grant funds - for the purchase of the Montclair property - that had been valued at 3 times his Municipal Valuation.
36. **Accused No 3** owned property in Gillespie Street in close proximity to the 15 Browns Road premises of the Ark Christian Ministries Church - and had established the Point Waterfront Development Company with the two Malaysian investment partners of Renong and Rocpoint in 1996. He was central to the relocation process and had after having received the grant funds into Metro Housing bank account: then proceeded to obtain an Eviction Notice that would ultimately destroy the APMC and institution.
37. **Accused No 3** was responsible for all the matters of City Management: Planning: and local economic development - and it was the Planning and Development Department that provided the letter of assurance and comfort to the APMC confirming support in the Albert Park relocation on the 22nd of February 2000 - while the Social Assessment Report prepared by his ANC Ward Councillor – Vusi Khoza – provided a rebuttal to it.
38. **Accused No 3** had orchestrated this Letter of Comfort and Rebuttal in 2000 - and on the basis of that assurance, the KZN Department of Housing had released the grant funds into the Metro Housing bank account on the 4th of May 2001 – and not Durban Ark Concept bank account under management of the APMC - Ark Christian Ministries Church. Under the alleged pretext, promise and pretence of a commitment to APMC

- relocation, this R10 865 000 was released to the Department of Metro Housing and it was stolen under false pretences. This was commercial crime and organised theft!
39. **Accused No 3** had no intention of ever assisting in the relocation process of ACMC – and there is not one single element of proof that demonstrates any willingness that this was the aim and objective of this individual and the co-accused – but there is a history of obstruction, resistance, deceit, betrayal and theft. There is a history of the abuse of power and human rights and this entire process is replete with undeniable evidence of organised crime and theft under false pretences of R10 865 000 and all the interest accrued since the 4th of May 2001. Accused No 3 only had one objective.
 40. **Accused No 3** immediately proceeded to obtain an Eviction Notice against the ACMC once the grant funds were in the Metro Housing Bank account and then lied to High Court Judges regarding the falsified evidence that the ACMC and institution was in the immediate way of development – but these buildings were still vacant in 2005 – and only *'partially'* used in December of 2016. It was on the basis of these lies that a Notice of Eviction was secured and on the 17th of May 2001 the ACMC was destroyed and more than 1 000 people were thrown onto the streets - by Municipal personnel!
 41. **Accused No 3** had orchestrated this eviction and there is more than enough proof or evidence to demonstrate that the ANC Ward Councillor – **Vusi Khoza** – had incited a strong opposition to the relocation in both Albert Park and Montclair and that Khoza had also not been looking for any suitable sites for the relocation of the ACMC and a 900-bed institution; but rather looking for alternative accommodation for only some of the residents under the care of the institution. **Accused No 1** – the City Mayor – is also known to have been aware of this deception and a clear betrayal of public trust.
 42. **Accused No 3** was determined to destroy the institution and to take possession of all the grant funding. That is exactly what he had done and there is no defence against a clear action of illegally and unlawfully taking possession of all the grant funds in May 2001; and then refusing to release the funds when a suitable site had been identified and secured in November of 2003 by the ACMC. Accused No 3 had also immediately applied for an Eviction Notice once the grant funds had been channelled into Metro Housing bank account – and it made sure that the ACMC was destroyed in May 2004.
 43. **Accused No 3** was instructed in December 2003 to release the grant funds to secure and purchase the Home of the Good Shepherd to prevent the impending eviction by the MEC for KZN Department of Housing – and he refused. This ended in the ACMC being evicted and destroyed and the grounds for refusing to release the grant funds was based on a Municipal Valuation that had also been manipulated and fabricated to discredit the Purchase and Sale Agreement that had been finalised by the ACMC.
 44. **Accused No 3** had instructed their City Estates Department to produce a *'Municipal'* Valuation on the fully furnished 6 Hectare property in Montclair for R6.3 million; and it had two other valuations of more than R9 million and more than R20 million and it defied all logic that Accused No 3 could actually get involved in that decision-making process on the suitability of the property and the actual valuation process of the site.

45. **Accused No 3** orchestrated the entire process of the management and control of the grant funds, the rebuttal of Social Assessment Reports at Albert Park and Montclair – with the support of his co-accused and agents – and then secured the Eviction Notice and signed the **Executive Committee Report** on the 16th of February; with all 3 other co-accused to vote in favour of evicting the ACMC and moving some residents to the shelters and properties under a management control of the Ethekewini Municipality.
46. **Accused No 3** chose to evict and destroy the ACMC and that 900-bed institution on the 17th of May 2004 – and he orchestrated the use of Municipal vehicles to remove all the assets and movable property worth in excess of R500 000 – as well as some of the residents under the care of the ACMC. He destroyed the institution and the lives of more than 1 000 people – and this was avoidable had he released the grant funds in December 2003 to secure the property: Home of the Good Shepherd in Montclair.
47. **Accused No 3** had orchestrated this entire travesty and human rights abuse and this could not have been achieved without the full support and collaborative cooperation of the other co-accused and agents that were under his management and control. It is clear what this office bearer and city manager did and it is true that time brings all things to life – and more especially the truth. The process that was followed by all of the co-accused cannot be opposed, disputed or denied and all evidence is supported by research and investigation that has been done since July 2005 - and are damning!
48. **Accused No 3** did everything in his power and control to ensure that the ACMC was never going to be relocated or re-established in Durban or anywhere else. He made it possible by his influence over all the co-accused and the reward for destroying this Christian place of worship and the institution was the R10 865 000 grant funds - and the personal satisfaction of having closed down something he detested. He stole the money from the institution and needy and he abused his position of public trust with the manipulation and negligence of duty – and this was theft and fraud by that false pretence of agreeing to assist in that relocation process - but did not perform at all!
49. **Accused No 3** is guilty of reckless endangerment and there is no doubt that his acts of deceit, manipulation, and commercial crime and organised crime no doubt caused misery, suffering and even the death of many of the people that were all affected by the destruction of this institution. He deprived the City of Durban and a surrounding area of an accredited institution and he deprived the poor and needy of a Beacon of Hope that could have meant the difference between life and death to many people!
50. **Accused No 3** had no compassion for the poor and was anti-Christian in his socialist and communist belief system and demonstrated this personal bias and *'intolerance'* throughout the relocation process. He ignored the Rule of Law and The Constitution of South Africa and the Bill of Rights. Two months before the May eviction this public servant published an article in the Ethekewini tabloid *Metro Beat* on the 19th of March 2004: *"I urge the public not to be taken in by emotional media statements, but rather that they should insist that all the 'facts and interests' be placed in the public domain; and I have no doubt that something rotten or political will be found"* – **M. Sutcliffe**.

51. **Accused No 4** was the Deputy City Manager at the time of the decision being taken by the Executive Management Committee on the 16th of February 2004 to evict and destroy the ACMC and the 900-bed accredited institution. He is an adult male and is known to have been employed as a public servant in the area of Procurement and Infrastructure in the office and position of Deputy City Manager. While Accused No 1 – the City Mayor – was not a signatory to that Executive Committee Report from the HOD of Metro Housing, he had already played his part in ensuring that the relocation would never take place. It was a mere formality for an eviction to take place in 2004.
52. **Accused No 4** was certainly aware of the '*origins*' of these grant funds from the KZN Department of Housing in May 2001 and this report clearly provided the two options of either relocating to Montclair Home of the Good Shepherd, or evict and destroy a 21 year old 900-bed homeless shelter – and he chose to evict, destroy and then put a few of the homeless residents in shelters and other premises that the co-accused on the committee and their agents – and Vusi Khoza - had identified as being suitable to provide temporary shelter to less than 400 people and all paid for out of grant funds.
53. **Accused No 4** would certainly have known, as the Deputy City Manager - that all the funds were the property of the ACMC and the 900 homeless people under their care and it was provided by the KZN Department of Housing for the purpose of relocating the ACMC and the entire institution – and not some of the homeless residents. It was not the duty or responsibility or Mandate of the Ethekwini Municipality to determine the future of these people - and they had no authority or prerogative to make all the decisions for them - without understanding the needs of every single person in care.
54. **Accused No 4** would most certainly have known all the consequences of evicting and destroying the ACMC and the 900-bed institution; and the needs on the poor and the homeless and the institution were not even considered above the need to destroy it and take control of the grant funds. At no time was any thought given to their future of the Church, the institution, the trustees, management, staff and all the remaining people that had no physical, emotional, mental or spiritual support; and the accused neither had the interest - or the capability to meet these needs of the people in care.
55. **Accused No 4** would most certainly have known that the grant funding belonged to the ACMC and that it was the result of more than two years of accreditation by KZN Department of Housing and that it had been granted on the basis of a cost per bed – and all the care and support that went with that shelter and provision of services. It was criminal and an abuse of human rights to deprive these people of that essential care and yet not one single person who signed that decision to evict took that into a mindful - or careful consideration. These co-accused and Accused No 4 ignored that Rule of Law and contractual obligation to relocate the ACMC; and even ignored that Constitution of South Africa and The Bill of Rights that were contained in Chapter 2.
56. **Accused No 4** would most certainly have known that eviction and destruction of the ACMC and the institution should have been a last resort – had he and the other co-accused had any conscience or moral compass. The decision to evict was immoral!

57. **Accused No 4** would most certainly have known that the grant funds did not belong to the Ethekewini Municipality; and that the origin of the funding was the result of an accreditation process between 1996 and 2001. The grant funds and all of the interest accrued from the 4th of May 2001 were the property of the ACMC - and yet decisions were taken by people that had both a conflict of interest and the lack of interest and ability to care for all needy and homeless in a manner only the ACMC knew or cared.
58. **Accused No 5** is an adult male and was also employed by the Ethekewini Municipality during the period of time from 1997 and 2009 – as Head of the Department of Metro Housing. He is a South African citizen and was on an Executive Management Council and Committee that took that decision on the 16th of February 2004 - to evict ACMC.
59. **Accused No 5** was employed as a public servant in the senior position of public trust and was responsible to the ratepayers of Durban and surrounding area in all matters of housing, planning and development - and was well aware of the situation relating to the planned relocation of the ACMC and the 900-bed institution from 15 Browns Road in the Point area of Durban and he was aware of the grant funds in his account.
60. **Accused No 5** was well aware of the planning and development of Point Waterfront Development Company and the Malaysian joint partners of Renong and Rocpoint. It was his duty and responsibility to assist in the relocation process of the ACMC - that had agreed to relocate to another suitable site to make way for the planned housing and commercial development in this area. This assistance was never provided and it is recorded that more than 5 years of failed assistance resulted in *'eviction'* in 2004.
61. **Accused No 5** was well aware that there had been an accreditation process that KZN Department of Housing had conducted between 1999 and 2001 with the ACMC and it was done to establish whether the 900-bed institution had been *'qualified'* to care for the 900 homeless people in their care and whether they were entitled to grant in aid and the R10 865 000 that was calculated on the basis of a cost per bed - and care.
62. **Accused No 5** was also aware that the KZN Department of Housing had stipulated in all accreditation that the Section 21 Company of the Durban Ark Concept be formed by the ACMC to accommodate the grant funds; and that this was done in June 1999. It is questionable how these grant funds were paid into the Metro Housing account in May 2001 after the accreditation process had been successful and funds released.
63. **Accused No 5** was also aware that these grant funds did not belong to the Ethekewini Municipality, the Durban City Council, the Executive Committee or Metro Housing at any time; and that it was the property and asset of the ACMC - and the 900 homeless people that were under the care of the 21-year old institution. This cannot be denied or disputed and Accused No 5 had a sole duty and responsibility to *'assist relocation'*.
64. **Accused No 5** was also aware that more than 31 properties had also been shown to Metro Housing from 1999 and that not one single property had been secured by this department. This department had been aware that this *'suitable site'* needed to be able to accommodate the institution and 900 beds and the infrastructure to provide all the services that the ACMC had been accredited for in 2001 by that KZN Housing.

65. **Accused No 5** had also become aware in November of 2003 that the ACMC had not only identified the Home of the Good Shepherd in Montclair, but that it had also put in an offer and signed a Purchase and Sale Agreement for R9million. Accused No 5 in response to this requested a Municipal Valuation from the City Estates Department instead of releasing the grant funds to purchase the only suitable property in 5 years.
66. **Accused No 5** and Accused No 3 failed to release all the grant funds when their own City Estates Department produced a dubious valuation of R6.3 million – when there was two other valuations of more than R9 million and R20 million. The appeals, pleas and demands by the MEC for KZN Housing were ignored and all terms and conditions of the Purchase and Sale Agreement were not honoured. The deal was destroyed by a municipality valuation - that was not market related or even close to other realistic valuations. Based on the opinions of these two accused, the ACMC was then evicted.
67. **Accused No 5** and Accused No 3 took possession and control of all the ACMC grant funds on the 4th of May 2001 and then also proceeded to apply for an Eviction Notice from the High Court to get the institution destroyed – while claiming to assist in that relocation process. They used the ANC ward councillor from Albert Park to create the negative rebuttal to the relocation in both Albert Park and also the Montclair area. It defies all logic that the Ethekewini had any right to control or take that possession of all the grant funds, when there is absolutely no evidence of any assistance to ACMC.
68. **Accused No 5** and Accused No 3 lied to the High Court of South Africa in order to get the Eviction Notice and claimed that the ACMC and institution were in the way of the immediate development of the Point Waterfront Company – and yet the buildings in 15 Browns Road had not been demolished by 2005 - and were still standing in 2016. It defies all logic that the Ethekewini Municipality had gone to such lengths to destroy this Christian place of worship - and the 900 bed fully accredited institution in 2004.
69. **Accused No 5** and the other co-accused took a decision on the 16th of February 2004 to evict the ACMC and then remove some of the residents to places under a control of the Ethekewini Municipality. The Report to the Executive Management Committee was presented on the 12th of February 2004 and it was signed and accepted on 16th of February 2004 – and they had approved the eviction of the ACMC and removal of less than 400 ‘homeless’ residents. The eviction took place on the 17th of May 2004.
70. **Accused No 5** utilised Metro Housing and municipal vehicles to remove the residents and all the assets and movable property belonging to the ACMC and the institution – and the value of these assets was in excess of R500 000. The residents and property were taken to destinations unknown to the ACMC Chairman and Trustees and they were then prevented from making contact with all the residents at these Municipal shelters. The Ethekewini Municipality utilised the grant funds to pay for this temporal shelter for less than 400 residents and they were deprived of all other essential help.
71. **Accused No 5** was contacted in 2008 by the new Chairman of the ACMC - after their founding Chairman had passed away in October 2004; and he had confirmed that all the grant funds were still in the Metro Housing account - and he had no objection to

- releasing these funds to re-establish the ACMC at the Puntan's Hill Primary School in Durban. This was blocked by both Accused No 2 and Accused No 3. This was a test of the Ethekewini Municipality that revealed these grant funds had never been returned to KZN Department of Housing; and was theft under false pretences from the ACMC.
72. **Accused No 5** sent a Metro Housing Department representative to a meeting with an HOD from the Department of Housing at Tolarem House on the 15th of October 2008 – Thabo Mokoaleli – after securing the properties of the Island View Hotel at Isipingo and Harbour View Hotel in Durban. This individual expressed concerns at a Christian foundation for the ACMC and this institution. This is evidenced in the Minutes of the meeting. This was the evidence that this Metro Housing Department were all biased.
73. **Accused No 5** had been requested to report back on these properties after site visits with their representative – Thabo Mokoaleli – and had failed to engage with the KZN Department of KZN Housing. In January 2009, the KZN Department of Housing had a letter sent to the Metro Housing Department that expressed their displeasure at the complete lack of collaborative support and all collaboration and stated the matter of the grant funds had been placed in limbo and that the matter could never be cleared as the Ethekewini Municipality had taken all these funds under false pretences for the reasons only known to themselves. It was suggested by them that a legal action then be taken for recovery of these grant funds - and restitution for the loss of the ACMC.
74. **Accused No 5** and the co-accused had refused to cooperate with the ACMC from the time that the grant finance had been paid into the Metro Housing account on the 4th of May 2001; and they had made sure that they would not release these grant funds. They had promised to assist the relocation process - but then took a decision to evict as soon as they received the grant funds by means known only to them. It is evident that they had planned to create barriers to the relocation process with the use of the agents and ward councillors and also the 2 '*manipulated*' Social Assessment Reports.
75. **Accused No 5** and the co-accused had refused to release the grant funds when those suitable premises were found in Montclair in November 2003 – and they used a City Estates Municipal valuation as the justification for destroying the only opportunity to prevent the eviction that the Ethekewini Municipality had themselves orchestrated to destroy the institution. None of this was accidental and it was commercial crime and organised crime at its very worst. They had worked together to steal the ACMC fund.
76. **Accused No 5** and the co-accused cannot provide a single reason to justify why they should have had any possession or control over these grant funds in the first place or any excuse why the grant funds were initially paid into their Metro Housing account in May 2001. They most certainly did not earn a right to be '*custodians*' of the ACMC grant funds based on their dismal performance and obstructive behaviour since May 2001. Their destructive behaviour and abuse of power and public trust are criminal!
77. **Accused No 5** held the grant funds, but the other accused, and the eviction and final destruction of the ACMC and institution made sure that the R10 865 000 remained in that account and gathered interest for the sole benefit of the Ethekewini Municipality.

RACKETEERING: CORRUPTION: AND THEFT UNDER FALSE PRETENCES: ORGANISED CRIME!

While it has taken many years to bring these public servants to justice, the matter can never be seen to *prescribe* and there is also a desperate need in this country for that truth, justice and righteousness that is seldom seen or rewarded. This travesty of abuse of power and the betrayal of public trust can never go unpunished and we owe it to those founders of the Ark Christian Ministries Church and the trustees, management and staff; to see that justice is no longer delayed or denied. Most importantly, we owe it to the 900 homeless people that lost the benefit of the institutional support of the APMC when it was evicted and destroyed by a small group of city officials who lacked compassion - and had conspired to destroy a church!

While it has taken many years of meticulous research and careful investigation to expose all the deceit, fraud, manipulation and racketeering by these public servants we owe it to those homeless people in the Greater Durban Area that the Ark Christian Ministries Church is once again rebuilt to provide those essential services to the destitute and needy; who are socially excluded by society and who are also desperate for physical, mental, emotional and spiritual support to rebuild their lives. These corrupt and heartless public servants used a system that they had created to suit their own personal or collective agendas and then used the bullying tactics and manipulation to establish a system that was perceived as being above all the law.

While it has taken many years of careful planning and patient preparation to bring these few corrupt and heartless public servants to justice, it is encouraging that this new president of a country in crisis has made it clear that the public sector will be purged of all corrupt officials; who have enjoyed a season of corruption and malfeasance at the expense of the poor and a fragile economy. These public servants ignored the Rule of Law, The Constitution and Bill of Rights - and the Ark Christian Ministries Church will expose the lengths that this small group of Ethekewini Municipality office bearers went to in order to destroy a Christian Church and a 21 year-old 900 bed fully accredited institution; in order to steal R10 865 000 in grant funds.

While it has taken many years to '*expose this evil*' and bring these criminals to justice, there is no doubt that we will prove beyond all reasonable doubt that one cannot hold onto stolen money and that nature has a wonderful way of balancing the books – and it is time to see all justice is served. It was clear that these accused had acted jointly and severally to achieve an illegal and unlawful objective and that was to take possession of the grant funds and destroy this Christian place of worship and community care in the process. That was achieved; and it is known that they acted in concert with one another in a process that is flawed with acts of racketeering, manipulation, fraud and corruption - to achieve the objective of stealing grant funds under false pretences. We have the undeniable evidence to prove that this was their only objective and all these facts and interests will be placed before all the courts of justice.

The criminal justice system and the High Court will be tested to see that justice will prevail!

ORGANISED CRIME: SOCIAL INJUSTICE: HUMAN RIGHTS ABUSE: WE HAVE THAT EVIDENCE:

The past ten years has been spent productively in researching the history of the eviction and all the evidence has been compiled into the **Five (5) Bundles** of *undeniable* and *indisputable* proof. This is a Museum of Truth and a Library of Evidence to prove beyond all doubt that all the accused acted in concert and unison to destroy the church and to steal the grant funds – and it is up to the Justice Department and also the National Prosecuting Authority to ‘*utilise*’ all the evidence to ensure that justice is seen to prevail. While these documents will be used to recover the R10 865 000 and the restitution and indemnity for the loss and damages, as a result of the abuse of power and betrayal of public trust, it is only the Criminal Courts and a Constitutional Court that can deal with criminality and human rights abuse - that happened!

The evidence is useless without the capable, committed and dedicated team of people who are able to use the combination of this evidence and also all the available Criminal Acts and Constitutional Laws to see that ‘*justice is served*’. There are most certainly ‘*enough grounds*’ for an independent judiciary and a Constitutional Court to prosecute the accused; and there is also a desperate need for truth, justice and righteousness in a country that is plagued with corruption and criminal activity and human rights abuse. There is most certainly a desperate need to purge the public sector of corrupt and heartless public servants - that falsely believe that it is *their right* to plunder the public purse and that they are above the law and immune from all prosecution and there is no need for responsibility, transparency - or accountability.

South Africa will never recover from the disgrace of Junk Status and the economic recession as a direct result of the crime, corruption and lack of infrastructure and service delivery and it is true to say that crime is the enemy of the economy – and corruption is the enemy of an increasing number of needy and destitute people in our country. But, it is a lack of essential infrastructure and necessary service delivery and service excellence that is the enemy of an entire country. The Ethekewini Municipality has a history of alleged corruption - and alleged mismanagement of public funds – and alleged non-performance – and alleged dereliction of duty – and alleged misuse of Section 36 of the Municipal Procurement Act – and the Manase Report was only the tip of the iceberg; and all these accused were implicated in that Report.

The evidence that we have has nothing at all to do with that Manase Report, or awarding of fraudulent contracts to dubious suppliers and it has nothing to do with the sale of any prime beachfront property worth R375 million for R15 million by one of the accused. This has also got nothing to do with the reality that the ANC ward councillor – **Vusi Khoza** – was accused of throwing Zimbabwe nationals from a ten storey building in the Albert Park area; and who compiled the Social Assessment Report - that was the opposition and rebuttal to the ACMC relocation to both Albert Park and Montclair under his ‘*management*’ - from 2000 to 2004.

South Africa will never recover from the disgrace that we are the **Number One** murder and rape and drug and crime and human rights abuse capital of the world; and the most corrupt in all of Africa – unless civil society and the government ensures that this justice will prevail!

ORGANISED CRIME: SOCIAL INJUSTICE: HUMAN RIGHTS ABUSE: APPLYING RULE OF LAW:

South Africa will never recover from the social injustice and human rights abuse and all that criminality and corruption - unless the moral majority and the Justice System work together in a spirit of collaborative justice and cooperation to enforce and maintain law and order to the benefit of the country. We have that perfect opportunity to begin that healing process:

- (a) Expose the evil and seek justice for all the crimes.
- (b) Put an end to the racketeering and organised crime.

THE INDICTMENT AGAINST THE ETHEKWINI MUNICIPALITY: AND THE ACCUSED OFFICERS

KINDLY TAKE NOTICE: That the accused, during the period of time between the 4th of May 2001 to date and in the Magisterial District of Durban Kwa Zulu-Natal and in the Republic of South Africa, conducted themselves unlawfully and illegally and as all set out in the General Preamble *supra* in Paragraphs 1 to 77 – and which actions and conduct violated the human rights of others, and threatened and endangered the lives of others - and dispossessed that Christian institution known as the Ark Christian Ministries Church of all its property, assets, independence, and its rights and authority and its safety and security; and contravened the 1948 United Nations Universal Declaration of Human Rights, and also the 1996 Constitution of the Republic of South Africa, and Chapter Two of the Constitution – **The Bill of Rights** – as well as in Section Two of the Prevention of Organised Crime Act of 1968. These also include:

OFFENCES IN TERMS OF THE PREVENTION OF ORGANISED CRIME ACT OF 1998

KINDLY TAKE NOTICE: That the accused, during the period of time between the 4th of May 2001 to date, and in their capacity as public servants, held senior positions of public trust in the Ethekwini Municipality and abused those positions of public trust in order to destroy a Christian place of worship and a 21-year old 900-bed Government accredited institution in order to take possession of all the grant funds of R10 865 000 that were granted by the KZN Department of Housing after an accreditation process between the period of 1999 and 2001 and to take possession of the assets and property of the institution after an eviction process that was instituted by the accused after they had unlawfully and without authority taken the possession of grant funds on the 4th of May 2001. The eviction took place on 17th May 2004.

KINDLY TAKE NOTICE: That the accused, during the period of time between the 4th of May 2001 to date, and in their capacity as public servants, conspired to dispossess the registered and accredited institution of its right to freedom, its title and right to function as a care giver and registered institution and its grant funds, possessions, property and its ability to provide further essential services to the homeless of Durban through a process of manipulation and fraud and deception between the 4th of May 2001 and the eviction on the 17th of May 2004 and, with the '*support and assistance*' of one another, the co-accused abused their position of public trust and used the influence of these departments and other agents to ensure that it was able to dispossess the institution of everything – and this was clearly organised crime:

1. **Any person who –**
 - (a) (i) receives or retains any property derived, directly, or indirectly from a pattern of racketeering activity; The property belonged to the ACMC and it was unlawfully acquired; and then retained through a process of racketeering and devious and lawless activity that had only one purpose: destroy the institution and then also retain these grant funds. and:
 - (ii) Knows or ought reasonably to have known that such property is so derived: **They knew it;** and
 - (iii) Uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment of operations or activities of any enterprise: **They invested it - for their gain!**
 - (b) (i) receives or retains any property, directly or indirectly, on behalf of any enterprise; and:
 - (ii) Knows or ought to have reasonably known that such property was derived or is derived from or through a pattern of racketeering activity: **They knew the origin and rightful owners of it;**
 - (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 through a pattern of racketeering activity: **It was their pattern of unlawful activity that stole this;**
 - (d) Acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity: **They secured it and then planned to keep it at all cost.**
 - (e) Whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprises' affairs through a pattern of racketeering activity;

Or:
 - (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 even participates in the conduct, directly or indirectly, of such enterprise' affairs through a pattern of racketeering activity;

Or:
 - (g) Conspires or attempts to violate any of the provisions of the Paragraphs that have been provided in 1:
 - (a). (b). (c). (d). (e). or (f) within the Republic of South Africa or elsewhere, shall be guilty of an offence

2. **The Court** may hear evidence, including evidence with regard to hearsay, similar facts or even the previous convictions relating to offences contemplated in Subsection (1). Notwithstanding that all such evidence might otherwise be inadmissible; provided that such evidence would not render a trial to be unfair.

KINDLY TAKE NOTICE: That the Definitions in the Act that are relevant include:

'Enterprise' includes any individual, partnership, corporation, association, or any other juristic person or legal entity, and any union, or group of individuals associated in fact, although not a juristic person - or legal entity.

'Pattern of Racketeering Activity' means the planned ongoing, continuous or related participation or active involvement in any offences that occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1. **The accused were guilty of these crimes.**

'Proceeds of Unlawful Activities' means property or any service or advantage, benefit or reward - which was derived, received or retained, directly or indirectly, in the Republic of South Africa or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity that is carried on by a person; and includes any property representing property so derived: **They stole the funds!**

'Unlawful Activity' means conduct which constitutes a crime or which contravenes any law, and whether such conduct occurred before or after the commencement of this Act - and whether such conduct occurred in the Republic of South Africa or elsewhere. **The accused contravened these laws in the Durban region.**

RACKETEERING: ORGANISED CRIME: THEFT BY FALSE PRETENCES: UNLAWFUL ACTIVITIES:

In the Matter between the Ark Christian Ministries Church and the Ethekwini Municipality:

KINDLY TAKE NOTICE: That on the 4th of May 2001, the grant funds belonging to the APMC had been unlawfully placed into the bank account of the Department of Metro Housing and not the Section 21 Company – **Durban Ark Concept** - that had been established in June 1999 at that specific request of the KZN Department of Housing. The Ethekwini Municipality and all the co-accused need to explain on what basis they had *'taken possession'* of these grant funds - and why, in more than 17 years, it had not released all these funds to the institution.

It is all the actions of the accused during the period from the 4th of May 2001 to date, and in the Durban and surrounding area and the Republic of South Africa, that they conspired and partook unlawfully in a process of racketeering and conspiracy – as set out in Paragraphs **1 to 77** of the General Preamble to all Charges *supra* - and in a manner that was in direct and indirect contravention of the Constitution of South Africa and also Chapter Two – The Bill of Rights – and carried out these acts of human rights abuse and illegal activities; as part of the plan to dispossess the APMC of its title, reputation, assets, accreditation, possessions and all the grant funds that had been provided by KZN Department of Housing - after accreditation.

KINDLY TAKE NOTICE: That the accused, during the period of 4th of May 2001 to date, and in the Thekwini Municipal Region of Durban and surrounding area and in the Republic of South Africa conducted themselves unlawfully - as clearly set out in Paragraphs **1 to 77** of General Preamble to all Charges *supra* – in that they had also contravened **s3** of the Prevention and Combatting of Corrupt Activities Act and **specifically in the general offence of corruption in terms of s3 of the Act:**

OFFENCES IN TERMS OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT – 12 of 2004:

Any Person who, directly or indirectly –

(a) Accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself, or herself, or for the benefit of another person: **The gratification was the grant funds:**
or:

(b) Gives or agrees or offers to give any other person any gratification, whether for the real benefit of the other person or for the benefit of another person in order to act, personally or by influencing another person so to act, in a manner –

(i) **That amounts to the –**

(aa) illegal, dishonest, unauthorised, incomplete, or biased: All of these apply to the accused; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out of performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation: They had a duty to relocate the institution – and not individuals.

(ii) **That amounts to –**

- (aa) the abuse of the position of authority: There was a total abuse of all their authority.
- (bb) a breach of trust: This was a total betrayal of public trust throughout the period.
- (cc) the violation of a legal duty or set of rules: They violated every single duty and all rules.
- (iii) Designed to achieve an unjustified result: They did not assist to relocate the institution. Or;
- (IV) That amounts to any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption. The accused were corrupt - and they had no authority to steal!

KINDLY TAKE NOTICE: That these accused, during the period of the 4th of May 2001 to date, and in the Greater Durban and surrounding area of the Ethekewini Municipal Region - and in the Republic of South Africa, conducted themselves unlawfully as set out in Paragraphs **1 to 77** of the General Preamble of all Charges *supra*; in that they had also contravened **s3** of the Prevention and Combatting of Corrupt Activities Act - and that the accused in their offices of public trust had conducted themselves unlawfully - and in contravention of The Constitution of the Republic of South Africa - and committed other corrupt activities **specifically in terms of s4 of the Corrupt Activities Act – and other criminal acts or unlawful offences in respect of Corrupt Activities relating to Public Officers.** It is clear that the accused contravened this:

The Gratification was R10 865 000 for the benefit of the accused and their own enterprises.

- (1) **Any –**
 - (a) Public officer who, directly or indirectly, accepts or agrees, or offers to accept any gratification from any other person, whether for the benefit of himself or herself for the benefit of another person; or;
 - (b) Person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to also act, personally or by influencing another person to act, in a manner –
 - (i)**That amounts to the –**
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased: All these apply to the accused; or:
 - (bb) misuse or selling of information or material acquired in the course of the exercise carrying out or the performance of any powers, duties or functions arising out of a constitutional, contractual or legal obligation: There was a constitutional, contractual and the legal obligation to relocate!
 - (ii)**That amounts to -**
 - (aa) a breach of trust: There most certainly was a breach and betrayal of public trust; or
 - (bb) the abuse of a position of authority: There was a total abuse of power and authority; or
 - (cc) the violation of a legal duty or set of rules: There was a total violation of duty; and rules.
 - (iii) Designed to achieve an unjustified result: There was no justification to destroy ACMC; or

(iv) **That amounts to** any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corrupt activities relating to public officers. They did not relocate ACMC.

- (2) Without derogating from the generality of Section 2 (4), **to act** in Subsection (1) includes –
- (a) Voting at any meeting of a public body: This was done to gain the support for eviction.
 - (b) Performing or not adequately performing any official functions: They did not perform at all. Instead of assisting in the relocation process, they evicted and destroyed ACMC.
 - (c) Expediting, delaying, hindering or preventing the performance of an official act: They delayed and hindered the entire relocation process - and they destroyed that institution!
 - (d) Aiding, assisting or favouring any particular person in the transaction of any business with a public body;
 - (e) Aiding or assisting in procuring or preventing the passing of any vote or the granting of any legal contract or advantage in favour of any person in relation to the transaction of any business with a public body;
 - (f) Showing any favour or disfavour to any person in performing a function as a public officer.
 - (g) Diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for the general purposes of administration, custody, or for any other reason, to another person: They diverted funds or
 - (h) Exerting any improper influence over the decision-making of any person performing functions in a public body. They influenced the ward councillor – **Vusi Khoza** – to oppose all that relocation to Albert Park and Montclair - and also that municipal valuation on the Montclair property. They influenced the High Court Judge to grant an eviction for the institution based on lies and perjury. They influenced the KZN Department of Housing to pay the ACMC grant funds into Metro Housing Account in May 2001.

DEFINITION OF A PUBLIC OFFICER:

‘Public Officer’ means any person who is a member, an officer, and employee or a servant of a public body, and includes –

- (a) Any person in the public sector contemplated in Section 8 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994);
- (b) Any person receiving any remuneration from public funds; or
- (c) Where the public body is a corporation, the person who is incorporated as such, but does not include any –
 - (a) Member of the legislative authority;
 - (b) Judicial Officer; or
 - (c) Member of the Prosecuting Authority

DEFINITION OF A PUBLIC BODY:

‘Public Body’ means –

- (a) Any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) Exercising any other functionary or institution when –
 - (i) Exercising a power or performing a duty or function in terms of the Constitution or a provincial constitution; or
 - (j) Exercising a public power or performing a public duty or any function in terms of any legislation.

Specifically s5 - Offences in respect of corrupt activities relating to public officials

KINDLY TAKE NOTICE: That the accused, during the period of the 4th of May 2001 to date, and in the Greater Durban and surrounding area of the Ethekewini Municipality and in the Republic of South Africa, conducted themselves unlawfully - as set out in Paragraphs 1 to 77 of the General Preamble *supra*, in that they contravened **s3** of the Prevention and Combatting of Corrupt Activities Act; and that the accused had during the period of May 2001 to date and in the Republic of South Africa had also conducted themselves unlawfully - as set out in Paragraphs 1 to 77 of the General Preamble *supra*, in that they contravened **s3** of the Prevention and Combatting of Corrupt Activities Act - and **specifically s5 - offences in respect of corrupt activities relating to public officials:**

- (1) Any person who, directly or indirectly gives or agrees or also offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, In order to act, personally or by influencing another person so to act, personally or by influencing another person so to act, in a manner –
 - (a) That amounts to the –
 - (i) Illegal, dishonest, unauthorised, incomplete, biased; or
 - (ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitution, statutory, or contractual or any other legal obligation;
 - (b) That amounts to –
 - (i) The abuse of a position of authority;
 - (ii) A breach of trust; or
 - (iii) The violation of a legal duty or set of rules;
 - (c) Designed to achieve an unjustified result; or
 - (d) That amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to foreign public officials.
- (2) Without derogating from the generality of Section 2 (4) 'to act' in subsection (1) includes –
 - (a) The using of such foreign public official's or such person's position to influence any acts or decisions of the foreign state or public international organisation concerned; or
 - (b) Obtaining or retaining a contract, business or an advantage in the conduct of business of the foreign state or public international organisation.

DEFINITION OF FOREIGN PUBLIC OFFICIAL:

'Foreign Public Official' means –

- (a) Any person holding a legislative, administrative or judicial office of a foreign state;
- (b) Any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or
- (c) An official or agent of a public international organisation.

KINDLY TAKE NOTICE: That the Ethekewini Municipality had a **50/50** partnership with the Malaysian investment companies of Rocpoint and Renong in a Point Waterfront Development Company (Pty) Ltd – that was established in 1996 by the accused. The Ark Christian Ministries Church was also in the way of the commercial development.

The KZN Department of Housing in good faith had agreed to provide the grant funds to relocate the 21 year old 900-bed institution to a suitable site for the ACMC to also continue with their range of services to the homeless poor in Durban and the greater Durban area. This was R10 865 000 and the accreditation process had taken place at the time between 1999 and 2001 and the Ethekewini Municipality and all the accused had no part in that accreditation process and on the basis of this reality had no right to the funds, or any authority over all these funds, or any right to even possess them.

KINDLY TAKE NOTICE: That the Ethekewini Municipality and the accused used official and political influence to get the KZN Department of Housing to place these funds in a Metro Housing bank account on the 4th of May 2001 – instead of putting them into the bank account of the Section 21 Company that had been established to receive all funds and all the title deeds of the suitable property that the Ethekewini Municipality had agreed to assist in securing and then relocating the ACMC to once the funds had been approved after accreditation. The Durban Ark Concept was the name of Section 21 Company and was registered in 1999. The accused had no right to hold any funds.

The Ethekewini Municipality had a conflict of interest and clearly represented foreign interests and the Department of Metro Housing was a municipal entity that clearly represented the interests of this foreign company. It was also a foreign entity to all the accreditation process and their interests lay in gaining an Eviction Notice as soon as the grant funds were placed in their account and their interests lay in destroying a Government accredited institution and also taking possession of the assets, bedding and equipment – and then moving a few homeless residents to their own shelters at a cost to be paid for from the grant funds belonging to the church and its institution.

KINDLY TAKE NOTICE: That the Ethekewini should have recused itself from taking part in the entire relocation process based on their lack of interest, conflict of interest; or its clear intentions to destroy the institution for the purposes of taking possession of the grant funds and finding residents for their shelters and RDP Housing schemes at Welbedacht in the area of Chatsworth and Umlazi. The City Manager and accused in more than 5 years clearly represented those interests of their Malaysian investment company and not the interests of the ACMC - or the homeless residents in their care.

The Ethekewini Municipality and the accused did not secure one single property in the period from 1999 to 2004; and put barriers and obstacles in the way of a relocation – that can be substantiated by the Social Assessment Reports. When the Home of The Good Shepherd was purchased in November 2003 for R9 million, the accused from Metro Housing immediately contacted the Managing Director of Point Waterfront Development Company – and also their City Estates Department to get a Municipal valuation of R6.3 million – to justify the withholding of the grant funds to destroy a legally binding agreement. The accused destroyed this institution - and stole grant funds as gratification for a foreign municipal department - having foreign interests!

Specifically Clause s6 – Offences in Respect of Corrupt Activities relating to Agents.

KINDLY TAKE NOTICE: That the accused, during the period of the 4th of May 2001 to date, and in the Greater Durban Area of the Ethekwini Municipality - and also in the Republic of South Africa, conducted themselves unlawfully as set out in Paragraphs 1 to 77 of the General Preamble *supra*, in that they contravened **s3** of the Prevention and Combatting of Corrupt Activities Act and that the accused, during the period of 4th of May 2001 to date, in the Republic of South Africa - and elsewhere - conducted themselves unlawfully as set out in Paragraphs 1 to 77 of the General Preamble of Charges *supra*, in that they contravened **s3** of Prevention and Combatting of Corrupt Activities Act and **specifically s6 – Offences in respect of corrupt activities relating to agents:**

Any –

(a) Agent who, directly or indirectly –

- (i) Accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (ii) Gives or agrees or offers to give to any person any gratification, whether for the benefit of that actual person or for the benefit of another person; or

(b) Person who, directly or indirectly -

(i) Accepts or agrees or offers to accept any gratification from an agent, whether for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner –

(aa) that amounts to the –

(aaa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bbb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, or also a contractual or any other legal obligation;

(bb) that amounts to –

(aaa) the abuse of a position of authority;

(bbb) a breach of trust, or

(ccc) the violation of a legal duty or a set of rules;

(cc) designed to achieve an unjustified result; or

(dd) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to agents.

DEFINITION OF AGENT: ‘Agent’ means any authorised representative who acts on behalf of his or her principal and includes a director, officer, employee or other person authorised to act on behalf of his or her principle – and ‘agency’ has a corresponding meaning: **The Ethekwini Municipality accused acted as an agent and agency for foreign investors and their interests while being in the employ of the Durban City Council and ratepayers.**

Specifically s12 – Offences in Respect of Corrupt Activities relating to Contracts:

KINDLY TAKE NOTICE: That the accused, during the period of the 4th of May 2001 to date, and in the Greater Durban and surrounding area of the Ethekewini Municipality - and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in the Paragraphs 1 to 77 of the General Preamble *supra*, in that they also contravened **s3** of the Prevention and Combatting of Corrupt Activities Act and **specifically s12 offences in respect of corrupt activities relating to contracts:**

- (1) Any person who, directly or indirectly –
 - (a) Accepts or agrees or offers or accepts any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person - or of another person; - or
 - (b) Gives or agrees or offers to give to any other person any gratification, whether for the benefit of another person-
 - (i) In order to improperly influence, in any way-
 - (aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or
 - (bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
 - (ii) As a reward for acting as contemplated in paragraph (a) is guilty of the offence of corrupt activities relating to contracts.
- (2) Any person who, in order to obtain or retain a contract with a public body or as a team of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any such person, whether for the benefit of that other person or the benefit of another person –
 - (a) For the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or
 - (b) With the intent to influence or effect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority, is guilty of an offence.

KINDLY TAKE NOTICE: That the Point Waterfront Company (Pty) Ltd was established in 1996 and the Ethekewini Municipality and accused had established a 50/50 business partnership to develop the Point and beachfront area. This company did not want that church or institution that cared for homeless and socially-excluded people in the planned area of commercial and residential development. The KZN Department of Housing had agreed to provide that grant funding of R10 865 000 to assist with the relocation; and it was the Durban City Council and Ethekewini Municipality that agreed to assist in the planned relocation process - while it was aware that it had no interest or intention to relocate the entire accredited institution - and it is obvious that there was no commitment by the total absence of performance to assist in a successful relocation process. While Ethekewini Municipality and the accused had given that assurance to the ACMC in February of 2000, this '*contractual obligation*' was not honoured!

The accused acted as agents for the Point Waterfront Company (Pty) Ltd and destroyed the ACMC by gaining an Eviction Notice as soon as those grant funds had been secured in their Metro Housing bank account as reward gratification - and was taken under false pretences.

The accused conspired and planned the process of corrupt and unlawful activities once they had unlawfully received these grant funds by unknown means - and they acted in concert to then ensure that the institution was destroyed; and abused their position of public trust and utilised their power, authority and influence to achieve its objectives - by manipulation and incitement and the use of agents and other senior officials and contravened rules or laws in order to destroy the institution and dispossess it; and **Specifically s21 – Offences relating to an Attempt, Conspiracy - and inducing another person or persons to commit this offence:**

Any person who-

- (a) Attempts;
- (b) Conspires with any other person; or
- (c) Aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person to commit an offence in terms of this Act, is guilty of an offence.

KINDLY TAKE NOTICE: That every single one of the accused knew that these relocation grant funds belonged to the ACMC and they also knew that the origin of these funds was from the accreditation process between the KZN Department of Housing and that the ACMC had then complied with the grant in aid funding criteria; and had earned the right to the funds for the purposes of relocating the institution. The accused had no authority over these funds; and it had no right to have even taken possession of the funds on the 4th of May 2001. They had in a period of four years been able to unlawfully take possession of the funds; and then used a variety of agents and methods – including legal representation – to ensure that these funds would never be released to the ACMC from the time of receipt in May 2001 to date in 2018.

KINDLY TAKE NOTICE: That every single one of the accused including the Offices of the Premiers from 2005 until 2016 knew that all these relocation grant funds belonging to the ACMC and the 900 poor and homeless had been stolen by the Ethekwini Municipality and that they had evicted and destroyed the institution on the 17th of May 2004. The Public Protector had not even investigated the theft of the property belonging to the ACMC, when the municipal staff and vehicles assisted in the eviction and removed them to their own places of shelters – and yet there was not one single office bearer with a moral compass - and the courage to defend what can only be described as a travesty of justice and human rights abuse at its very worst!

Specifically s34 – offences related to the duty to report corrupt transactions

KINDLY TAKE NOTICE: That the accused, during the period of the 4th of May 2001 to date, and in the Greater Durban and surrounding area of the Ethekwini Municipality and in the Republic of South Africa and elsewhere, conducted themselves unlawfully as set out in the Paragraphs 1 to 77 of the General Preamble *supra*, in that they had contravened s3 of the Prevention and Combatting of Corrupt Activities Act and that the accused in their positions and offices of public trust conducted themselves unlawfully and in contravention of a 1996 Constitution of the Republic of South Africa – as set out in Paragraphs 1 to 77 of the General Preamble *supra*, in that they contravened s3 of the Prevention and Combatting of Corrupt

Activities Act and **specifically s34 – that also relate to offences related to the duty to report corrupt transactions.**

- (1) Any person who holds a position of authority and who knows and ought reasonably to have known or suspected that any other person had committed-
 - (a) An offence under Part 1, 2, 3, or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or
 - (b) The offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred in section 17c of the South Africa Police Service Act, 1995, (Act 68 of 1995). [Sub-s. (1) Substituted by s.21 of Act 10 of 2012 (wef 14 September 2012).]
- (2) Subject to the provisions of section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence. [Date of commencement of sub-s. (2): July 2004.]
- (3) (a) Upon receipt of a report referred to in subsection (1), the police official concerned must then take down the report in the manner as directed by the National Head of the Directorate for Priority Crime Investigation, appointed in terms of 17C (2) (a) of the South African Police Service Act, 1995, (Act 68 of 1995), and forthwith provide the person who made the report with an acknowledgement of receipt of such report. [Para. (a) substituted by s.21 of Act 10 of 2012 (wef 14 September 2012).] and:
 - (b) The National Head of the Directorate for Priority Crime Investigation, must within three months of the commencement of the South African Police Service Amendment Act, 2012, publish the directions contemplated in paragraph ((a) in the *Gazette*, during which period any existing notice issued in terms of the Act shall remain in force. [Par. (b) Substituted by s.21 of Act 10 of 2012 (wef 14 September 2012).]
 - (c) Any direction issued under paragraph (b), must be tabled in Parliament before publication thereof in the *Gazette*.
- (4) For purposes of subsection (1) the following persons hold a position of authority, namely-
 - (a) The Director-General or head, or equivalent officer, of a national or provincial department;
 - (b) In the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 Act 117 of 1998);
 - (c) Any public officer in the Senior Management Service of a public body;
 - (d) Any head, rector or principal of a tertiary institution;
 - (e) The manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act 1984 Act 69 of 1984.
 - (f) The executive manager of any bank or other financial institution;
 - (g) Any partner in a partnership;
 - (h) Any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;
 - (i) Any other person who is responsible for the overall management and control of the business of an employer; or
 - (j) Any person contemplated in paragraph (a) to (i), who has been appointed in an acting or temporary capacity.

KINDLY TAKE NOTICE: That none of the accused, or agents or partners reported any crimes!

SUMMARY OF INDICTMENT AND CHARGE REPORT: THEFT: CORRUPTION - AND OTHERS

In the interests of the entire country, the general public, and the ratepayers of Durban and a much wider taxpaying community, the accused and their partners, allies and agents need to be brought to justice. The new President of South Africa, Cyril Ramaphosa, made it clear at a recent State of the Nation Address – **SONA** – that it was a *‘collective’* duty and responsibility of the wider community, commerce, the corporate sector and the moral majority to put an end to the plague of corruption, crime - and the abuse of power and position of public trust.

The accused and the office bearers within the Ethekewini Municipality have enjoyed a long or protracted period of immunity and impunity from prosecution – and the media and all daily tabloids are replete with the irregularities and wastage of expenditure and the theft from an ignorant and trusting public. This trust has been betrayed and misplaced - and it is time for a new season of truth, justice and righteousness; and it is a civic duty and moral imperative to remove these people from a trusted position from which they have all abused this trust and also enjoyed a disproportionate amount of the political favour; that has afforded them with a protection and defence from justice. It is time to punish them - and expose and prosecute them - for these crimes against humanity and our society. Justice can no longer be delayed!

The accused and the office bearers within the Ethekewini Municipality have enjoyed a long or protracted period of irregular and corrupt and dysfunctional management – and as recently as the 23rd of February 2018, *The Mercury* tabloid provided a front-page article on just one of these irregular and irresponsible acts of public mismanagement: **“R90 Million Deal was a Pile of Garbage – Orange Bag Tender Shocker”** – by Bheki Mbanjwa. This stated a forensic investigation into the awarding of a contract for R90 million to supply orange recycling bags to the city has found that the tender process was fraught with irregularities – and that this 3 year contract had been awarded in 2015 to a single business person - that lacked experience - and technical knowledge. Between 2015 and 2016, this company supplied 5.4 million bags.

The report, one of many against the Ethekewini Municipality, was being *‘studied’* by the City Manager – **Sipho Nzuza** – and he claimed that he was going to take the necessary corrective action based on the report’s recommendations. It was *The Mercury* reporter Bheki Mbanjwa that summed up a need for *‘corrective action’* by the general public. **“The city has the duty and a responsibility to the public and ratepayers to ensure that the recommendations are implemented....and some individuals end up leaking these reports because of the people’s frustration that these reports are not being acted upon. If we want to deal with all of this corruption, people must be dealt with – those in the positions of public trust and service. I am aware that many reports are hidden by the city”** – Bheki Mbanjwa. This has to be done.

The duty and responsibility to see that justice is served rests with the Department of Justice and that National Prosecuting Authority - and the South African Police Services. This Report will not be studied by any City Manager or City Treasurer or any public servant; but it will be an indictment and the foundations that will ensure that all these criminals are prosecuted.

CONCLUSION: THE ARK CHRISTIAN MINISTRIES CHURCH – IT IS TIME FOR THAT JUSTICE!

It has taken more than 13 years to research and investigate and prepare this matter for trial and to ensure that the accused are brought to justice – and that the Ethekewini Municipality is held responsible for the destruction of a Christian Church and an accredited institution in May 2001. This is most certainly not a **Cold Case** - or a matter that has prescribed according to some arbitrary and obscure law created to protect the guilty from providing indemnity or restitution for their crimes against society - and protection to the few from that real justice.

This matter is not about R90 million being extracted from the ratepayers of Durban for 5.4 million plastic bags that were never delivered by someone who had obviously gained favour from corrupt officials in charge of the Procurement Supply Chain Management to this city – and who had manipulated the system and had never been investigated for this malfeasance.

This matter between The Ark Christian Ministries Church and the Ethekewini Municipality and its most senior management, is about the destruction of a Christian Place of Worship and an institution that had provided 900 beds and essential life-changing, life-giving and life-saving care to more than 300 000 homeless people in more than 21 years. It had provided all those 2 700 meals a day without any financial support from either the Government or Municipality that had *'requested'* it establish that centre in 1987. It had trusted the same Municipality to do what it had promised to do in 1999 and assured it would in February of 2000 – but all the trust had been misplaced in those whose loyalty and alliance rested in the Malaysian money lords and business partners that wanted all homeless people out of their development area.

This matter is about R10 865 000 that was stolen from The Church and the homeless poor of Durban – and how the city officials and public servants conspired to steal that grant money; and in doing so, also deprived the institution of its only hope of relocating to another site. It is human rights abuse and theft of the worst possible kind. Crime is crime; and it is what it is – and it doesn't really matter whether the National Prosecuting Authority or Justice System, or South African Police Services want to label it as commercial crime or organised crime – or even as corruption; or theft of money under false pretences. The actions of the accused had resulted in the theft of the money; and destruction of a place of hope that really saved lives.

The 1948 United Nations *Universal Declaration of Human Rights* and the 1996 Constitution – and *Bill of Rights* – and the 2009 Salvation Army *Seeds of Exclusion* Report - have revealed that the actions of these public servants and Ethekewini Municipality have not only ruined a large number of lives by ethnic cleansing and social injustice and manipulative and creative engineering – but they have taken the lives of people that desperately relied on services or support provided by this institution. There will be no stone left unturned to bring all of the transgressors and criminals to justice. We also have the assurance and total support from the new president of South Africa – who is in need of *'collaborative cooperation'* and help from the wider community and civil society to expose the evil and seek that righteousness.

Dr Peter Munns – Chairman: The Ark Christian Ministries Church.