



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File reference number: EC/2223/0068

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

OWN INITIATIVE

And

SOUTH AFRICAN POLICE SERVICE

FIRST RESPONDENT

BUFFALO CITY METROPOLITAN MUNICIPALITY

SECOND RESPONDENT

EASTERN CAPE LIQUOR BOARD

THIRD RESPONDENT

FINAL INVESTIGATIVE REPORT

“Enyobeni: A Sobering Account”

EXECUTIVE SUMMARY

The Enyobeni tragedy sheds light on critical lapses within South Africa's regulatory and enforcement frameworks regarding alcohol regulation, particularly in safeguarding the rights of children. The Commission's investigation unearthed systemic deficiencies across multiple sectors, underscoring the urgent need for comprehensive reforms to protect vulnerable populations and uphold human rights.

The Commission's investigation revealed a multitude of findings surrounding the Enyobeni Tavern incident. Key issues included inadequate enforcement of liquor regulations by the Eastern Cape Liquor Board (ECLB) and the South African Police Service (SAPS), failure to address community complaints, and insufficient oversight by the Buffalo City Metropolitan Municipality (BCMM). Furthermore, national departments such as the Department of Trade and Industry (DTI) and the Department of Social Development (DSD) neglected to prioritize crucial legislative measures aimed at curbing alcohol abuse. The Enyobeni tragedy further underscores violations of various legal frameworks, including Section 28 of the South African Constitution and international treaties such as the Convention on the Rights of the Child. Children's rights to protection from the harmful effects of alcohol were directly compromised, reflecting broader failures in regulatory compliance and enforcement.

In respect of its findings, the Commission's investigation highlighted systemic failures across multiple sectors, including:

- Inadequate enforcement of liquor regulations by the ECLB and SAPS.
- Insufficient oversight and capacity within BCMM to monitor compliance with zoning and building regulations.
- Delayed and opaque processes within the Department of Health regarding investigation findings and inquest proceedings.
- Neglect by national departments in prioritizing crucial legislative measures aimed at curbing alcohol abuse.

To address these deficiencies and uphold children's rights, the Commission proposes a series of targeted recommendations, including:

- ECLB: Implement a moratorium on issuing on-site licenses until capacity for effective monitoring is bolstered. Follow up on peace officer status and ensure alignment with proposed legislative reforms.
- BCMM: Enhance internal capacity-building through tailored training programs for Ward Councillors and metro police officials. Engage in community outreach to identify and address challenges posed by liquor outlets, prioritize the installation of recreational facilities, and conduct audits to ensure compliance with liquor

regulations and building standards. Urgently establish LDACs within its jurisdiction.

- National Departments: Prioritize the re-tableting and enactment of critical legislative measures aimed at curbing alcohol abuse, ensuring alignment with international best practices and existing policy frameworks.
- SAPS: Strengthen enforcement mechanisms to address violations of liquor regulations and collaborate with relevant authorities to ensure public safety and order.

The Enyobeni tragedy serves as a sobering reminder of the urgent need to recalibrate regulatory frameworks and enforcement mechanisms to prioritize the protection of children's rights. While acknowledging the economic contributions of the liquor industry, it is imperative to reassess the societal costs and prioritize the well-being of vulnerable populations. The Commission calls for decisive action to address systemic deficiencies and safeguard the rights of all citizens, particularly the most vulnerable among us.



This report is dedicated to: Lithemba Velaphi, Mbulelo Rhangile, Inathi Nkani, Kungentando Nzima, Ovayo Mateyise, Bongolethu Ncandana, Anathi Ngqoza, Sinothando Mgangala, Simamkele Sobetwa, Aluncedo Monela, Simele Bolsiki, Esinako Sinarhana, Oyena Ngoloyi, Lungile Bekiso, Asamkele Thukuthe, Azizipho Zilindile, Inamandla Wexu, Liliitha Methuko, Sisanda Mahlahlaka, Sisekela Tshemese, Thembinkosi Silwane

1. Introduction and Mandate

Introduction

- 1.1. This report encapsulates the findings of the South African Human Rights Commission's (SAHRC/Commission) investigation into the tragic Enyobeni Tavern incident, which resulted in the devastating loss of 21 lives, primarily young individuals.
- 1.2. The conviction of Siyakhangela and Vuyokazi Ndevu, proprietors of Enyobeni Tavern, for selling alcohol to minors underscores a critical connection between the events of June 25-26, 2022, and the broader landscape of harmful alcohol consumption in South Africa.
- 1.3. As the formal inquiry into the deaths of the 21 individuals unfolds, it becomes increasingly apparent that the Enyobeni Tavern tragedy cannot be viewed in isolation but rather must be contextualized within the prevalent alcohol-related issues gripping South African society.
- 1.4. The Commission confirms it did not and is not mandated to investigate the criminal liability in respect of this tragic occurrence. Without however delving into the forensic specifics of the fatalities, the Commission recognized the direct correlation between the events of that tragic evening and the systemic and pervasive culture of alcohol abuse within the country.
- 1.5. Acknowledging the profound implications of the Enyobeni Tavern tragedy within the wider context of alcohol abuse culture in South Africa, the Commission thus asserted its commitment to extending its focus beyond the singular event.
- 1.6. Therefore, this report delves into these systemic issues, aiming to illuminate factors surrounding the Enyobeni Tavern incident.

- 1.7. By examining the broader framework of alcohol-related challenges, the Commission aimed to uncover the circumstances leading to the tragedy as well as to propose solutions that tackle underlying systemic issues to prevent similar incidents from occurring in the future.

Mandate

- 1.8. The Commission herein is an independent State institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (the 'Constitution') to strengthen constitutional democracy.
- 1.9. In terms of section 184 (1) of the Constitution, the Commission must:
 - 1.9.1. Promote respect for human rights;
 - 1.9.2. Promote the protection, development and attainment of human rights; and
 - 1.9.3. Monitor and assess the observance of human rights in the Republic.
- 1.10. The Commission is empowered, in terms of section 184 (2) (a) and (b) of the Constitution, to investigate and report on the observance of human rights in the country and to take steps to secure appropriate redress where human rights have been violated.
- 1.11. The Commission has additional powers in terms of legislation, including the South African Human Rights Commission Act 40 of 2013 ('SAHRC Act'). Section 13 of the SAHRC Act lists a number of powers and functions of the Commission, which include the powers to:
 - 1.11.1. Request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights in terms of section 13 (1) (iii) of the SAHRC Act;

- 1.11.2. Maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances;
- 1.11.3. Monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants, and international and regional charters relating to the objects of the Commission;
- 1.11.4. Investigate, on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum; and
- 1.11.5. Bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.
- 1.12. Section 15 (1) of the SAHRC Act determines the procedure to be followed in conducting an investigation regarding an alleged violation of, or threat to a fundamental right.
- 1.13. The Commission's Complaints Handling Procedures¹, Government Notice 55, Government Gazette 34963, dated 27 January 2012 (the 'Complaints Handling Procedures') promulgated in terms of section 10

¹ A newly adopted draft of the CHP (6 November 2023) has been approved

(6) of the SAHRC Act, articulate the procedures to be followed in conducting an investigation regarding an alleged violation of, or threat to a fundamental right. Article 3 of the Complaints Handling Procedures provides that:

*'3. The Commission has the jurisdiction to conduct or cause to be conducted any investigation –
(a) on receipt of a complaint, into any alleged violation of a fundamental right, or
(b) on its own accord, into any alleged violation of or a threat to a fundamental right.'*

2. Parties

- 2.1. The Commission initiated this investigation on its own accord and subsequently received a complaint from the Southern African Alcohol Policy Alliance in South Africa (SAAPA SA). The complaint raised concerns about the glamorization of alcohol by the liquor industry, particularly its impact on youth, and highlighted issues of public disempowerment and inadequate responses to complaints about problematic liquor outlets. Integrating SAAPA SA's concerns into its inquiry, the Commission expanded its scope to encompass broader systemic issues within the alcohol industry. This comprehensive approach guided the investigation, enabling the Commission to address not only the Enyobeni Tavern tragedy but also the underlying challenges identified by SAAPA SA and other stakeholders.
- 2.2. The First Respondent is the South African Police Services ('SAPS'), established in terms of section 205 of the Constitution, with its Eastern Cape Provincial offices situated at Griffiths Mxenge Building, Buffalo Road, Zwelitsha.
- 2.3. The Second Respondent is the Buffalo City Metropolitan Municipality ('BCMM'), a municipality established in terms of the provisions of the

Local Government Municipal Structures Act 117 of 1998 read with the Constitution, with its principal place of business situated at 117 Oxford Street, cnr North & Oxford Streets, Trust Centre, East London.

- 2.4. The Third Respondent is the Eastern Cape Liquor Board ('ECLB'), a statutory body regulating the registration of retail sales and micro manufacturing of liquor in the Eastern Cape, with its provincial Head Office situated at Shop 10, Beacon Bay Crossing, Beacon Bay, East London.
- 2.5. In addition to the above respondents, the Commission engaged with various other stakeholders who may have had a role in the Enyobeni Tavern tragedy or the broader systemic issues surrounding alcohol abuse. These stakeholders include local authorities, law enforcement agencies, health professionals, community organizations, and representatives from the liquor industry. By involving multiple parties, the Commission aimed to provide a comprehensive understanding of the factors contributing to the tragedy and to propose holistic recommendations for addressing alcohol-related challenges in South Africa.

3. **Background to the Investigation**

- 3.1. On the 26th June 2022, it was reported that 21 youth died at the Enyobeni Tavern located in Scenery Park, East London. The deaths included 12 boys and 9 girls aged between 13 to 21 years old.
- 3.2. It was alleged that on Saturday, 25th June 2022, the youth visited the Enyobeni Tavern as part of a customary "pens down" celebration² to mark the end of the school exams.

² A "pens down" celebration, in the South African context, refers to an event or gathering typically held after the completion of school exams. During this celebration, students symbolically put down their pens, signifying the end of their academic assessments. It's a moment of relief and festivity, often marked by social activities and festivities among students.

- 3.3. Initial reports at the time suggested that the deaths may have resulted from carbon monoxide poisoning or suffocation resulting from a stampede. These suppositions have since been ruled out.
- 3.4. While the formal inquest into the exact cause of death is pending, it is widely acknowledged that the tragic loss of the learners occurred as a consequence of their attendance at a "pens down" party at the Enyobeni Tavern.

4. **The scope of the Commission's investigation**

- 4.1. The Commission's investigation pursued a dual strategy with immediate actions to address the aftermath of the tragedy and a comprehensive examination of the legal framework governing liquor sales in the Eastern Cape.
- 4.2. Firstly, prioritizing the well-being of affected individuals, especially parents, legal guardians, and relatives, the Commission ensured access to counseling services.³ Secondly, a thorough analysis of the legal framework aimed to identify gaps and assess compliance and enforcement by relevant parties, leading to recommendations for stakeholders.
- 4.3. Additionally, and in view of information gathered, the Commission expanded its focus to encompass a broader analysis of alcohol concerns in South Africa, with a specific emphasis on youth, healthcare systems, and societal impacts. The methodology employed involved analyzing public records, gathering community insights, consulting experts, and evaluating legislative and policy frameworks of relevant stakeholders. This multifaceted approach aimed to propose effective, multifaceted countermeasures addressing both immediate consequences and underlying causes of systemic failures.

³ Referring to counselling services, the Commission was able to secure the psychological services offered by the Fort Hare Psychological Services Centre located in East London. This was then conveyed to the aggrieved parents and legal guardians.

5. Steps taken by the Commission⁴

Parental Engagement

- 5.1. Upon receiving confirmation of readiness from the Fort Hare Psychological Services Centre to offer counselling to the parents affected by the Enyobeni Tavern tragedy, the Commission communicated this vital resource to the grieving families.
- 5.2. Throughout its investigative process from August to September 2022, the Commission maintained direct engagement with these parents, seeking updates on SAPS briefings regarding the expected timeline for the forensic report and reminding them of available counselling services.
- 5.3. Unfortunately, some parents expressed dissatisfaction with SAPS's handling of the matter, particularly regarding the provision of forensic findings. Additionally, the Commission monitored and participated in an online meeting hosted by the South African Council of Churches, Eastern Cape, in February 2023. During this session, discussions centred on the parents' intentions to pursue civil litigation, with appointed legal representatives guiding them through the ongoing process.
- 5.4. Furthermore, on August 5, 2022, Commissioner J Sibanyoni convened a stakeholder engagement at Uviwe Senior Secondary School, providing learners with a crucial platform to address issues concerning social ills, peer pressure, alcohol, and substance abuse, among others. Notably, some of the learners at Uviwe Senior Secondary School were directly impacted by the tragedy, as some of the deceased were students at the school.

⁴ In order to also bolster its understanding of forensic procedures pertinent to the Enyobeni Tavern tragedy, the Commission convened a meeting with a forensic expert. On September 6, 2022, the Commission engaged in discussions with the expert, who provided valuable guidance that informed the subsequent course of our investigations. The insights shared during this meeting were instrumental in shaping our approach, ensuring thoroughness and accuracy in our examination of the circumstances surrounding the tragedy. Through this collaboration, the Commission aimed to enhance its capacity to uncover the truth and uphold principles of justice in its investigation process

- 5.5. This was followed on the same day by an online Youth Dialogue on Social Ills and Social Cohesion, conducted in response to the tragedies involving the youth in various communities.

Community engagement

- 5.6. On the afternoon of June 26, 2022, Dr. Eileen Carter, the Provincial Manager of the Commission in the Eastern Cape, visited the scene of the tragedy to verify its occurrence, confirming details consistent with media reports.
- 5.7. Subsequently, on June 28, 2022, Commission officials conducted a visit to the Enyobeni Tavern's vicinity to engage with local residents. The objective was to facilitate an open discussion, allowing residents to share their experiences with a focus on the tavern. Initially, residents were hesitant to speak, fearing potential victimization. However, they eventually provided verbal accounts, detailing the following observations:
- 5.7.1. Residents noted that until early December 2021, there were limited issues with the Enyobeni Tavern's business practices.
- 5.7.2. However, from the latter part of December 2021 and over subsequent weekends (Friday 18:00 – Monday 06:00), residents reported the following escalating issues:
- 5.7.2.1. Increased noise levels from the tavern;
 - 5.7.2.2. A significant surge in the number of patrons;
 - 5.7.2.3. Disregard for operating hours;
 - 5.7.2.4. Instances of underage drinking both within and outside the tavern;
 - 5.7.2.5. Incidents of public indecency, including urination and sexual conduct in public areas, driveways, and residents' yards;
 - 5.7.2.6. Damage to and theft of property by tavern patrons; and
 - 5.7.2.7. Disposal of empty bottles into residents' yards.

- 5.8. Despite reporting these issues to the Scenery Park police station and the ECLB on numerous occasions, residents noted a lack of positive interventions.
- 5.9. Significantly, the Commission was informed that in May 2022, SAPS officials conducted a door-to-door campaign, allowing residents near the tavern to submit affidavits detailing challenges they faced. Twenty affidavits, each representing a household, were submitted during this campaign.
- 5.10. Allegations further arose that an ECLB official was present during this campaign.
- 5.11. Following the door-to-door campaign, a meeting was convened at the Scenery Park police station, attended by concerned residents, SAPS officials, and an ECLB representative. The meeting focused on addressing challenges outlined in the affidavits against the Enyobeni Tavern.
- 5.12. However, residents reported a lack of subsequent engagement or action from SAPS officials post-meeting, whether in the form of investigations or patrols in the affected area.

Correspondence to SAPS

- 5.13. On March 7, 2023, the Commission dispatched comprehensive correspondence to the Eastern Cape SAPS Provincial Commissioner. This communication outlined:
 - 5.13.1. The underlying rationale behind the Commission's investigation into the Enyobeni Tavern tragedy.
 - 5.13.2. A detailed exposition of the challenges encountered by residents concerning the Enyobeni Tavern, particularly preceding the incident.

- 5.13.3. Reference to the community engagement through a door-to-door campaign and subsequent submission of affidavits, along with the meeting convened in May 2022.
- 5.13.4. Emphasis on the legislative framework governing the responsibilities and actions of SAPS in such matters.
- 5.14. The communication also articulated specific requests for information from SAPS, including:
 - 5.14.1. The timeline of complaints or notifications received by SAPS offices, detailing their nature. Copies of these complaints were requested for review.
 - 5.14.2. Details regarding the actions taken by SAPS subsequent to the receipt of these complaints.
 - 5.14.3. Confirmation regarding the occurrence and attendees of the meeting held at the Scenery Park police station.
 - 5.14.4. Clarification on any specific measures implemented by SAPS following reports of underage drinking.
- 5.15. A reminder was dispatched to SAPS on April 17, 2023, urging expedited response. This reminder was promptly acknowledged by SAPS, assuring the Commission of their intention to collaborate once the requested information was gathered.
- 5.16. On April 21, 2023, the Commission received a comprehensive response from SAPS, which encompassed the following details:
 - 5.16.1. A copy of a letter dated March 31, 2023, addressed to SAPS provincial offices by the Scenery Park Station Commander. The letter outlined:
 - 5.16.1.1. Absence of written complaints from the community, although incidents of noise and public drinking were sporadically reported to the Community Service Centre (CSC).

- 5.16.1.2. Deployment of CSC members for regular patrols near the Enyobeni Tavern and compliance inspections conducted on a weekly basis.
- 5.16.1.3. Organization of a meeting on May 17, 2022, attended by neighbors of the tavern, an ECLB member, station management, Community Policing Officer, and CPF chairperson.
- 5.16.1.4. Reference to attached affidavits detailing complaints about late operating hours, noise, and indecent behavior.
- 5.16.1.5. Provision of contact numbers to attendees for immediate reporting of community concerns.
- 5.16.1.6. Submission of a file containing 12 affidavits from community members expressing discontent with the Enyobeni Tavern.
- 5.16.1.7. Inclusion of images depicting apparent meetings between police officials and tavern neighbors, dated May 11, 2022.
- 5.16.1.8. A document titled "INTERVENTION MEETING AT ENYOBENI TAVERN," documenting a meeting between Vispol commander, Captain Mtykwekwana, and tavern owners on April 6, 2022. Discussions centered on high crime rates in the area and compliance issues.
- 5.16.1.9. Details from the meeting indicating Mr. Ndevu's efforts to adhere to closing times and challenges faced in managing patrons outside the premises.
- 5.16.1.10. Documentation titled "VISIT NYOBENI TAVERN ON 2021/12/18 @ 17:00," describing a visit by a Scenery Park police station official following complaints of public nuisance. The official observed violations of liquor regulations and engaged with tavern owners.
- 5.16.1.11. Account of the official's interaction with tavern owners, including Mrs. Ndevu's assertion that police intervention was beyond their jurisdiction.
- 5.16.1.12. Mrs. Ndevu's non-compliance with a police request to visit the station on December 20, 2021, citing jurisdictional issues.
- 5.16.1.13. A bundle of ECLB registration documents related to the Enyobeni Tavern.

Correspondence to ECLB

5.17. The Commission dispatched correspondence, dated the 7th March 2023, to the Chief Executive Officer of the ECLB in terms of which it:-

5.17.1. Provided the basis of the Commission's investigation.

5.17.2. Put forward the challenges faced by the residents regarding the Enyobeni Tavern, which occurred prior to the incident.

5.17.3. Referred to the door-to-door engagement and subsequent affidavits that were submitted to SAPS officials as well as the meeting that took place in May 2022.

5.17.4. Highlighted legislative framework governing the ECLB.

5.18. The following information was then requested from the ECLB:

5.18.1. Whether the Enyobeni Tavern was in possession of a valid registration certificate at the time leading up to the incident;

5.18.2. Whether community consultations were conducted regarding the liquor licence application and if any objections were noted;

5.18.3. Whether the ECLB received any form of complaint, notification or information regarding any alleged disturbances resulting from the conduct of the tavern;

5.18.4. Confirmation of whether any ECLB employees were present at the meeting held at the Scenery Park police station in which complaints against the tavern were put forward; and

5.18.5. Noting the ECLB's mandate, vision and mission, what steps, processes and/or programmes are in place to ensure that social cohesion within communities is realised; to ensure proper management in reducing socio-economic effects of excessive alcohol consumption and what compliance mechanisms are being utilised by the ECLB to enforce and monitor compliance on part of liquor traders.

5.19. On the 15th March 2023 the Commission received a response from the ECLB, where they responded as follows:

- 5.19.1. That Vuyokazi Ndevu (the registrant) was in possession of a valid registration certificate for the retail of sale of liquor under the trading name of Enyobeni.
- 5.19.2. The ECLB processes to issue a liquor licence are set out in the Eastern Cape Liquor Act 10 of 2003 and associated Regulations ('Liquor Act').
- 5.19.3. In the case of Enyobeni, Mrs Ndevu lodged an application to trade in the retail sale of liquor for 'on and off consumption' (tavern) under the trading name of Enyobeni situated at 37300 Phase 1, Scenery Park, East London.
- 5.19.4. On the 12th December 2011, in accordance with Regulation 4 of the Liquor Act, the ECLB gazetted the notice of application to the public. The public advertisement is twofold in that it informs the public, including government entities of the pending application and secondly, to solicit any objections to the liquor licence application. No objections were raised in this regard.
- 5.19.5. In terms of the Liquor Act, the Applicant is required to serve a form 2 notice to the Ward Committee of the Ward in which the proposed outlet is intended to operate. That section 22 (2) (d) (i) of the Liquor Act mandates the Ward Committee to consult the community of the area where the premises are situated and simultaneously submit a report to the ECLB and relevant municipal council.
- 5.19.6. That in the case of Enyobeni, service of form 2 was received by the Ward Councillor, the Chairperson of the Ward Committee. Form 2 Notice legally mandates the Ward Committee to convene a community consultation and to submit a report to the ECLB and the relevant Municipal Council.
- 5.19.7. That the ECLB received two community consultation reports. One from the then Ward Councillor and one from the then Ward Committee confirming that the community was consulted. No objections were received, and the application was supported.
- 5.19.8. That the above mechanism is designed to ensure that the Local Authority is notified about the liquor licence application. The aspect of zoning, land

use and approved building plans was not raised as an objection in the aforementioned reports.

- 5.19.9. That the ECLB distributes its database of registered liquor traders, including their addresses, to the public which includes government agencies such as the Local Municipal Authority. Emphasis was placed on the fact that the ECLB issues a liquor licence when all legislative requirements as detailed in section 22 of the Liquor Act are met.
- 5.19.10. That the ECLB conducted the required pre and post registration inspection of the outlet and the premises were at the time compliant in respect of Regulation 2 (3) of the Liquor Act.
- 5.19.11. And that with regards to the receipt of complaints, the ECLB advised that on the 23rd of August 2021, 3rd and 13th September 2021 complaints relating to non-compliance with the Disaster Management Act and associated Regulations were received via the ECLB complaints hotline. The ECLB advised that they did not have competency to enforce said matters/complaints as such matters or complaints were to be enforced by an 'enforcement officer'.
- 5.19.12. Further, the ECLB indicated that the definition of an 'enforcement officer' excluded ECLB Inspectors but included members of the South African Police Service, South African National Defence Force and a peace officer.
- 5.19.13. That due to this exclusion of their officials in enforcing their legislation, the complaints received were referred to the Station Commander of Scenery Park police station. It was only after the tragedy that written complaints in affidavit format were provided by SAPS to the ECLB.
- 5.20. Speaking to the question of whether an ECLB official was present at the Scenery Park police station meeting, ECLB advised that a Senior Inspector attended a meeting held on the 17th May 2022. Said inspector was invited to advise SAPS and community members on the general trading conditions imposed on outlets.
- 5.21. In response to processes and programs aimed at mitigating the socio-economic impacts of alcohol abuse, the ECLB advised that to mitigate

underage drinking, school-based education programs had been intensified. A total of 40 schools were targeted per district municipality, identified with the assistance of the Department of Education. A school-based Ambassador Programme was launched where four learners were nominated from each participating school to be ECLB ambassadors who would educate other learners on the dangers of underage drinking.

- 5.22. Furthermore, the ECLB launched the Anti-Pens Down Campaign in the Buffalo City Metropolitan Municipality region to raise awareness against the culture of Pens Down parties. This initiative was subsequently extended to other municipalities such as the Nelson Mandela Metro and OR Tambo District Municipality. The ECLB further rolled out a 'Back-to-School Campaign' meant to impress the dangers of underage drinking, including the Pens Down culture.
- 5.23. With respect to compliance mechanisms utilized by the ECLB, it was noted that sections 28, 29, and 55 of the Liquor Act detailed measures to seek compliance on the part of liquor traders. The Liquor Act provides for criminal charges should provisions of the act be contravened. The ECLB partnered with SAPS and Metro Police in Blitz operations to seek non-compliant traders and to take the requisite action against them.
- 5.24. Following the tragedy, and on or about June 27, 2022, the ECLB invoked section 55 of the Liquor Act, which provided for the owner to close the premises with immediate effect. A Notice was served directly on the registered owner of the liquor outlet, Mrs. Ndevu. The ECLB further instituted criminal charges against the registered owner, Mrs. Ndevu, tavern employees, and the registered tavern manager, Mr. Ndevu, for contravention of the Liquor Act.
- 5.25. The ECLB was further moving to facilitate a revised determination of the fine schedule to discourage non-compliance. As it stood, the determination of fines, as permitted by the Criminal Procedure Act 59 of 1977, as amended ('Criminal Procedure Act'), held that an admission of

guilt fine was R2,000.00 for contravening section 38 of this act (for the supply of liquor to underage persons).

- 5.26. Referring to Law Reform, the ECLB confirmed that the Eastern Cape Liquor Authority Act 4 of 2018 (new Liquor Act) was gazetted on March 11, 2019, and has yet to come into full effect. Further, the ECLB was in the process of amending current Regulations to the Liquor Act, which amendments would be seen to bolster the ECLB's legal footing.
- 5.27. With reference to declaring Inspectors as Peace Officers, the ECLB was in the process of seeking approval from the Honourable Minister of Justice and Correctional Services to declare Inspectors as Peace Officers in terms of section 334 of the Criminal Procedure Act.
- 5.28. This would equip the ECLB inspectors with expanded legal powers to ensure that registered owners of liquor outlets adhere to the provisions of the Liquor Act. Inspectors had undergone Peace Officer training in anticipation of the declaration.
- 5.29. During the course of the investigation, further follow-up correspondence was dispatched to the ECLB, dated October 2nd, 2023. The following information was requested from the ECLB:
 - 5.29.1. Copies of the two community consultation reports that had been submitted to the ECLB.
 - 5.29.2. Details regarding the manner, platform, and frequency in which the ECLB distributed the database of registered liquor traders, particularly regarding whether the local municipal authority had access to such information.
 - 5.29.3. An outline from the ECLB regarding the nature of complaints it received and subsequently referred to the Station Commander at the Scenery Park police station, with particular attention to any complaints related to underage drinking.

- 5.29.4. A copy of the revised determination, acknowledging that this process was still underway, along with the status regarding the finalization of the fine determinations.
- 5.29.5. An update on the status of the approval to declare ECLB inspectors as Peace Officers.
- 5.29.6. Information on the approximate number of taverns operating within the ECLB's jurisdiction; the number of inspectors employed by the ECLB; ECLB's desired number of inspectors; inspection frequency for taverns; sufficiency of the ECLB's budget for operational and personnel requirements related to monitoring and compliance; and strategic initiatives or resource allocation plans to enhance the ECLB's capacity for overseeing tavern operations and ensuring compliance.
- 5.30. The ECLB responded through correspondence dated November 1st, 2023. Their response included the following:
- 5.30.1. Copies of the 'Confirmation of a community consultative process regarding an application for liquor registration'⁵, the 'Ward Committee Report in respect of the community consultation process', and the 'Notice to the Ward Committees, Governing Bodies of Educational Institutions and places of worship, of intention to apply for registration'.⁶
- 5.30.2. Explanation that due to excessive financial costs, the ECLB was unable to publish the entire register of liquor traders in the government gazette or newspapers. However, this information was available on the ECLB's website.⁷
- 5.30.3. Information that the determination of fines was considered by respective Chief Magistrates, and although revised determinations were approved, uniformity was not reached between the two magisterial jurisdictions.⁸
- 5.30.4. Confirmation that the ECLB submitted a formal request to the Honourable Minister Lamola and the Director-General of the Department

⁵ Signed at East London, dated 22nd November 2011, with BCMM official date stamp

⁶ Signed at East London, dated the 10th November 2011, with BCMM official date stamp

⁷ Community consultation dated 22nd July 2012. Details of attendees redacted in order to comply with the provisions of the Protection of Personal Information Act 4 of 2013. Community supported the application.

⁸ Chief Magistrate: Gqeberha; Chief Magistrate: East London and Chief Magistrate: Mthatha

of Justice and Correctional Services, seeking approval to declare ECLB Inspectors as Peace Officers.⁹

- 5.30.5. Disclosure that the number of registered liquor outlets in the East London area was approximately 515.
- 5.30.6. Information that at the time of the Enyobeni Tavern tragedy, the East London area was serviced by 1 inspector, with a ratio of 1 Inspector for every 470 taverns. Currently, the ECLB employs 23 Inspectors,¹⁰ with the desired number of Inspectors needed for effective compliance monitoring and enforcement being about 35-40 Inspectors.
- 5.30.7. Details about the ECLB's engagement with both SAPS and municipalities to train police and metro police officers on the provisions of the Liquor Act for maximizing monitoring and enforcement purposes.

Department of Health

- 5.31. The Commission dispatched correspondence dated March 8th, 2023, to the department, outlining the following:
 - 5.31.1. Providing the basis for the Commission's investigation.
 - 5.31.2. Noting the department's initial suggestion that the deaths were due to methanol poisoning, which was later ruled out. Subsequent information revealed that the deaths were caused by suffocation due to overcrowding.
 - 5.31.3. Requesting copies of the department's final report indicating the cause of death for each of the deceased.
 - 5.31.4. Inquiring whether the department, either independently or upon request by a family member or interested party, sought to have an independent pathological medical practitioner conduct an autopsy to verify or ascertain the cause of death.

⁹ On or about the 8th May 2023

¹⁰ Of the 23 Inspectors, the Chief Inspector and Senior Inspector Quality Assurance are not allocated outlets/inspection areas, which means the inspectors in fact are 21

- 5.32. Despite reminders, the Commission received no response from the department.
- 5.33. Additionally, noting a pending inquest, the Commission resolved not to further its engagement on this matter.

Correspondence to BCMM

- 5.34. On August 21st, 2023, the Commission sent correspondence to BCMM, detailing the following:
 - 5.34.1. Providing the basis for the Commission's investigation.
 - 5.34.2. Highlighting the challenges faced by residents concerning the Enyobeni Tavern before the incident.
 - 5.34.3. Raising questions and comments regarding the legality of the building housing the Enyobeni Tavern, including whether BCMM received and approved the building plans and whether the property was zoned for business.
 - 5.34.4. Referring to the Zoning Scheme Regulations under section 9(2) of the Land Use Planning Ordinance 15 of 1985, with specific emphasis on the Policy for Informal Alcohol Retail Operations: Taverns.
 - 5.34.5. Mentioning a media article published on July 20th, 2023, titled '*Buffalo City Metro issues demolition order to the owners of Enyobeni tavern,*' which reported that the municipality ordered the demolition of the top floor of the double-story building housing the Enyobeni Tavern due to lack of approved building plans and illegal construction on residentially zoned land.
 - 5.34.6. Noting that the municipality did not receive any application or correspondence seeking permission for business zoning or grant any departures for the tavern's operation.
 - 5.34.7. Pointing out the procedures for applying for a liquor license, including the responsibility of the Ward Committee to consult with the community and submit a report to the municipal council.

- 5.34.8. Advising the municipality on the Provincial Gazette Extraordinary, dated December 17th, 2023, No. 70 of Gazette No. 3093, which addresses the municipality's liquor trading hours and provides definitions of community and Ward committee.
 - 5.34.9. Inquiring whether the municipality received any complaints regarding noise nuisance, violation of trading hours, under-age drinking, and the legality of the tavern's structure and zoning.
 - 5.34.10. Requesting a copy of the report from the community consultation by the Ward Committee submitted to the municipal council.
 - 5.34.11. Asking about the steps being taken by the municipality to conduct a systemic profiling exercise to investigate allegedly illegally operated taverns.
- 5.35. BCMM responded on the 4th September 2023 and advised as follows:
- 5.35.1. That the municipality noted that the Enyobeni Tavern was not zoned as business which enables conversion of existing residential building to be used for trading or as a business.
 - 5.35.2. That the Spatial Planning & Land Use Management Act 16 of 2013 supersedes the old Land Use Planning Ordinance 15 of 1985.
 - 5.35.3. That the municipality has advised the ECLB that they are to obtain Municipal Planning Tribunal approval before a liquor license can be issued.
 - 5.35.4. That the municipality noted the Commission's reference to the procedure to be followed by the municipality before a liquor license can be issued as well as the importance of the participation of the ward committees in such process.
 - 5.35.5. That the municipality never received any complaints against the tavern.
 - 5.35.6. That through their inspection efforts, they unfortunately never identified the Enyobeni Tavern as flouting building regulations and zoning laws.
 - 5.35.7. However, that moving forward, the municipality will be working with the ECLB and SAPS to conduct regular inspections of all taverns within the city.

- 5.35.8. That the municipality is in the process of entering into a Memorandum of Agreement with the ECLB with the sole intention being to tighten the working relationship to avoid similar occurrences in the future.

Central Drug Authority

- 5.36. The Prevention of and Treatment for Substance Abuse Act 70 of 2008 ('Substance Abuse Act') mandates the establishment of Local Drug Action Committees (LDACs) by municipalities to address substance abuse within their jurisdictions.
- 5.37. LDACs play a crucial role in implementing strategies outlined in the Substance Abuse Act to control and reduce the supply of, demand for, and harm caused by substances such as alcohol and drugs.
- 5.38. These committees bring together various stakeholders from governmental departments, law enforcement agencies, educational institutions, healthcare providers, and community organizations to coordinate efforts in combating substance abuse.
- 5.39. The establishment of LDACs is vital as it ensures a coordinated and multi-sectoral approach to tackling substance abuse, thereby promoting public health and safety.
- 5.40. In light of the importance of the role of LDAC's within communities, the Commission reached out to the Central Drug Authority ('CDA') to enquire about the existence of LDAC within BCMM, as well as the broader Eastern Cape perspective of established LDAC's.
- 5.41. Based on the response received from the CDA, it is evident that the BCMM did not have an established LDAC at the time of the Enyobeni Tavern tragedy on June 26, 2022.
- 5.42. However, during the 2021-22 financial year, several other Eastern Cape municipalities had established LDACs in accordance with the Act,

including Umzimvubu, Mbashe, Emalahleni, Intsika Yethu, Inxuba Yethemba, Sakhisizwe, Elundini, Senqu, Nyandeni, Port St Johns, Mhlontlo, Kouga, Ndlambe, and Nelson Mandela Metro Municipality.

- 5.43. As of the current date, the Eastern Cape municipalities that have established LDACs in compliance with the Substance Abuse Act include Umzimvubu, Mbashe, Emalahleni, Intsika Yethu, Inxuba Yethemba, Sakhisizwe, Elundini, Senqu, Nyandeni, Port St Johns, Mhlontlo, Kouga, Ndlambe, and Nelson Mandela Metro Municipality.

Further Steps and Interventions

- 5.44. With the ECLB's implementation of school-based initiatives to educate learners on the negative effects of alcohol consumption, the Commission sought information from the Department of Education into whether they have implemented similar school-based campaigns.
- 5.45. The Department of Education regrettably advised that they do not currently have any such campaigns.
- 5.46. What is noteworthy at this point is that the South African school curriculum serves a comprehensive purpose, aiming to facilitate the holistic development of learners while equipping them with essential knowledge and skills. It fosters critical thinking, problem-solving abilities, and cultural awareness, promoting social cohesion and tolerance.
- 5.47. The curriculum instills civic values, ethical conduct, and a sense of responsible citizenship, preparing learners for active participation in a democratic society.
- 5.48. The Commission also engaged on its assessments with a sample of key role-players within the liquor stakeholder sector, including the Advertising Regulatory Board ('ARB') and the Drinks Federation of South Africa ('DFSA').

- 5.49. The ARB, is a board set up by the broader marketing and communications industry to protect the South African consumer through the self-regulation of advertising, including packaging.
- 5.50. The ARB's position was that alcohol advertising is a minor factor in a complex array of socio-economic drivers that result in alcohol abuse and under-age drinking. It urged the Commission to look beyond visible, superficial solutions and consider the deeper, entrenched issues behind alcohol abuse. Factors contributing to underage drinking include poverty, unemployment, easy access to alcohol, cultural norms, peer pressure, and limited education on alcohol's risks. The role of advertising is acknowledged, but as part of a broader context where various social, economic, and cultural elements play a significant role in influencing underage drinking and alcohol abuse.
- 5.51. The DFSA indicated that it aimed to be recognized for its significant role in fostering a thriving, fair, and safe country, contributing notably to improving responsible drinking practices. Its mandate includes implementing self-regulation, promoting responsible trade, advancing the formalization of the market, and working to reduce illicit trade activities.
- 5.52. The DFSA, from their response, acknowledged the negative societal impacts of problematic alcohol consumption and advocates for shared responsibility in promoting responsible drinking. Established in November 2022, DFSA represents various alcohol industry sectors and collaborates with Aware.org on education and responsible drinking programs. It emphasized scientific research, market integrity, responsible trading, and stakeholder collaboration in countering the illicit trade of alcohol.
- 5.53. DFSA further indicated that it administers the self-regulatory Communication Code of Conduct, focusing on responsible alcohol

marketing and advertising. A Trade Code of Conduct is also being developed to enforce responsible trading practices, including e-commerce challenges. DFSA highlighted their commitment to responsible alcohol consumption and trading, and its role in addressing the broader societal issues related to alcohol abuse.

- 5.54. In order to continuously engage with the community relating to the systemic concerns that Scenery Park faces, the Commission again visited the area on the 27th of September 2022. At this juncture, the Commission resolved to monitor available recreational facilities within the area. The Commission noted a dire lack of these important relief facilities for children which play a vital role in the healthy development of children.

6. **LEGAL FRAMEWORK**

6.1. **The Constitution of the Republic of South Africa¹¹ ('Constitution'):**

- 6.1.1. The Constitution is the highest legal authority with a binding nature on all branches of government and state organs. It implies that any law or conduct inconsistent with the Constitution's provisions, including those related to human rights, is invalid. It underscores the importance of ensuring that all actions taken by government bodies, including the investigation into the Enyobeni Tavern tragedy, align with the constitutional framework.
- 6.1.2. Section 10 of the Constitution emphasizes the inherent dignity of every individual and the obligation to respect and promote it. In the context of the Enyobeni Tavern tragedy, it highlights the importance of treating the victims and their families with dignity and respect throughout the investigation and legal proceedings.

¹¹ Act 108 of 1996

- 6.1.3. Section 11 guarantees the right to life for everyone. The tragedy at Enyobeni Tavern involved loss of life, making this constitutional provision directly relevant. It underscores the duty of the state to protect and preserve the lives of its citizens and to investigate any circumstances that may have led to loss of life.
- 6.1.4. The right to freedom and security of the person is dealt with in section 12 of the Constitution. This section protects individuals from being subjected to cruel, inhumane, or degrading treatment. It ensures that everyone has the right to security and freedom from harm. In the case of the Enyobeni Tavern tragedy, any negligence or misconduct that contributed to the loss of life may implicate this constitutional provision.
- 6.1.5. Section 22, and for purposes which will be made clear later within this report, guarantees the right of citizens to freely choose their trade, occupation, or profession, subject to lawful regulation. This provision may be relevant if there are concerns about the legality of the tavern's operation or compliance with licensing regulations.
- 6.1.6. The right to a healthy environment in section 24 further guarantees the right to an environment that is not harmful to one's health or wellbeing. In the context of the Enyobeni Tavern tragedy, this provision may be invoked in respect of concerns about public health and safety.
- 6.1.7. While section 27 doesn't directly address substance abuse, it lays the groundwork for why access to treatment for addiction might be considered a right. This section guarantees everyone the right to access to healthcare services, which includes socio-economic factors affecting health. Since chronic substance abuse can significantly impact a person's health and well-being, a strong argument can be made that the government has a responsibility to provide, or at least facilitate, access to treatment programs as part of fulfilling this right. The specific

limitations and obligations of the government would likely depend on available resources and the severity of the addiction.

- 6.1.8. Key to the Commission's assessment, is section 28 of the Constitution. This section prioritizes the best interests of the child in all matters concerning them. Concerns about underage drinking, accessibility into and treatment of minors at taverns, as well as a general lack of responsiveness in respect of a regulatory framework triggers this constitutional provision in determining appropriate measures to safeguard children's welfare.
- 6.1.9. Section 32 further guarantees the right of access to information held by the state. In the investigation into the Enyobeni Tavern tragedy, access to relevant information, such as reports, documents, and findings, is essential for transparency and accountability. These also include access to registered liquor outlets, proper regulatory processes, information about the impact of certain licensing etc. In this respect section 33 goes further and ensures that administrative actions taken by government bodies are lawful, reasonable, and procedurally fair. Any actions or decisions made by relevant authorities must adhere to these principles.
- 6.1.10. Section 36 allows for the limitation of rights under certain circumstances, provided that the limitation is reasonable, justifiable, and in line with constitutional principles. In the context of the Enyobeni Tavern tragedy, any measures taken by the government that may limit individual rights must meet these criteria and be justified within the context of an open and democratic society.¹²
- 6.1.11. Section 39 of the South African Constitution further ensures all laws and legal interpretations prioritize the Bill of Rights. When making decisions, courts must consider international law and promote human dignity, equality, and freedom. This applies not only to the Bill of Rights itself, but

¹² Said relevant factors include the '(a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose.'

to all laws in South Africa, ensuring they ultimately uphold the Constitution's core human rights principles.

6.1.12. Further to the above, additional constitutional provisions play a crucial role in shaping the collaborative efforts required between different stakeholders such as the ECLB, BCMM, and SAPS in circumstances as is reflected in the current investigation. Section 41 (1)¹³ (b) underscores the overarching duty of all government spheres and state organs to ensure the well-being of South Africa's people, which may encompass taking measures to prevent similar incidents and promote public safety.¹⁴

6.1.13. Section 41 (1) (h) emphasizes the necessity for cooperation among government entities, emphasizing mutual trust and good faith, essential for effective coordination and response. Section 152 (1) (c) and (d) outline the objectives of local government, highlighting the need to promote social and economic development and ensure a safe and healthy environment within communities, which are directly relevant to addressing issues surrounding the operation of establishments like the Enyobeni Tavern.¹⁵ Section 198 (a) speaks to the broader context of national security, emphasizing the collective aspiration of South Africans to live in peace, harmony, and with freedom from fear, underlining the importance of addressing public safety concerns arising from incidents like this.¹⁶

6.1.14. Lastly, Section 205 (3) delineates the responsibilities of the police service, emphasizing their duty to prevent and investigate crime, maintain public order, and protect the inhabitants of the Republic and their property, highlighting their pivotal role in ensuring justice and enforcing the law in all matters concerning communities, and in particular, children.¹⁷

¹³Principles of co-operative government and intergovernmental relations'

¹⁴ By '(i) fostering friendly relations; (ii) assisting and supporting one another; (iii) informing one another of, and consulting one another on, matters of common interest; (iv) co-ordinating their actions and legislation with one another; ...'

¹⁵ 'Objects of local government'

¹⁶ 'Governing principles' for Security Services as provided for in Chapter 11 of the Constitution

¹⁷ 'Police service'

6.2. South African Police Service Act¹⁸ ('Police Service Act'):

6.2.1. Section 13¹⁹ (1) of the Police Service Act states that subject to the Constitution and regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official.

6.3. The South African Police Service Amendment Act²⁰: ('Police Service Amendment Act')

6.3.1. Section 64E²¹ of the Police Service Amendment Act states that the functions of a municipal police service is the policing of municipal by-laws and regulations which are the responsibility of the municipality in question and the prevention of crime.

6.3.2. Section 64F²² states that subject to the Constitution, and with due regard to the fundamental rights of every person, a member of a municipal police service may exercise such powers and shall perform such duties as are by law conferred upon or assigned to a member of a municipal police service.

6.4. The National Liquor Act²³ ('National Liquor Act')

6.4.1. In terms of section 2²⁴ of the National Liquor Act, states that '*the objects of this Act are*

*(a) to reduce the socio-economic and other costs of alcohol abuse by –
(i) setting essential national norms and standards in the liquor industry;
(ii) regulating the manufacture and wholesale distribution of liquor; (iii) setting essential national norms and standards for the regulation of the*

¹⁸ 68 of 1995

¹⁹ 'Members'

²⁰ 83 of 1998

²¹ 'Functions of municipal police service'

²² 'Powers of member of municipal police service'

²³ 59 of 2003

²⁴ 'Objects of Act'

retail sale and micro-manufacture of liquor; and (iv) providing for public participation in the consideration of applications for registration; and (b) to promote the development of a responsible and sustainable liquor industry in a manner that facilitates – (i) the entry of new participants into the industry; (ii) diversity of ownership in the industry; and (iii) an ethos of social responsibility in the industry.'

6.4.2. Section 9²⁵ (1) (a) (ii) states that '*a person must not advertise any liquor or methylated spirits in a manner intended to target or attract minors...*'.

6.4.3. Section 10²⁶ (1) states that '*a person must not sell or supply liquor or methylated spirits to a minor.*'

6.5. **The Control of Marketing of Alcoholic Beverages Bill of 2013 ('Bill'):**

6.5.1. Similar to the principles of the Tobacco Products Control Act²⁷, this Bill was primarily aimed at regulating and reducing the marketing, promotion and sponsorship of alcoholic beverages. It was introduced in response to concerns about the high levels of alcohol abuse and its associated social and health problems in South Africa.

6.5.2. On the 18th September 2013, Cabinet approved that the Bill should be gazetted for public comment. This was per the media statement by the then Minister of Social Development, Ms Bathabile Dlamini. In terms of the then Minister's media statement, she stated the following:

'The Bill aims to reduce alcohol-related harm and protect public health by limiting public exposure to alcohol marketing. This includes restricting alcohol advertisements, prohibiting sponsorships associated with alcoholic beverages (except for non-promotional donations), and banning alcohol promotions.'

²⁵ Advertising restrictions

²⁶ Prohibition of supply of liquor or methylated spirits to minor

²⁷ 83 of 1993

6.5.3. The key objectives contained within the Bill includes:

6.5.3.1. To limit the exposure and appeal of alcoholic beverages, especially among vulnerable populations like youth, thus reducing the overall consumption in the country; and

6.5.3.2. protecting public health by reducing the incidence of alcohol-related harm.

6.5.4. By controlling the marketing of alcohol, the Bill intended to make alcoholic beverages less attractive and less accessible to minors, as well as to limit social issues like violence, crime and family disruption by reducing the visibility and attractiveness of alcohol. The Bill further considered the economic impact of alcohol abuse which includes costs related to healthcare, law enforcement and lost productivity.

6.5.5. This Bill has unfortunately yet to be gazetted.

6.6. **The Draft Liquor Amendment Bill, 2016**

6.6.1. The Draft Liquor Amendment Bill (DLAB), proposed by the Department of Trade and Industry and now undergoing public comment, aims to introduce significant changes to the Liquor Act of 2003.

6.6.2. With the goal of addressing the societal harms associated with alcohol abuse, the Bill includes provisions to tighten regulations on alcohol advertising and sales.

6.6.3. Notable amendments include restrictions on alcohol advertising across various media platforms, the establishment of proximity regulations to prevent liquor outlets from operating within 500 meters of schools, residential areas, public institutions and places of worship and recreation, and an increase in the legal drinking age from 18 to 21 years.

6.6.4. Additionally, the Bill proposes specific trading days and hours for the distribution and manufacturing of alcohol to mitigate excessive consumption. Furthermore, it seeks to hold alcohol retailers and manufacturers accountable for harm resulting from violations of regulations.

6.6.5. The Bill has been on hold since 2018.

6.7. Eastern Cape Liquor Act²⁸ ('Liquor Act'):

6.7.1. In terms of section 2²⁹ of the Liquor Act, it states that:

'the objects of the Liquor Act are to make provision for the registration of retail sales and micro-manufacturing of liquor in the Province, to encourage and support the liquor industry and to manage and reduce the socio-economic and other costs of excessive alcohol consumption by creating an environment in which- (a) the entry of new participants into the liquor industry is facilitated; (b) appropriate steps are taken against those selling liquor outside the administrative and regulatory framework established in terms of this Act; (c) those involved in the liquor industry may attain and maintain adequate standards of service delivery; (d) community considerations on the registration of retail premises are taken into account; and (e) the particular realities confronting the liquor industry in the Province can be addressed.'

6.7.2. Section 19³⁰ of the Liquor Act states that no person shall sell liquor unless they are registered or are deemed to be registered in terms of the Liquor Act to sell liquor.

²⁸ 10 of 2003

²⁹ Dealing with 'Objects of Act'

³⁰ 'Compulsory registration'

- 6.7.3. Section 20³¹ (c) states that an application for registration in terms of the Liquor Act may be made for *'the retail sale and consumption of liquor on and off the premises on which the liquor is being sold'*.
- 6.7.4. Section 22³² (2) (d) (i) states that proof of service of the notice contemplated in the prescribed manner³³ on the ward committee must accompany the application for registration. The ward committee must, on receipt of the notice, consult the community of the area where the premises are situated and simultaneously submit a report to the board and the relevant municipal council.
- 6.7.5. Regulation 4³⁴ states that the board must, within seven days of receipt of an application for registration in terms of the Liquor Act, notify the public by notice in the Gazette and must invite interested parties to submit their written representations or objections to the board.
- 6.7.6. Further, the ECLB made public the application for registration in the Provincial Gazette Extraordinary No. 2673 dated 12th December 2011. Section 38³⁵ states that no registered person may sell liquor to any person under the age of 18 years or an intoxicated person. Section 42³⁶ (b) states that a person registered to sell liquor may sell liquor only during hours determined by the municipality in whose area of jurisdiction the premises are situated.
- 6.7.7. Section 47 (1)³⁷ continues to state that an inspector may conduct an inspection and monitor and enforce compliance on any liquor related matter.
- 6.7.8. Section 61³⁸ (1) (b) states that any person who contravenes or fails to comply with the provision of section 38, which is the selling of alcohol to

³¹ *'Categories of registration'*

³² *'Application procedure for registration, transfer or removal'*

³³ In terms of section 3 of the ECLB Regulations, an applicant must within seven days of lodgement, serve a notice substantially in the form of Form 2 of Annexure 2 on the ward committee of the area where the premises are situated.

³⁴ Eastern Cape Liquor Regulations in terms of the Liquor Act, *'Notice by board to members of the public'*

³⁵ *'Prohibition on sale of liquor to certain persons'*

³⁶ *'Trading hours'*

³⁷ *'Powers and duties of inspectors'*

³⁸ *'Penalties'*

persons under the age of 18 or an intoxicated person, must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both such fine and imprisonment.

6.8. The Prevention of and Treatment of Substance Abuse Act, 2008 ('Substance Abuse Act')

- 6.8.1. The definition of "substances" in this act encompasses various chemical and psychoactive substances that are susceptible to abuse. This includes alcohol, which is classified as a psychoactive substance.
- 6.8.2. The act further addresses the escalating issue of substance abuse in South Africa through a comprehensive national response. It establishes measures for prevention, treatment, rehabilitation, and reintegration of substance users into communities, with a focus on coordinated efforts across various sectors.
- 6.8.3. Central to the act, and as pointed out above, is section 60, which mandates the establishment of Local Drug Action Committees (LDACs) at the municipal level. These committees, comprising stakeholders from diverse backgrounds, are tasked with implementing the Mini Drug Master Plan. The plan, developed in collaboration with national departments, provincial substance abuse forums, and LDACs, outlines strategies to control and reduce the supply of, demand for, and harm caused by substances. LDACs play a crucial role in local efforts to combat substance abuse, working alongside government agencies, law enforcement, educational institutions, healthcare providers, and community organizations to address this pressing public health issue.
- 6.8.4. Further to this, applying the definition of "abuse" from the Substance Abuse Act to underage drinking involves understanding it as the sustained or sporadic excessive consumption of alcohol by individuals below the legal drinking age. This encompasses both the continuous or occasional overindulgence in alcohol, as well as any instances where

minors consume alcoholic beverages unlawfully, such as purchasing alcohol underage or using fake identification to obtain alcohol. Therefore, underage drinking falls within the scope of substance abuse as defined by the act, as it involves the excessive use of a substance (alcohol) by individuals who are not legally permitted to do so.

6.9. **National Environmental Management Act³⁹ ('Environmental Act')**

6.9.1. Section 28⁴⁰ (1) of the Environmental Act states that every person who causes, has caused, or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution from occurring, to minimise and rectify such pollution or degradation.

6.9.2. The term pollution is defined by the Environmental Act as any change in the environment caused by '*(iii) noise, odours, dust or heat*'.

6.10. **Liquor Trading Hours By-law:**

6.10.1. The liquor trading by-laws applicable to the jurisdiction of the BCMM are set out in the Local Authority Notice No. 70 of the Provincial Gazette Extraordinary⁴¹. ('By-law')

6.10.2. Section 5⁴² (2) of the By-law states that a Council reserves the right to depart from the stipulated trading hours, provided that such departure is lawful, reasonable and procedurally fair.

6.10.3. Section 6 deals with '*Reports by Ward Committee*' where it stipulates that a ward committee must, upon receipt of a notice of application for registration for a liquor license, consult members of the community. The ward committee is then required to submit a report to the ECLB and the

³⁹ Act 107 of 1998

⁴⁰ '*Chapter 7: Compliance, Enforcement and Protection: Duty of care and remediation of environmental damage*'

⁴¹ Gazette no. 3093, 17th December 2013

⁴² '*Trading hours*'

Council in which it contains details of the consultative process with the community, advise on any objections to the application and make recommendations.

6.10.4. Section 7⁴³ states that the Council may appoint and mandate officials to enforce this by-law and provides various provisions in doing so herein.

6.10.5. Section 9⁴⁴ further states that any person who contravenes or fails to comply with the provisions of this by-law shall be guilty of an offence and shall be liable, on conviction, to a penalty not exceeding R10,000 or imprisonment not exceeding three years or to both such fine and imprisonment.

6.10.6. In terms of the By-law, the trading hours applicable to the Enyobeni Tavern for:

Off-Consumption:

Monday to Saturday - 08:00 to 20:00

Sunday - 10:00 to 13:00

On-Consumption:

Monday to Thursday - 10:00 to 23:00

Friday to Saturday - 10:00 to 02:00

Sunday - 12:00 to 22:00

6.11. **Draft Policy on the Prevention and Treatment for Substance Use Disorders ('Substance Abuse Policy')**

6.11.1. The Substance Abuse Policy was published for comments through Government Gazette no. 49658 of 10 November 2023.

6.11.2. This policy outlines several aspects related to alcohol and alcohol abuse in South Africa. Several key points are identified:

⁴³ 'Enforcement'

⁴⁴ 'Penalties'

- 6.11.2.1. Acknowledgement of the significant role alcohol plays which is a major barrier for the achievement of the Sustainable Development Goals. It points out the prevalence of alcohol abuse and heavy episodic drinking and its association with various social ills, violence and health related issues.
- 6.11.2.2. The need in addressing challenges by implementing strategies to reduce alcohol abuse, particularly among youth. This includes improving regulations and controls over the sale and distribution of alcohol, increasing public awareness and enhancing treatment and support services.
- 6.11.3. This Policy proposes several measures to prevent and reduce alcohol abuse, such as reducing access to alcohol, implementing more stringent drink-driving laws, regulating advertising and promoting responsible drinking behaviours.
- 6.11.4. The policy further emphasizes the need for a collaborative approach involving various stakeholders, including government departments, civil society and the alcohol industry, to effectively address the issue of alcohol abuse.

6.12. Draft Limpopo Liquor Regulations, 2019:

- 6.12.1. Through these draft regulations, the Limpopo province took a position that liquor has proved to be a causative factor in terms of community instability, violence and abuse across homes within the province, sparking the need for more stringent liquor regulations.
- 6.12.2. What was later termed the Midnight Law, the abovementioned regulations included a proposed curfew for liquor traders across the province. The newly proposed curfew determined that traders were not allowed to sell liquor after midnight, (which curfew was originally 02:00am) This curfew was meant to come into effect on 1st August 2023.

6.12.3. This proposed curfew received backlash from the community, where the Sekhukhune Liquor Traders Association and the EFF Capricorn region approached the courts to interdict the enforcement of this curfew.

6.12.4. The Limpopo High Court: Polokwane Division has at the time of drafting this report, reserved judgment in the matter.

6.13. **The Tobacco Products Control Act⁴⁵ ('Tobacco Act')**

6.13.1. The relevance of the Tobacco Act is that it prohibits the advertising or promotion of tobacco products through any direct or indirect means, including through sponsorship of any organisation, event, service, physical establishment, programme, project, bursary, scholarship or any other method.

6.13.2. This benchmark has been referenced when stricter advertising regulations have been deliberated towards the liquor industry.

6.14. **Children's Act 38 of 2005 ('Children's Act')**

6.14.1. The Children's Act in South Africa doesn't have a section directly targeting underage drinking.

6.14.2. However, section 150 (1) (d) of the Children's Act can be indirectly relevant in severe cases. This section identifies a child as "in need of care and protection" if they are addicted to a dependence-producing substance and lack support for treatment. Chronic and severe alcohol abuse by a minor could be considered an addiction under this clause, especially if the child lacks access to help overcoming it.

6.14.3. Additionally, section 150 (1) (f) would also apply in instances where a child is in "need of care and protection", such as if they live in or are

⁴⁵ 83 of 1993

exposed to circumstances which may seriously harm that child's physical, mental or social well-being. This would then apply to children who live near or frequent areas with liquor outlets who are likely exposed to the harmful activities resulting from alcohol-related violence, crime, or neglect.

6.14.4. Here, the Children's Act prioritizes the child's well-being. If a situation arises where a minor exhibits signs of serious alcohol dependence and has no support system for recovery or is exposed to unbecoming circumstances, the Children's Act can be used to trigger intervention and ensure the child receives proper treatment. It's important to remember that not all instances of underage drinking would qualify under this section. The severity of the addiction and the child's access to support are crucial factors in determining how the Children's Act applies.

6.15. **Child Justice Act 75 of 2008 ('Child Justice Act')**

6.15.1. The Child Justice Act, focusing on a rehabilitative approach for minors in conflict with the law, underscores the state's responsibility in addressing juvenile delinquency, including crimes influenced by alcohol.

6.15.2. The act's emphasis on restorative justice highlights the resource-intensive nature of managing underage offenders, especially when alcohol abuse is a contributing factor. The state bears the financial and logistical burden of rehabilitating these minors, which includes court proceedings, social services, and potentially incarceration or supervision, all of which are costly and strain the justice system.

6.16. **Basic Education Laws Amendment Bill (BELA Bill)**

6.16.1. The BELA Bill, aimed at enhancing the educational environment, indirectly relates to underage drinking by promoting a safe and supportive setting for students. Strict alcohol controls near educational institutions are implied within this legislative framework, which could

mitigate alcohol exposure among students. However, without explicit provisions in the BELA Bill for alcohol control, educational authorities may struggle to effectively prevent underage drinking, leading to educational disruptions and additional demands on educational and social welfare systems.

6.17. International Law

6.17.1. Convention on the Rights of the Child (CRC), a cornerstone treaty, emphasizes child protection and well-being. While not explicitly mentioning alcohol, Article 33 states as follows:

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

6.17.2. In this respect it is key to note two elements for the purposes of this investigation:

6.17.2.1. According to the World Health Organisation (‘WHO’), psychoactive drugs are substances that, when taken in or administered into one's system, affect mental processes, e.g., perception, consciousness, cognition or mood and emotions. Psychoactive drugs belong to a broader category of psychoactive substances that include alcohol and nicotine.⁴⁶

6.17.2.2. That all measures must be taken to protect children from the illicit use of psychotropic substances, including taking legislative steps. There is therefore a positive obligation on any government whom have

⁴⁶ See https://www.who.int/health-topics/drugs-psychoactive#tab=tab_1 . Also see the National Drugs Library which determines that Psychotropic is In its most general sense, a term with the same meaning as "psychoactive", i.e. affecting the mind or mental processes. Strictly speaking, a psychotropic drug is any chemical agent whose primary or significant effects are on the central nervous system.

ratified the UNCRC to ensure protection of children through the pursuance of applicable law-making

6.17.2.3. South Africa signed the Convention in 1993 and ratified it on the 16th June 1995.

6.17.3. Similar to the UNCRC, the ACRWC states, in section 28, that States Parties shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

6.17.4. In 1998, South Africa ratified the International Covenant on Civil and Political Rights (ICCPR), a treaty outlining various civil and political rights. While the ICCPR permits certain rights to be limited in exceptional circumstances, such as for national security or public health reasons, concerns arose regarding potential abuse of these provisions. In response, the American Association for the International Commission of Jurists (AAICJ) developed the "Siracusa Principles" in 1984, offering authoritative guidance on the conditions under which rights limitations may be permissible. These principles were subsequently endorsed by the UN Economic and Social Council in 1985. In the absence of binding legal standards, the Siracusa Principles serve as the primary framework for evaluating rights limitations under the ICCPR.

6.17.5. The WHO's Global Strategy to Reduce Harmful Alcohol Use⁴⁷ further outlines measures to curb alcohol's negative impact, including protecting children from exposure to alcohol marketing and promoting responsible parenting practices.

6.17.6. The Pan American Health Organization (PAHO) Policy and Strategy on Alcohol, a regional framework, emphasizes protecting children from

⁴⁷ WHO: Global strategy to reduce the harmful use of alcohol (May 2010)
<https://www.who.int/publications/i/item/9789241599931>

alcohol's harmful effects through measures like marketing restrictions and public awareness campaigns.

6.17.7. Furthermore, and with more regional context, the European Union Alcohol Strategy (2014-2020) sets aim at addressing alcohol-related harm in the European region. While not solely focused on children, it highlighted the importance of protecting minors from alcohol exposure and promoting responsible drinking environments.

6.17.8. The African Plan of Action for the Prevention and Control of Non-communicable Diseases (NCDs) also acknowledges the detrimental effects of harmful alcohol consumption and outlines strategies to address the issue. It emphasizes the importance of regulating alcohol marketing and promoting responsible drinking practices.

6.17.9. Additionally, the WHO African Regional Strategy for Alcohol Control specifically focuses on the African context and provides a framework for member states to implement effective alcohol control measures. It highlights the need for:

6.17.9.1. Marketing restrictions: Limiting alcohol advertising, sponsorships, and promotion near schools and playgrounds.

6.17.9.2. Age restrictions: Enforcing minimum legal drinking ages and implementing stricter regulations on the sale and supply of alcohol to minors.

7. APPLICABLE CASE LAW:

7.1. In *Shoprite Checkers v the MEC for Economic Development, Environmental Affairs and Tourism, Eastern Cape*⁴⁸ the Constitutional Court said that regulating liquor licensing had at least two important and balanced objectives:

⁴⁸ See *Shoprite Checkers (Pty) Limited v Member of the Executive Council for Economic Development, Environmental Affairs and Tourism: Eastern Cape and Others* [2015] ZACC 23

“The first is part of a framework which is designed to impose regulation and control over the access to and use of a dangerous substance, with a real potential to cause negative socio-economic consequences as well as having direct and indirect effects on health. On the other scale are the potential economic benefits of trading in liquor for the holders of licences and the State. Liquor licence holders are often powerful and influential companies involved in the supply side of the liquor industry. Maximising their contributions to the economy must be assessed against the negative costs of alcohol use. Regulation in this industry is used to curtail these negative side effects and can directly contribute to improving the society we live in.”

7.2. The Court also stated in this matter that a liquor licence is an entitlement to do business that would otherwise have been unlawful. The competence to do this kind of business originates from state approval and its continuance is dependent on state powers of amendment, cancellation and regulation.⁴⁹

7.3. Furthermore, reflecting on the role of the court to reflect on the decisions made by lawmakers in respect of the sale of alcohol et al, the court made the following remarks:

“And, on the facts on record before us, it is quite rational to change the regulatory regime of liquor sales to provide for simplification in the licensing system. Some might say the advantages of simplification are minimal, but that does not upset the rationality of the means used to achieve the end of simplification. The same applies to the justification of ensuring that questions of control and exposure to the sale of liquor in a grocery store are ameliorated. It is not too difficult to imagine that it is easier to keep control of the sale of liquor in premises where only liquor is sold, than otherwise. Opinion may also be divided on whether children are worse off by being exposed to the sale of wine in a grocery store than being in the vicinity of premises where only liquor is sold. But these

⁴⁹ Ibid ad par 58

differences of opinion are not the kind of issues courts should interfere with too readily. They are mostly instances of legislative facts where courts should not easily interfere with the choices made by legislatures.”

- 7.4. In *Affordable Medicines Trust and Others v Minister of Health and Another*⁵⁰ the court held that:

“Where the regulation of a practice, viewed objectively, is likely to impact negatively on the choice of a profession, such regulation will limit the right freely to choose a profession . . . and must therefore meet the test under section 36(1). Similarly, where the regulation of practice, though falling within the purview of section 22, limits any of the rights in the Bill of Rights, [it] must meet the section 36(1) standard.”

And: *“Where the regulation, viewed objectively, would have a negative impact on choice, the regulation must be tested under section 36(1). In other cases, the test is one of rationality.”*

- 7.5. The court in *BATSA v Minister of Health*⁵¹ the SCA found that while the Bill of Rights protected certain freedoms, these freedoms can be restricted by laws that apply fairly to everyone. One such limitation applied in this case. While advertising is important, the court found that it can't come at the expense of public health. In this case, the dangers of smoking were found to be far greater than any benefits gained by allowing tobacco advertising.

- 7.6. Further, in *Minister of Home Affairs v Nicro & others* Chaskalson CJ explained:

‘This [meaning the limitation analysis] calls for a different enquiry to that conducted when factual disputes have to be resolved. In a justification analysis facts and policy are often intertwined. There may for instance

⁵⁰ *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005)

⁵¹ *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012)

be cases where the concerns to which the legislation is addressed are subjective and not capable of proof as objective facts. A legislative choice is not always subject to courtroom fact-finding and may be based on reasonable inferences unsupported by empirical data. When policy is in issue it may not be possible to prove that a policy directed to a particular concern will be effective. It does not necessarily follow from this, however, that the policy is not reasonable and justifiable. If the concerns are of sufficient importance, the risks associated with them sufficiently high, and there is sufficient connection between means and ends, that may be enough to justify action taken to address them.'

- 7.7. In the case of *South African Breweries (Pty) Ltd v Minister of Corporative Governance and Traditional Affairs and Another*⁵², the ban and reduction in the sale of alcohol in South Africa hinged on the balance between public health and economic interests. The ban was implemented as a response to the COVID-19 pandemic, with the primary aim of reducing alcohol-related trauma cases therefore easing the burden on the healthcare system.
- 7.8. The court considered various factors, including the impact of the ban on the liquor industry and its economic implications. The court acknowledged the significant contribution of the liquor industry to the economy and the employment it provides. However, the health risks posed by the pandemic and the role of alcohol in exacerbating these risks were deemed more pressing.
- 7.9. The judgment illustrates a case where government's responsibility to protect public health was considered paramount, even at the cost of economic losses in certain sectors. This approach aligns with the principles of public health law, which prioritizes the well-being and safety of the population over individual interests or economic considerations. The judgment underscores the government's authority to impose such

⁵² (10996/2021) [2021] ZAWCHC 135; [2021] f All SA 189 (WCC) (22 July 2021)

regulations and the importance of balancing different interests for the greater good of society.

- 7.10. In the case of *Queenstown Municipality v Wiehahn*⁵³ referred to the concept of a public nuisance being '*Any act, omission or condition which is offensive, which is injurious or dangerous to health, which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or which adversely affects the safety of the public.*'⁵⁴
- 7.11. In the case of *Mark Wayne Christopher v Jolindi Nicolene Verster, and Others*⁵⁵, Henney, J, at paragraph 75, noted that although an owner of land may do so as he pleases, his neighbour has the right to the enjoyment of his own land. If one of the neighbouring owners uses his land in such a way that may interfere with the other's right of enjoyment results, the latter being entitled to relief.
- 7.12. Additionally in *Steenkamp and Another v Knysna Local Municipality and Another*⁵⁶, the court noted⁵⁷ that:

'the determination of when an interference so exceeds the limits of expected toleration is achieved by invoking the test of what, in the given circumstances, is reasonable. The criterion used is not that of the reasonable man but rather involves an objective evaluation of the circumstances and milieu in which the alleged nuisance has occurred. The purpose of such evaluation is to decide whether it is fair or appropriate to require the complainant to tolerate the interference or whether the perpetrator ought to be compelled to terminate the activities giving rise to the harm.'

⁵³ 1943 EDL 134, at paragraph 140

⁵⁴ Public nuisance is defined by Joubert (Ed) *The Law of South Africa Vol 19 (2nd Edition Replacement)* para 214 as: 'In the result the term "public nuisance" in South African law has the simplified meaning of an ordinary nuisance so extensive in its effect or range of operation as to discomfort the public at large.'

⁵⁵ 9001/2020 [2021] ZAWCHC

⁵⁶ (A20/11) [2011] ZAWCHC 512 (22 August 2011)

⁵⁷ Paragraph 21

- 7.13. Lastly, and as referred to above, the ECLB brought criminal charges against the owners, Siyakhangela and Vuyokazi Ndevu, for violating section 38 of the Liquor Act, which refers to the selling of alcohol to persons under the age of 18.
- 7.14. On the 23rd and 24th May 2023, an official from the Commission's Eastern Cape office attended the criminal trial for the purposes of observing and monitoring the proceedings.
- 7.15. On the 21st February 2024 Judgment was delivered in which both the accused were found guilty of contravening section 38 of the Liquor Act. The Commission notes the sentence given to each of the accused which included that of a fine of R5,000.00 or 100 days imprisonment. The Commission further notes the disappointment expressed by the victim's family members given the gravity and scale of the tragedy which in their view warranted a more substantial sentence.

8. FACTUAL AND LEGAL ANALYSIS

- 8.1. It is trite and uncontested that on a fateful night at the Enyobeni Tavern in East London, tragedy struck in the most devastating of ways. Twenty-one young lives were lost, their futures cut short in a heartbreaking turn of events.
- 8.2. The Commission, tasked with investigating this incident, stood witness to the grief as it also attended the funeral of these individuals. The families left behind, grappling with unimaginable loss, sought answers amidst their anguish.
- 8.3. In the aftermath of this profound tragedy, one question looms large: How could such a catastrophic event occur within the confines of existing regulatory frameworks and oversight mechanisms? Despite the plethora of laws, both domestic and international, aimed at safeguarding against

the perils of alcohol abuse, the loss of 21 young souls serves as a stark reminder of the inadequacies that persist.

- 8.4. Private and public entities provided the Commission with reassurances, citing the extensive protective measures in place and in instances dismissing the need for additional safeguards, even further regulation of alcohol.
- 8.5. They argued that existing laws adequately shield children from harm and absolve alcohol of culpability in the tragedy at the Enyobeni Tavern. Yet, the reality on the ground paints a different picture—a nation grappling with the socio-economic fallout of rampant alcohol abuse, with statistics that defy comparison to other countries.
- 8.6. According to the WHO, every 10 seconds a person dies from alcohol-related causes.⁵⁸
- 8.7. South Africa is ranked 3rd in Africa for the levels of alcohol consumed by both sexes and from the age of 15 years and over. Moreover, South Africa is ranked in the top 20 countries worldwide in terms of alcohol consumption.
- 8.8. Furthermore, liquor outlets have emerged as highly dangerous locations, ranking as the third most likely place for a murder to occur. This alarming trend is underscored by the stark statistics from the first quarter of 2022, where out of 9,556 reported rape cases, drugs and alcohol were implicated in 1,383 incidents.⁵⁹
- 8.9. In addition, the issue extends to other forms of violence where within the 72,762 cases of assault and grievous bodily harm recorded in the same

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See <https://www.who.int/initiatives/SAFER#:~:text=Every%2010%20seconds%20a%20person,to%20reduce%20alcohol%20related%20harm.>

⁵⁹ From an article published in the Daily Maverick (4th January 2023) <https://www.dailymaverick.co.za/article/2023-01-04-tavern-manager-and-assistant-arrested-for-selling-liquor-to-minors-after-three-die-on-christmas-day/>), it was reported that the Eastern Cape Police are investigating the deaths of three women, two of which were minors, who died at the Razzmatazz Tavern in Hofmeyr, Eastern Cape. The deaths allegedly resulted from an apparent stampede in the tavern where they tried to flee after an unknown substance was sprayed on patrons.

period, 3,695 were reported as being directly related to substance abuse. These figures highlight a disturbing correlation between the availability of alcohol and the incidence of severe crimes, including murder, rape and serious assaults.

- 8.10. In 2019, the Human Sciences Research Council⁶⁰ conducted a mixed-methods study in low-resource townships across three provinces in South Africa, which provided further insights into adolescents' drinking behaviours. With a sample of 3518 adolescents aged between 11 and 18 years, the quantitative results found that 67% had consumed alcohol at least once in their lifetime, and most had their first drink at the age of 13 or 14 years. A quarter of males and 16% of females said they had their first drink at the age of 11 years.
- 8.11. The study also found that many young people had easy access to alcohol. Roughly one-quarter reported that they had gone to a tavern to socialise with friends, while 23% had been able to purchase alcohol at the tavern before. Concerningly, about one in five adolescents (21%) reported getting drunk at a tavern and more than one-third (39%) had entered a tavern without being stopped, despite their age. Similarly, one-quarter of the participants indicated that they are sometimes or often able to enter a tavern without being asked to present an ID.
- 8.12. Additionally, further research⁶¹ has also highlighted reports that youth found alcohol easily accessible, and that alcohol advertising and marketing are not only appealing but entice them to access and consume alcohol, including binge drinking. Concerningly, young female participants reported exposure to unsafe and transactional sex, and sexual violence at alcohol outlets.
- 8.13. To fortify its understanding of the impact alcohol may have on children in relation to the Children's Act and Child Justice Act, one key stakeholder within the child protection services reported that:

⁶⁰ Per article titled 'Underage drinking: the allure of 'lit vibes' and little control?', 28th September 2022

⁶¹ L. Lebohang, R. Weiner, M. Gafos, K. Fritz: Alcohol Availability, Marketing, and Sexual Health Risk Amongst Urban and Rural Youth in South Africa (2018)

- 8.13.1. Based on their clinical observations, they had encountered various instances where children had been affected by alcohol-related circumstances. For instance, in their program aimed at supporting pregnant learners in Gauteng schools, some students revealed that their unintended pregnancies were a result of impaired judgment caused by alcohol consumption, leading to unprotected sex. Additionally, in programs addressing young sex offenders, individuals disclosed that alcohol use contributed to their aggressive sexual behaviour towards others.
- 8.13.2. They also encountered cases where girls, who were victims of rape, were compromised at parties where alcohol was available, resulting in situations where they lost control and were subsequently sexually assaulted.
- 8.13.3. Furthermore, it was reported to the Commission that during interventions with boys who witnessed parental alcohol abuse, many exhibited anger and disruptive behaviour, such as bullying, alcohol abuse, and involvement in gangs, which adversely affected their academic performance and self-esteem.⁶²
- 8.14. The Commission also engaged with local medical practitioners at public health facilities, who concerningly reported just a few examples from their day-to-day experiences:

“A 17 year old girl was brought in by her female friend after being hit in the face by a glass bottle. Both of the young women were noticeably drunk - slurring their words - and stated that they were coming from the tavern. The patient had sustained a cut extending from the corner of her left lip up to just below her left ear. The reason given for her having been hit was because another girl thought that the patient was causing her boyfriend to cheat. That young girl will now have a scar running the length of the side of her face for the rest of her life.”

⁶² Response to the Commission by the Teddy Bear Clinic, dated 17 November 2023

“A 30 year old woman was brought in by her friend. Both were noticeably drunk and, even though the patient was bleeding heavily from an arm wound, were giggling a lot. The gravity of the situation hadn't sunk in. In fact when asked what happened the patient said that she had been hit with a Savannah bottle, then corrected it to a Hunters Dry then said that no it was a Savannah bottle actually. On opening the dressing around the wound she had sustained a long, deep, ragged cut into the flesh just below the bend in her arm. The cut had passed incredibly close to her artery and tendons there and she could have lost function of the use of her right hand if the injury was just a centimetre to the side. As it was there was still a cut that required a tight tourniquet around her upper arm to stop the bleeding enough to enable safely exploring and closing the wound.”

“A 20 year old man came in with a deep cut in his wrist after being stabbed at the tavern - he didn't say why. The cut went through one of the arteries that fed to his hand and required urgent tying off to get control of the bleeding. The process was difficult and he was fortunate it only affected an artery that had side branches supplying the rest of the hand as backups.”

- 8.15. In the face of this reality, it becomes imperative to pause, reflect, and reconsider our approach.
- 8.16. Should we not, in the wake of this tragedy and the broader crisis of alcohol use and abuse, turn to the guiding principles enshrined in our Constitution?
- 8.17. Perhaps it is time for a fundamental reevaluation—a turning point where we confront the systemic failures and recalibrate our regulatory framework to prioritize the well-being and safety of our citizens, especially our youth.
- 8.18. As the Commission undertook this journey of assessment, it did not stay clear from considerations leaning towards transformation.

- 8.19. For the memory of the 21 lives lost at the Enyobeni Tavern demands nothing less than our utmost commitment to ensuring that such tragedies never recur, and that the legacy of their untimely demise serves as a catalyst for meaningful change.

The ECLB

- 8.20. The Enyobeni Tavern tragedy, occurring within the ECLB's jurisdiction, underscores the need for a comprehensive examination of its regulatory functions.
- 8.21. As a pivotal regulatory authority, the ECLB is tasked with overseeing liquor establishments in the Eastern Cape province, including registering liquor sales, enforcing compliance with liquor laws, and mitigating the socio-economic impacts of excessive alcohol consumption. However, the tragedy highlights potential shortcomings in the ECLB's execution of its oversight role.

Community Consultations: scrutiny?

- 8.22. In analyzing the provisions outlined in the Liquor Act and associated Regulations, it becomes apparent that community consultations are a crucial component of the liquor licensing process. These consultations are intended to serve multiple purposes, including soliciting community input, assessing potential impacts on local residents, and ensuring transparency throughout the licensing process.
- 8.23. From the perspective of the Commission, these consultations must go beyond mere formality; they must serve as a platform for comprehensive engagement with the community. This entails informing community members about the risks and benefits associated with the establishment or operation of liquor facilities within their vicinity. Questions regarding the potential impact on the community, current statistics on alcohol-related issues, the capacity of regulatory authorities to monitor and

enforce compliance, and the contact details of responsible officials must all be addressed.

- 8.24. However, despite the regulatory requirement for ward committees to conduct these consultations, the Commission observes a significant gap in the process. The ECLB appears to have no active role in facilitating or participating in these consultations. Instead, it merely receives proof of service and attendance registers from the committee, indicating a lack of meaningful engagement with the community.
- 8.25. This lack of ECLB involvement, coupled with potential inadequacies in the training of ward committee members regarding liquor legislation, raises concerns about the effectiveness of these consultations. Without proper guidance and oversight from the regulatory body, community stakeholders may lack awareness of the potential risks associated with liquor licenses, leading to uninformed decision-making and persistent exposure to illicit trading operations.
- 8.26. Furthermore, Section 26 of the current ECLB Regulations refers to '*Notice for annual registration fee*', where a holder of a certificate is required to pay an annual registration fee as set out in Annexure 1.
- 8.27. Schedule 2 of Annexure 1 of the current ECLB Regulations, deals with '*Fees payable in respect of categories of registration*', Part C refers to '*Annual licence fees*'.
- 8.28. No reference is made to renewal fees or any additional ward committee meetings other than the one at the origin of the application process.
- 8.29. The Commission notes a glaring oversight in this licensing process: once a license is granted, the current community remains at the mercy of the effects of alcohol sales indefinitely, without opportunity for ongoing engagement or reassessment of community needs, through, perhaps, further periodic consultation.

- 8.30. In essence, the Commission underscores this critical observation: the community that may have remained silent or raised no objections when the liquor license was initially awarded in 2012 might have undergone significant changes since then. These changes could encompass a spectrum of socio-economic challenges, including heightened poverty levels and increasing social hardships.
- 8.31. Considering the potential evolution of the community's circumstances, the absence of regular consultations regarding the presence of liquor facilities appears not only impractical but also untenable. The dynamics within communities can shift over time, potentially magnifying the impact of liquor establishments on vulnerable populations.
- 8.32. Therefore, the Commission emphasizes the necessity of ongoing engagement and dialogue with affected communities to ensure that their voices are heard and their evolving needs are addressed. Neglecting to facilitate regular consultations in the face of changing socio-economic realities would not only be shortsighted but also detrimental to the welfare of community members.
- 8.33. In light of these shortcomings, it is imperative to advocate for continuous and meaningful engagement with affected communities before issuing or renewing liquor licenses.
- 8.34. This requires active participation from regulatory authorities like the ECLB, comprehensive training for ward committee members, and regular reassessment of community needs and concerns. Only through such proactive measures can the adverse impacts of alcohol sales be effectively mitigated, ensuring the well-being and safety of local residents.

Zoning

- 8.35. It is a fundamental observation that the Enyobeni Tavern was not appropriately zoned for business activities, a fact verified by the BCMM.
- 8.36. However, upon examination, the Commission discerned a glaring oversight by the ECLB in failing to consider whether the proposed premises, intended for the sale of liquor, complied with zoning regulations for business use.
- 8.37. Zoning regulations serve as pillars for fostering structured and sustainable development within municipal boundaries. By ensuring that liquor outlets operate within designated business zones, municipalities promote economic activities in an organized fashion, thus fostering the community's overall welfare and growth.
- 8.38. The absence of objections does not absolve the ECLB from its responsibility to assess the potential infringement of individuals' human rights, particularly given the proximity of the location to numerous households. The presence of a liquor outlet in a non-compliant area heightens the likelihood of nuisances and criminal activities affecting nearby residents, which was clear from the consultations the Commission had with members of the community near the Enyobeni Tavern.
- 8.39. Moreover, the Commission contends that the ECLB failed to adequately scrutinize Mrs. Ndevu's liquor license application in accordance with the ECLB's own 'Guiding Principles'. Its oversight in this regard omitted crucial factors such as the proposed outlet's location, the type and condition of the structure, adherence to laws and municipal by-laws, and consideration of public interest.
- 8.40. The ECLB's lapse in considering zoning requirements permitted the Enyobeni Tavern to operate in defiance of regulations. This failure may have facilitated increased access to alcohol within a vulnerable

community, exacerbating social challenges and heightening the risks associated with alcohol-related harm.

Capacity

- 8.41. The Commission takes note of the ECLB's response that the number of registered liquor outlets in the East London area was approximately 515.
- 8.42. The Commission further notes that at the time of the Enyobeni Tavern tragedy, the East London area was serviced by only 1 inspector, with a ratio of 1 Inspector for every 470 taverns.
- 8.43. The Commission further notes from the ECLB's 22/23 Annual Performance Report (APP) the following:

“ECLB is continuously experiencing human capital challenges more specifically with the legislative reforms being introduced, and the increase in the operations (e.g. 16 Inspectors who must enforce compliance by over 7 500 liquor licence outlets throughout the Province) as well as, social accountability programmes.”⁶³

- 8.44. Given the information provided by the ECLB, as well as referencing this against their own APP there were 16 inspectors tasked with enforcing compliance across over 7,500 liquor license outlets throughout the Eastern Cape Province.
- 8.45. This calculation reveals that each inspector is responsible for overseeing approximately 469 liquor license outlets. This analysis correlates with the response provided to the Commission indicating towards 470 outlets per inspector
- 8.46. With the above in mind, with 469 outlets to oversee, it would be challenging for inspectors to conduct frequent visits to each outlet.

⁶³ https://www.eclb.co.za/images/documents/ECLB_Annual_Report_2022-2023-compressed.pdf

- 8.47. For instance, if we assume that inspectors work five days a week and dedicate one full day to conducting inspections, they would need to visit approximately 93 outlets per day to cover all 7,500 outlets within a year. This would likely be an unrealistic expectation given the logistical constraints and other responsibilities that inspectors may have.
- 8.48. As a result, it's evident that the current number of inspectors may not be sufficient to effectively monitor and enforce compliance across the vast number of liquor license outlets in the Eastern Cape Province. This shortage of human capital surely compromises the ECLB's ability to address non-compliance issues in a timely manner and prevent incidents such as the Enyobeni Tavern tragedy.
- 8.49. In addition, during the review period, the Licensing Committee scrutinized a total of 1,407 applications, encompassing both new submissions and backlog applications from the previous year.
- 8.50. Among these, 871 applications were considered for the first time, indicating a substantial influx of potential new entries into the liquor market.
- 8.51. However, the data reveals a concerning trend regarding the processing of these applications. Only 42.02% of the first-time applications were reviewed within the mandated 60-day period, while the remaining 57.98% faced delays in assessment. This backlog raises questions about the capacity of the ECLB to effectively manage the influx of new entrants into an already saturated market.
- 8.52. With acknowledged human capital challenges and legislative reforms placing additional strain on operations, the ECLB's ability to oversee compliance and enforcement for over 7,500 liquor license outlets across the province is already stretched thin.

- 8.53. In this context, the addition of more outlets without adequate capacity to monitor and enforce compliance risks exacerbating existing challenges and further saturating an already bloated market.
- 8.54. Therefore, there is a valid argument to question whether expanding the liquor market with new entries is prudent or feasible given the acknowledged limitations in capacity and resources within the ECLB.
- 8.55. The Commission further notes that in November 2023 the CEO of the ECLB reflected as follows:

“In terms of the capacity we don’t have much capacity as Eastern Cape liquor board because we currently only about 22 inspectors who are supposed to look at the whole of the province”⁶⁴

- 8.56. Although this indicates towards a slight increase in the number of inspectors, the number remains wholly inadequate to properly oversee and regulate this clearly dangerous market.

Peace Officers

- 8.57. Section 334 of the Criminal Procedure Act, 1977, bestows upon the Minister the authority, through a Notice published in the Gazette, to designate an individual, by virtue of their position, as a peace officer for specific purposes outlined in the Notice. This section stipulates that the employer of the appointed individual must furnish them with a certificate of appointment before they can exercise the conferred powers.
- 8.58. Furthermore, the Minister is empowered to prescribe conditions for issuing the certificate and specify the information to be included on it. Notably, if the designated peace officer is employed by the State, the State assumes liability for any damages resulting from their actions or omissions while exercising the conferred powers.

⁶⁴ <https://www.sabcnews.com/sabcnews/e-cape-liquor-board-saps-to-enforce-compliance-by-liquor-traders/>

- 8.59. The Commission acknowledges the ECLB's response indicating its ongoing efforts to secure approval from the Honourable Minister of Justice and Correctional Services to designate ECLB inspectors as Peace Officers under section 334 of the Criminal Procedure Act. This designation would empower ECLB inspectors to enforce compliance with the provisions of the Liquor Act among registered liquor outlet owners.
- 8.60. However, the Commission finds it perplexing why ECLB inspectors have not yet been designated as peace officers. Evidence reveals that inspectors from Kwa-Zulu Natal and the Western Cape provinces obtained this designation under their respective regulatory frameworks as early as 2014.
- 8.61. Consequently, the Commission questions the delay in the ECLB's pursuit of this crucial empowerment, considering the evident need for enforcement capabilities.
- 8.62. This discrepancy prompts the Commission to scrutinize whether the impediments to declaration should be attributed to the Minister or the leadership of the ECLB. While refraining from engaging in speculative conjecture, the Commission contemplates whether an earlier designation of Eastern Cape inspectors as peace officers could have mitigated the likelihood of the tragic events unfolding.

SAPS

- 8.63. The response provided by the SAPS, which included affidavits from community members, did not reflect claims of underage drinking at the Enyobeni Tavern, despite assertions from the community suggesting otherwise.
- 8.64. This discrepancy raises questions about the accuracy and comprehensiveness of SAPS's investigations into alleged violations at

the tavern. Failure to adequately address reports of underage drinking may have contributed to a breakdown in enforcement measures, allowing illicit activities to persist unchecked.

- 8.65. SAPS's acknowledgment of receiving complaints from community members regarding noise and public drinking near the Enyobeni Tavern indicates a degree of awareness of the general concerns surrounding the establishment.
- 8.66. However, SAPS's approach to addressing these complaints appears reactive rather than proactive, with meetings aimed at resolving issues rather than enforcing compliance with relevant laws and regulations. This reactive stance may have limited the effectiveness of SAPS's efforts to address the underlying causes of community concerns and prevent further incidents.
- 8.67. Furthermore, the Commission is of the view that SAPS's failure to pursue a path of strict enforcement regarding compliance with liquor regulations and noise nuisance by-laws suggests a lack of assertiveness in addressing potential violations. By opting for a more lenient approach focused on dialogue and resolution, SAPS may have inadvertently allowed illicit conduct to persist, undermining efforts to uphold public safety and order.
- 8.68. A more assertive enforcement stance, coupled with proactive measures to address underlying issues, may have been more effective in curbing criminal activities and protecting community well-being.
- 8.69. In addition, SAPS's reluctance to take assertive action in enforcing compliance with BCMM by-laws and liquor regulations, despite awareness of community complaints, suggests a possible oversight or lack of familiarity with relevant regulatory frameworks.

- 8.70. Given SAPS's mandate to uphold public order and safety, officers should possess a thorough understanding of applicable laws and regulations governing liquor outlets and noise nuisance.
- 8.71. Failure to enforce these regulations effectively may indicate systemic deficiencies in training or oversight within the agency. SAPS officials from the Scenery Park police station confirmed that they were aware of complaints against the Enyobeni Tavern as far back as December 2021 after which several further complaints over the years were lodged with SAPS officials.
- 8.72. It may therefore very well be that SAPS officials did not effectively fulfil their legislative duty to prevent, combat, and investigate crime in this case. Despite conducting multiple meetings and engagements with both the Enyobeni Tavern owner and community members, this did not prompt any positive change on part of the Enyobeni Tavern's operations.
- 8.73. SAPS officials acknowledged Mrs Ndevu's uncooperative demeanour when addressing the complaints with her. They also observed untoward behaviour of patrons and non-compliance on part of the Enyobeni Tavern and yet failed to effectively investigate and maintain public order, whether on their own accord or through that of collaborating with the ECLB and BCMM.
- 8.74. In line with SAPS's mission statement, it appears that police officials failed to adequately combat and investigate the complaints that were said to threaten the safety and security of the community surrounding the Enyobeni Tavern.⁶⁵

⁶⁵ SAPS acknowledged that over time they had received complaints from community members against the Enyobeni Tavern relating to noise and drinking in the streets. On the 6th April 2022, Captain Mtyekwana, from the Scenery Park police station, met with Mr and Mrs Ndevu, the purpose being to highlight the high crime rate in the area around the Enyobeni Tavern. Mr Ndevu replied by advising that he will keep to the closing times but raised a concern that some patrons refuse to leave timeously. This information further substantiates that SAPS were aware of the issues presented by the local community against the Enyobeni Tavern, with evidence of this awareness tracing back to at least December 2021. Despite this, SAPS did not pursue a path of strict enforcement regarding compliance with relevant laws and regulations. Instead, they adopted a more lenient and arguably less effective approach, characterized by conducting meetings aimed at resolving complaints.

BCMM

Zoning

- 8.75. BCMM's confirmation that the Enyobeni Tavern was not zoned as a business raises concerns about the municipality's oversight of zoning laws and building regulations.
- 8.76. Despite acknowledging this discrepancy, BCMM's response was viewed as vague by the Commission, as it did not explicitly address the existence of the tavern or the municipality's regulatory actions regarding its operation.
- 8.77. This lack of clarity underscores potential gaps in BCMM's enforcement of zoning and building regulations, which may have contributed to the tragedy at the Enyobeni Tavern.
- 8.78. Furthermore, BCMM's response to inquiries about the liquor license application process, including whether the municipal council received the Ward Committee's report, suggests a lack of proactive engagement in ensuring compliance with licensing procedures.⁶⁶ With submissions attesting to the fact that BCMM Council were provided with the Report of the Ward Committee and that of BCMM's responsibility to stay apprised of new liquor license applications published in Gazette notices, the

⁶⁶ After having put to BCMM the procedure to be followed when one applies for a liquor license, as contemplated in section 22 of the Liquor Act and section 6 of the BCMM by-laws, BCMM merely noted this aspect and neither confirmed nor denied knowledge of whether the municipal council were provided with the Report of the Ward Committee. Nor was any attempt made by BCMM to request for copies of the Report of the Ward Committee. Additionally, the ECLB confirmed that it issued a Gazette notice to inform the public about the liquor license application, inviting interested parties to submit their written representations or objections to the board. The Commission in this regard emphasizes the importance that BCMM stays informed about such new liquor license applications as this would prove useful when actioning out compliance, monitoring and regulatory programmes. In this instance, BCMM would be equipped to assess whether the proposed outlet's premises are appropriately zoned for business and to address any potential public health and safety concerns. Additionally, this would also involve ensuring compliance with building regulations. The Commission acknowledges BCMM's response where they highlight that the ECLB must secure Municipal Planning Tribunal approval before granting a liquor license. However, a point of concern arises regarding whether the ECLB is legally obligated, under its enabling legislation, to seek such approval. The responsibility lies with the ECLB to grant liquor licenses, even though it does not consider whether the premises are appropriately zoned for business. In contrast, the Municipal Planning Tribunal may potentially reject an application based on zoning considerations which may result in litigious action being taken against the ECLB and/or BCMM. This proposal of securing Municipal Planning Tribunal approval may very well prove problematic as applicants who do not receive approval will cite the fact that this criterion is not a legal requirement and is procedurally and substantively unfair.

Commission finds it difficult to believe that BCMM were not aware of the tavern's existence.

- 8.79. Should this in fact be the case, it then clearly demonstrates a shortcoming on part of BCMM which requires urgent attention as this may illustrate that there is a disconnect between the Ward Committee and the Municipal Council.
- 8.80. BCMM's involvement in monitoring and regulating liquor license applications, particularly regarding zoning and public health considerations, is crucial for promoting community well-being and safety.
- 8.81. BCMM in this instance may have been in a position to object to the application for a liquor license in this regard. This failure also led to BCMM not being able to ascertain whether the tavern's structure was compliant in terms of the relevant building regulations.
- 8.82. The Commission thus notes that BCMM did not adequately monitor new liquor license applications, the importance of which is to ensure compliance with zoning and building regulations, public health and safety standards. This oversight is critical in preventing the establishment of liquor outlets in vulnerable communities and opening up such communities to the harsh realities of alcohol abuse and depriving said communities of economic empowerment.

LDAC

- 8.83. Collaborative efforts between key stakeholders within the alcohol sales industry is essential for effective enforcement and oversight of liquor-related activities. This is one of the reasons the Substance Abuse Act calls for the establishment of LDACs.
- 8.84. LDACs play a crucial role in implementing strategies outlined in the Substance Abuse Act to control and reduce the supply of, demand for, and harm caused by substances such as alcohol and drugs.

- 8.85. These committees bring together the abovementioned stakeholders from governmental departments, law enforcement agencies, educational institutions, healthcare providers, and community organizations to coordinate efforts in combating substance abuse.
- 8.86. The establishment of LDACs is thus vital as it ensures a coordinated and multi-sectoral approach to tackling substance abuse, thereby promoting public health and safety.
- 8.87. As set out above, it is evident that the BCMM did not have an established LDAC at the time of the Enyobeni Tavern tragedy.
- 8.88. It also appears from information received from the CDA, that the BCMM still does not adhere to this legislative requirement.
- 8.89. BCMM's recognition of the socio-economic challenges faced by residents in impoverished communities, as well as its proposal of a Memorandum of Agreement is therefore almost moot as these cooperative relationships should already be governed through proper adherence to legislative prescripts.
- 8.90. The proliferation of liquor outlets in these areas exacerbates social problems, diverting resources away from essential services and perpetuating cycles of poverty and crime. It is therefore crucial for the BCMM to establish its LDAC to coordinate its efforts, it has committed itself to through the responses to the Commission.
- 8.91. BCMM's conduct in relation to the Enyobeni Tavern tragedy thus reveals potential shortcomings in its oversight of zoning and regulatory compliance, as well as its responsiveness to licensing procedures and community concerns.
- 8.92. Furthermore, the Commission's inspections underscore the critical importance of recreational facilities, particularly in impoverished

communities, for fostering youth development, promoting community well-being, and reducing social vulnerabilities.

- 8.93. Recreational facilities serve as vital resources for youth in impoverished areas, offering safe environments for physical activity, social interaction, and skills development. By providing constructive outlets for energy and creativity, these spaces mitigate the risk of youth engaging in risky behaviours associated with idleness or lack of positive alternatives.
- 8.94. BCMM's recognition of the significance of recreational facilities in its Integrated Development Plan (IDP) does however demonstrate an acknowledgment of this crucial role in youth empowerment and risk mitigation.

Department of Health

- 8.95. Following the Enyobeni Tavern tragedy, initial reports from the Department of Health suggested methanol poisoning as the cause of death, later refuted. Instead, suffocation due to overcrowding emerged as the purported cause, a contention disputed by the victims' families.
- 8.96. This discrepancy highlights a concerning lack of clarity and consistency in the information provided to the public and the affected families, exacerbating their distress and uncertainty.
- 8.97. Subsequent reports reveal a troubling pattern of family members contesting the reported cause of death and facing obstacles in accessing relevant information. Family members have expressed frustration at not being provided with copies of the report detailing the investigation findings. The department's explanation citing confidentiality and legal constraints raises questions about transparency and accountability in the handling of the investigation.

- 8.98. Despite ongoing disputes and concerns, formal inquest proceedings to investigate the deaths are repeatedly postponed, with the latest scheduled for 2024. The significant delay in initiating the inquest prolongs the agony and uncertainty for the bereaved families, further underscoring the need for timely and transparent resolution of the matter.

Legislative Strengthening and Reform

- 8.99. The Enyobeni Tavern tragedy shows the critical gaps within our societal oversight, legislative frameworks, and policies concerning alcohol regulation. These are however not new issues.

- 8.100. The Constitutional Court already in 1997 confirmed as follows:

“Liquor is a potentially harmful substance. It is part of the normal environment in which the liquor trade is conducted in South Africa, and other countries, for selling to be regulated by licences which control not only the right to sell liquor but also where, when and what liquor may be sold.”⁶⁷

- 8.101. The Commission highlights that from a legal and regulatory standpoint, various tools are already drafted and available to the government, yet they have remained largely dormant in recent years.

- 8.102. To illustrate, the State, in recognition of the harmful effect of alcohol abuse, issued its Final National Liquor Policy in 2016, making clear proposals for reform within the sector.

- 8.103. The recommendations put forth in the Policy highlighted the pressing need for comprehensive amendments to the National Liquor Act in order

⁶⁷ S v Lawrence , S v Negal ; S v Solberg (CCT38/96, CCT39/96, CCT40/96) [1997] ZACC 11; 1997 (10) BCLR 1348; 1997 (4) SA 1176 (6 October 1997) par 36

to tackle the multifaceted challenges associated with alcohol abuse and its socio-economic repercussions.

- 8.104. One key area of concern revolves around advertising restrictions, suggesting that section 9 of the National Liquor Act be revised to grant the Minister of Trade and Industry the authority to impose additional constraints on alcohol advertising and marketing. Proposed measures include limiting alcohol advertisements on broadcast television to nighttime hours and banning content that appeals to youth, alongside prohibiting branding on liquor premises and delivery vehicles.
- 8.105. Furthermore, the Policy underscored the importance of strengthening registration conditions under section 13 of the National Liquor Act, advocating for the empowerment of the Minister to issue regulations and guidelines aimed at combatting alcohol abuse and ensuring compliance.
- 8.106. Another critical recommendation involves introducing liability for manufacturers and suppliers who provide alcohol to unlicensed traders, thereby holding them accountable for any resulting harm or damage.
- 8.107. Additionally, retailers are urged to refrain from serving liquor to already intoxicated individuals, with a call for heightened awareness of signs of visible intoxication. The regulation of liquor availability is highlighted as another crucial strategy, with proposed measures including restrictions on sales hours and raising the minimum legal purchasing age from eighteen to twenty-one.
- 8.108. Furthermore, the Policy emphasized the need for enhanced public education and awareness campaigns regarding the harmful effects of alcohol abuse, targeting both consumers and license holders to ensure compliance with liquor legislation.
- 8.109. Pricing policies were also identified as a potential intervention, aiming to reduce harmful alcohol consumption through taxation.

- 8.110. The Policy also advocated for the harmonization of provincial liquor legislation with the National Liquor Act and emphasized the importance of collaboration and capacity building among regulatory authorities at various government levels. These recommendations collectively aimed to address the complex challenges posed by alcohol abuse and pave the way for a more responsible and regulated liquor industry.
- 8.111. In response to the Policy, The Liquor Amendment Bill of 2016 was drafted, as set out above, and proposes stringent measures to regulate the sale and distribution of alcoholic beverages. It is estimated that these measures could potentially reduce alcohol consumption by up to 7%.⁶⁸ However, despite this potential, there has been a notable lack of progress on this legislation for an extended period.
- 8.112. Similarly, the Control of Marketing of Alcoholic Beverages Bill of 2013, also acknowledged above, received Cabinet approval for public commentary over a decade ago. This bill aimed to acutely regulate alcohol advertising. However, despite its potential impact, the bill has not been released for public review, indicating a significant gap in regulatory action.
- 8.113. It is incredulous that two potentially life-saving pieces of legislation, namely the Control of Marketing of Alcoholic Beverages Bill and the Draft Liquor Amendment Bill, have languished without significant progress for almost a decade.
- 8.114. Despite mounting evidence of the devastating impact of alcohol abuse on public health and safety, these critical bills have yet to be enacted, leaving gaping loopholes in the regulatory framework governing the liquor industry.

⁶⁸ See <https://genesis.imgix.net/uploads/downloads/Genesis-Analytics-NEDLAC-Impact-of-amendments-to-Liquor-Act-Final-Report-31-October-2017.pdf>

- 8.115. The failure to advance these measures raises serious questions about political will and prioritization of public health over economic interests.
- 8.116. To move forward, the State must demonstrate a renewed commitment to tackling the scourge of alcohol abuse by expediting the legislative process and implementing robust enforcement mechanisms.

9. FINDINGS

“But I ask them, what is more important in this country, and on this earth, than the lives of our children? These were not only the children of their families, of Scenery Park, and of East London. Ibingabantwana bethu sonke. They were our children.”

HE President Cyril Ramaphosa at the state funeral of the Enyobeni 21

The ECLB

- 9.1. The Commission finds that the ECLB’s conduct and/or omissions have contributed to violations of fundamental human rights in the unfolding of the Enyobeni Tavern tragedy.
- 9.2. Despite acknowledging severe human capital challenges, the ECLB persisted in issuing liquor licenses without the requisite capacity to adequately monitor and enforce compliance.
- 9.3. This failure directly contravened the State’s obligation under the Constitution and international human rights law, including the right to life as enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which obligates States to take all necessary measures to protect life.
- 9.4. By continuously issuing liquor licenses knowing it would not have the capacity to oversee and inspect the operations of license holders such as taverns, the ELCB deliberately neglected to protect vulnerable members of society against the illicit trade of alcohol and its associated

alcohol harms. This, despite its own “Guiding Principles” determining that it must take the public interest into account. It would never be in the public interest to continue issuing liquor licences at a ratio of one (1) inspector per 470 license holders as it would be physically impossible to oversee these licences. This it would appear is known to nefarious actors and may contribute to continuous flouting of liquor laws, as found in the Enyobeni Tavern tragedy.

- 9.5. The lacklustre and clear inability of the ECLB to prioritise and speed up the designation of its inspectors as peace officers under section 334 of the Criminal Procedure Act, further undermined its ability to effectively enforce liquor regulations, thereby perpetuating a regulatory environment susceptible to exploitation and non-compliance. The Commission notes that a request was made to the Minister of Justice and Correctional Services and finds that the delay in declaring these inspectors as peace officers contributed to a toothless environment not only known to the ECLB, but also to the industry at large.
- 9.6. The Commission further finds that the absence of a robust process for community consultation where the ECLB would provide expert and informed advice to communities in anticipation of possibly housing a tavern within their vicinity violated the principles of participation and transparency, essential components of the right to dignity and the right to a safe and healthy environment.
- 9.7. This failure is particularly egregious considering that effective community engagement is crucial for assessing the potential impact of liquor establishments on vulnerable communities and ensuring their voices are heard. The fact that the ECLB is only concerned with receiving proof of service and a consultation report, without inquiring what the community was in fact advised, is concerning. It appears to be a purely administrative process of rubberstamping any application which is placed on their table without determining whether the community provided *informed* consent.

- 9.8. Furthermore, the ECLB's issuance of licenses in non-compliant areas disregarded zoning regulations, thereby jeopardizing public safety and exacerbating the risk of harm, directly infringing upon the right to life and the right to health, as well as a healthy environment.
- 9.9. The Commission also finds that the weak legislative framework and nominal fines imposed on liquor outlet owners for violations fail to serve as an effective deterrent, further exacerbating the risk of harm and contributing to the violation of human rights.
- 9.10. In light of these systemic failures, the ECLB's conduct has undermined the fundamental rights to dignity, a safe and healthy environment, health, and children's rights, highlighting a clear breach of its duty to respect, protect, promote, and fulfil human rights as mandated by Section 7(2) of the South African Bill of Rights.

The BCMM

- 9.11. The Commission finds that the BCMM failed to fulfil its obligations in ensuring the protection of fundamental human rights, particularly in relation to zoning regulations, monitoring of liquor license applications, and the establishment of a LDAC.
- 9.12. Despite submissions affirming that the BCMM Council received the Report of the Ward Committee and acknowledging BCMM's obligation to monitor new liquor license applications published in Gazette notices, the Commission finds it implausible that BCMM was unaware of the tavern's concerning operations. The revelation that the Enyobeni Tavern operated without proper zoning as a business establishment underscores BCMM's failure to enforce zoning laws and building regulations, directly infringing upon the right to a safe and healthy environment as safeguarded by international human rights instruments.
- 9.13. Additionally, BCMM's vague response regarding its oversight of the tavern's operation and its failure to proactively engage in compliance

monitoring of liquor license applications demonstrate a lack of accountability and transparency, further compromising community safety and well-being.

- 9.14. BCMM's inability to establish an LDAC, despite legislative requirements and recognition of socio-economic challenges, reflects a systemic failure to address substance abuse issues comprehensively, thereby infringing upon the right to health and exacerbating social vulnerabilities, particularly among children and youth.
- 9.15. The Commission concludes that BCMM's conduct regarding the Enyobeni Tavern tragedy reveals significant shortcomings in its regulatory oversight and responsiveness to community concerns, resulting in violations of the rights to a safe and healthy environment, health, and children's rights, as enshrined in international human rights law and domestic legislation.

SAPS

- 9.17. SAPS officials from the Scenery Park police station confirmed their awareness of complaints against the Enyobeni Tavern dating as far back as December 2021, with subsequent complaints being lodged with SAPS officials over the years.
- 9.18. The Commission finds that the SAPS failed to fulfil its duty to protect public safety and uphold relevant regulations, thereby contributing to a range of human rights violations in relation to the Enyobeni Tavern tragedy.
- 9.19. SAPS's inadequate response to reports of underage drinking and other violations at the tavern raises concerns about the thoroughness and effectiveness of its investigations, directly impacting the right to a safe and healthy environment, particularly for vulnerable individuals such as children.

- 9.20. Despite receiving complaints regarding noise and public drinking near the tavern, SAPS's reactive approach focused on dialogue rather than strict enforcement of relevant laws and regulations, indicating a lack of assertiveness in addressing potential violations and protecting community well-being.
- 9.21. Moreover, SAPS officials acknowledged Mrs Ndevu's uncooperative demeanor when addressing the complaints with her. SAPS officials also observed untoward behaviour of patrons and non-compliance on part of the Enyobeni Tavern and yet failed to effectively investigate and maintain public order, whether on their own accord or through that of collaborating with the ECLB and BCMM.
- 9.22. In light of these findings, the Commission concludes that SAPS's conduct in relation to the Enyobeni Tavern tragedy resulted in violations of the rights to a safe and healthy environment, freedom and security of person, and effective remedies, as enshrined in international human rights instruments and domestic legislation.

Department of Health

- 9.23. The Commission finds that the Department of Health's handling of the Enyobeni Tavern tragedy has resulted in violations of the right to dignity of the victims' families.
- 9.24. The initial reports suggesting methanol poisoning as the cause of death, later refuted, followed by the emergence of suffocation due to overcrowding as the purported cause, created confusion and distress among the affected families.
- 9.25. The lack of clarity and consistency in the information provided exacerbated their trauma and denied them the dignity of knowing the truth about the circumstances of their loved ones' deaths.

- 9.26. Furthermore, the obstacles faced by family members in accessing relevant information, and the department's explanation citing confidentiality and legal constraints, raise questions about transparency and accountability in the investigation process, further eroding the families' sense of dignity and respect.
- 9.27. The repeated postponement of formal inquest proceedings to investigate the deaths prolongs the agony and uncertainty for the bereaved families, denying them closure and perpetuating their suffering. In failing to provide timely and transparent resolution of the matter, the Department of Health has failed to uphold the dignity of the victims and their families, thereby violating their fundamental human rights.

National Department of Social Development (NDSD) and the National Department of Trade and Industry (NDTI)

- 9.28. The Commission finds that the National Department of Trade and Industry and the Department of Social Development have failed to fulfil their obligations under Section 7(2) of the Constitution, as well as their obligations under international treaties such as the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).
- 9.29. Section 7(2) of the Constitution imposes a positive obligation on the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of socio-economic rights. Similarly, the CRC and the ACRWC require State parties to take all appropriate measures, including legislative steps, to protect children from the illicit use of psychotropic substances, which includes alcohol.
- 9.30. Despite these obligations, the NDTI and the NDSD have failed to prioritize improving legislation that could have protected the lives of the victims of the Enyobeni Tavern tragedy and others affected by alcohol-related harm.

- 9.31. The Final National Liquor Policy issued in 2016 made clear recommendations for comprehensive amendments to the National Liquor Act to address the challenges associated with alcohol abuse, including advertising restrictions and stricter regulations on the sale and supply of alcohol to minors.
- 9.32. However, bills such as the Liquor Amendment Bill of 2016 and the Control of Marketing of Alcoholic Beverages Bill of 2013 have seen little to no progress in the legislative process, despite their potential to significantly reduce alcohol consumption and regulate alcohol marketing.
- 9.33. Furthermore, international frameworks such as the WHO Global Strategy to Reduce Harmful Alcohol Use and the WHO African Regional Strategy for Alcohol Control emphasize the importance of protecting children from alcohol's harmful effects through measures such as marketing restrictions and age restrictions on alcohol sales.
- 9.34. The failure of the NDTI and NDSD to prioritize and further these measures demonstrates a clear disregard for their obligations to protect children's rights and promote public health and safety.
- 9.35. Therefore, their inaction constitutes a violation of Section 7(2) of the Constitution, as well as their obligations under the CRC and the ACRWC, to protect children from the harms of alcohol abuse and to promote public health and safety.

10. RECOMMENDATIONS

ECLB

10.1. Moratorium on Issuing On-Site Licences:

- 10.1.1. The ECLB, with the cooperation of DEDEAT and other key stakeholders, to consider an immediate moratorium on issuing of new on-site liquor

licences until sufficient capacity is appointed to effectively monitor compliance with existing regulations;

10.1.2. This pause will allow the ECLB to address the current deficiencies in enforcement and ensure that future licences are granted responsibly; and

10.1.3. The Commission acknowledges that this recommendation may impact the section 22 rights of prospective business owners and the dignity rights of alcohol consumers, as often emphasized by the liquor industry. However, the Commission firmly asserts that any restriction on the liquor industry's right to trade or on the dignity of alcohol users is justifiable under a section 36⁶⁹ analysis and rationality test. Considering the public interest, principles of ubuntu⁷⁰, and common sense, the State is compelled to take urgent action to address the pervasive issue of alcohol misuse and abuse in South Africa's socio-economic landscape and to ensure that children's rights are promoted and protected.⁷¹

10.2. Pursue Peace Officer Status:

10.2.1. The ECLB must expedite efforts to secure approval from the Minister of Justice and Correctional Services to designate ECLB inspectors as Peace Officers under section 334 of the Criminal Procedure Act.

⁶⁹ South African Constitution

⁷⁰ Ubuntu is an African philosophy that emphasizes the interconnectedness of all individuals, asserting that one's humanity is entwined with that of others. It promotes empathy, respect, and the intrinsic worth of every person, advocating for community support, solidarity, and collective well-being. Central to Ubuntu are the principles of moral responsibility and ethical conduct towards others, as well as reciprocity in social interactions, encapsulating the ethos of "I am because we are." This philosophy fosters community cohesion, trust, and mutual caring, highlighting the importance of communal harmony and ethical relationships.

⁷¹ Section 36 permits the limitation of rights provided that such limitations are reasonable and justifiable in a democratic society valuing human dignity, equality and freedom. This legal framework supports the immediate moratorium as a measure to mitigate the societal and health-related issues from alcohol abuse.

The justification for this limitation hinges on balancing the individual's rights with the public interest, where the pressing need to address alcohol-related harm validates the temporary infringement on one's right to trade within the liquor industry. The limitation must align with the purpose of reducing alcohol abuse, demonstrating a direct relationship between the pausing of liquor licence approvals and the anticipated decrease in alcohol-related abuse. With the ECLB's insufficient resource constraints and its assumed inability to monitor compliance over the vast number of liquor outlets, enforcing a moratorium is likely to be considered reasonable and justifiable when it is the most suitable means to achieve the public health objective, especially considering the severity of illicit liquor trading operations and its impact on society and its effect on children's rights.

10.2.2. This designation would empower ECLB inspectors to enforce compliance with liquor laws more effectively and enhance their ability to address violations.

10.3. **Alignment with New Legislation and Policies:**

10.3.1. The ECLB should ensure that any new legislation and regulations align with the provisions outlined in the Draft Liquor Amendment Bill of 2018 and the Final National Liquor Policy of 2016.⁷²

10.3.2. This alignment should support, but not be limited to:

10.3.2.1. Restricting advertising of alcohol on print media, television, radio, billboards and all other public areas except at site of sale;

10.3.2.2. Prohibiting the location of liquor outlets within 500m of schools, residential areas, and places of worship and recreation;

10.3.2.3. Increasing the legal drinking age from 18 to 21 years;

10.3.2.4. Regulating specific trading days and hours (00:00) for alcohol to be distributed and manufactured; and

10.3.2.5. Placing liability on alcohol retailers and manufacturers for harm related to the contravention of regulations.

10.3.3. The Commission again underscores that the justifications behind these potential limitations are reasonable and justifiable in an open democracy, and the research behind these recommendations are already included in the State's own policy considerations.

⁷² The Commission recognizes that in terms of Schedule 5 of the Constitution, liquor licences are listed as one of the functional areas of '*Exclusive Provincial Legislative Competence*', coupled with the National Liquor Act's definition of '*applicable provincial legislation*' meaning legislation enacted by the provincial legislature regulating the micro-manufacture, retail sale or consumption of liquor. Despite the provinces' sole authority to legislate on matters related to liquor licences, reflecting the decentralized approach in managing liquor licences, does not preclude the provincial authority's capacity to align liquor legislation to the national framework or even to the extent that Constitutional values supersede the retail and consumption of liquor.

10.4. **Enhanced Community Engagement:**

10.4.1. The ECLB must prioritize meaningful engagement with affected communities during the liquor licensing process and renewal by way of its physical presence and participation. This includes conducting comprehensive consultations that inform communities about the risks and benefits associated with liquor establishments, as well as regularly reassessing community needs and concerns to ensure ongoing dialogue and responsiveness.

10.4.2. Implementing these recommendations will not only help the ECLB fulfil its regulatory mandate more effectively but also safeguard the human rights of communities affected by alcohol-related harm within the Eastern Cape province in order to prevent another Enyobeni Tragedy from occurring.

10.5. **The ECLB to provide the Commission with a report within 30 days after the release of this report illustrating how it will address the Commission's recommendations herein.**

BCMM

10.6. **Establishment of LDAC:**

10.6.1. BCMM must immediately establish the required Local Drug Action Committee (LDAC) to fulfil its obligations under relevant legislation and promote substance abuse prevention and intervention efforts.

10.6.2. **Recreational Facilities:**

10.6.3. BCMM must identify suitable communities for planning, developing and installing recreational facilities to promote community development and youth empowerment. This proactive approach aligns with BCMM's role in fostering community well-being.

- 10.6.4. To maximise the impact of the recreational facilities on community development, BCMM to further ensure that they are fully resourced and accompanied by a diverse range of activities. This holistic approach to include, but not limited to:-
- 10.6.4.1. Development of a year-round activity schedule where BCMM should work with community leaders, youth organisations and educators to create a comprehensive calendar of events that cater to different age groups, interests as well as abilities.
- 10.6.4.2. In addition to the roles and responsibilities of Ward Councillors, BCMM to consider investing in local youth by training them to manage and run these facilities and activities which may provide valuable employment opportunities while fostering a sense of ownership and responsibility within the community.
- 10.6.4.3. BCMM to collaborate with local businesses and NGO's where additional resources and expertise can be garnered to help fund programmes, provide equipment, and offer guidance and monitor role-out of activities.
- 10.7. **Identifying Illegal Liquor Outlets; Business Zoning and Building Regulations:**
- 10.7.1. BCMM, in collaboration with relevant stakeholders, should conduct a drive to identify liquor outlets in communities and ascertain their legal status. An audit on all liquor outlets, especially in informal and disadvantaged communities, should be conducted to verify zoning compliance and adherence to building regulations.
- 10.8. **Reports by Ward Committee:**
- 10.8.1. BCMM should amend section 6 of the By-law or issue a directive to invite or mandate the presence of ECLB and SAPS officials at

community consultations to enhance transparency and fairness in liquor licensing processes.

10.9. Timelines:

- 10.9.1. BCMM should submit a report on conducting the audit of liquor outlets within three (3) months after receipt of this report, detailing the number of facilities closed upon confirmation of non-compliance. The report should also provide the Commission with proof of the establishment of an LDAC.

SAPS

- 10.9.2. SAPS should implement more assertive enforcement measures to ensure compliance with liquor regulations and noise nuisance by-laws, particularly in vulnerable communities. This entails taking proactive steps to address reports of underage drinking, noise disturbances, and other illicit activities near liquor establishments. SAPS should prioritize regular patrols and inspections in areas with high alcohol-related incidents to deter unlawful behaviour effectively.
- 10.9.3. SAPS officials, particularly those stationed in areas with a high concentration of liquor outlets, should undergo specialized training on liquor regulations, enforcement procedures, and community engagement strategies. This training should equip officers with the knowledge and skills necessary to effectively address alcohol-related issues and collaborate with relevant stakeholders, such as the ECLB and local municipalities.
- 10.9.4. SAPS should strengthen collaborative partnerships with other relevant agencies, including the ECLB and local municipalities, to enhance coordination and information sharing regarding liquor licensing, compliance, and enforcement. By fostering closer cooperation, SAPS can leverage resources and expertise from

different sectors to address alcohol-related challenges more comprehensively.

- 10.9.5. SAPS should prioritize community engagement initiatives aimed at raising awareness about the risks associated with alcohol abuse, promoting responsible drinking practices, and fostering positive relationships between law enforcement and community members. These initiatives should involve regular meetings, public awareness campaigns, and educational programs targeting both adults and youth.
- 10.9.6. SAPS to submit a report detailing the steps it will take in response to the abovementioned recommendations within three (3) months after receipt of this report.

National Department of Trade and Industry; National Department of Social Development

- 10.10. **Prioritization of Legislative Action:** The relevant abovementioned custodial departments should prioritize the re-tabling and potential enactment of the Control of Marketing of Alcoholic Beverages Bill and the Liquor Amendment Bill, both of which have remained stagnant for an extended period. These bills encompass crucial measures aimed at regulating the sale and distribution of alcoholic beverages, thereby playing a significant role in curbing alcohol abuse and safeguarding public health.
- 10.11. **Expedited Legislative Process:** The Department of Trade and Industry (DTI) should furnish the Commission with a comprehensive report detailing its strategy for expediting the formalization of the draft legislation. Furthermore, the DTI should outline steps taken to ensure alignment with any recent developments or amendments necessitated since the initial tabling of the bills. This proactive approach will

facilitate swift progress in addressing the pressing issues surrounding alcohol regulation and enforcement.

The Office of the Premier

- 10.12. The Office of the Premier should issue an urgent directive to all municipalities within the Province who have yet to establish their own LDACs to do so within 30 days after receipt of this report, as prescribed by the Substance Abuse Act.
- 10.13. The Office of the Premier to encourage municipalities, through COGHTA, to conduct similar audits as directed towards BCMM above, in order to ensure zoning and building regulation compliance within the Province.
- 10.14. The Office of the Premier should further facilitate regular oversight meetings among relevant government departments, including the Department of Health, Department of Social Development, Department of Education, and law enforcement agencies, to develop a coordinated approach to addressing the root causes of alcohol-related harm and improving regulatory oversight.

The Eastern Cape Provincial Legislature

- 10.15. Initiate a comprehensive review of existing alcohol-related legislation to identify gaps, inconsistencies, and areas for improvement. This review should prioritize aligning provincial laws with international human rights standards, such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, to ensure adequate protection for vulnerable populations, including children and marginalized communities.
- 10.16. Strengthen legislative oversight mechanisms to monitor the implementation of alcohol-related policies and regulations effectively.

This may involve establishing a dedicated committee or task force within the provincial legislature to oversee alcohol regulation, conduct regular audits of compliance and enforcement efforts, and hold relevant government agencies accountable for their performance in addressing alcohol-related harm.

The Department of Education

10.17. Further, and with specific reference to the concerns associated with ‘pens down’ celebrations and linked risks of under-age drinking, the Commission recommends that the Department of Education embarks on a proactive and collaborative campaign with the relevant stakeholders and local government to eradicate or prevent such celebrations.

10.18. To ensure a safer, controlled and engaging alternatives for end of year celebrations, the Department of Education, along with stakeholders, to facilitate alternative end-of-exam celebrations that provide fun, engaging and a safer environment for youth. Said activities may include concerts, sporting events, cultural festivals that engage students in positive activities. By involving parents and community members in the planning and execution of such engagements will ensure that the event meets the expectations and safety standards of the community. Parental involvement further helps reinforce the message about safe behaviour and responsible choices.

11. CONCLUSION

This report, as well as the incidents leading to this systemic investigation, underscore a sobering reality: the harms of alcohol abuse are well-documented and pervasive, but our collective response remains inadequate. We do not need further evidence to understand the devastating impact of alcohol on individuals,

families, and communities. What is urgently needed is a fundamental shift in how we, as a society, approach alcohol consumption and regulation.

It is evident that parents often have limited oversight over their children, who tragically end up frequenting taverns and becoming victims of alcohol-related harm. We must confront the uncomfortable truth that, too often, we prioritize the right to drink over the rights of children to be protected from harm. This is a call to action—a call to recalibrate our priorities in the name of human rights. While the Commission is not blind to the significant contribution the liquor industry makes to the GDP, we must ask ourselves: at what cost? We cannot ignore the human rights implications of our societal choices, and it is imperative that we prioritize the well-being and safety of our most vulnerable members, as is also placed upon us by our international obligations.

It will however require concerted efforts from all sectors of society, including government, civil society, and the private sector, to enact meaningful policy reforms, strengthen enforcement mechanisms, and promote responsible alcohol consumption. Only through collective action can we create safer, healthier, and more equitable communities for all.

Signed at Western Cape on this 23 day of April 2024.



Chris Nissen

Chairperson

South African Human Rights Commission