#### IN THE HIGH COURT OF SOUTH AFRICA

## (WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 5633/2020

In application for admission as amicus curiae:

NASREEN RAJAB-BUDLENDER

NOZIZWE SILINDILE VUNDLA

CAROL KHOLEKA ZAMA

PENELOPE JOY PARENZEE

NICOLE LOUISE FRITZ

Acting in their capacity as

THE TRUSTEES FOR THE TIME BEING OF THE

Applicant

WOMEN'S LEGAL CENTRE TRUST

In the matter between:

CITY OF CAPE TOWN

Applicant

and

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

First Respondent

CHIEF EXECUTIVE OFFICER OF THE SOUTH

Second Respondent

### AFRICASN HUMAN RIGHTS COMMISSION

TAURIQ JENKINS	Third Respondent	
ANNIE KIRKE	Fourth Respondent	
ANNELIZE VAN WYK	Fifth Respondent	
LYSANDRA FLOWERS	Sixth Respondent	
LORENZO DAVIDS	Seventh Respondent	
CATHERINE WILLIAMS	Eighth Respondent	
GILLES VAN CUTSEM	Ninth Respondent	
JARED SACKS	Tenth Respondent	
ZELDA HOLTZMAN	Eleventh Respondent	
FILING SHEET		

KINDLY TAKE NOTICE THAT the Applicant herewith files the following documents:

- 1. Applicant's Notice of Motion with Founding Affidavit
- 2. Supporting affidavits from Seehaam Samaai, AX, and Bronwyn Pithey

DATED a Cyclon this the 12th day of Nay 2020.



7th floor Constitution House

124 Adderley Street

Cape Town

Email: bronwyn@wlce.co.za

Tel: 021 4245660

TO:

THE REGISTRAR

HIGH COURT

**CAPE TOWN** 

AND TO:

FAIRBRIDGES WERTHEIM BECKER ATTORNEYS

Attorneys for the Applicant

Adela Petersen

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**CAPE TOWN** 

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AND TO:

THE LEGAL RESOURCES CENTRE

Attorneys for the Respondents

Sherylle Dass

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**CAPE TOWN** 

sherylle@lrc.org.za

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# NOTICE OF APPLICATION FOR ADMISSION AS *AMICUS CURIAE* IN TERMS OF RULE 16A

PLEASE TAKE NOTICE THAT the applicant, the Women's Legal Centre Trust, makes application to this Honourable Court for an order in the following terms:

1. That this application be treated as an urgent application and that the non-compliance with the Rules of the above Honourable Court relating to forms, time periods and service be condoned and that leave be granted to the Applicant to move this application as a matter of urgency in terms of the provisions of Rule 6(12);

- 2. Admitting the Women's Legal Centre Trust as an amicus curiae;
- 3. Granting the Women's Legal Centre Trust leave to file written submissions;
- 4. Granting the Women's Legal Centre Trust leave to present oral argument at the hearing; and
- 5. Further and/or alternative relief.

PLEASE TAKE NOTICE FURTHER that the affidavits of CHARLENE MAY, SEEHAAM SAMAAI, AX, and BRONWYN PITHEY annexed hereto will be used in support of this application.

PLEASE NOTICE FURTHER that the applicant has appointed the offices of the Women's Legal Centre 7<sup>th</sup> floor Constitution House, 124 Adderley Street, Cape Town, c/o the email address of its attorney of record set out below, as the address at which the applicant will accept notice and service of all process and documents in these proceedings.

PLEASE TAKE NOTICE FURTHER THAT that if you intend to oppose this application, you are required to:

- a. Notify the Women's Legal Centre Trust by 12 noon on 13 MAY 2020 that you intend to do so:
- b. Appoint an address within 8 kilometres of the office of the Registrar at which you will accept notice and service of all documents in the proceedings; and
- c. By 10am 14 MAY 2020, or a date arranged between the parties, lodge your answering affidavit, if any, together with any relevant documents, which may include supporting affidavits.

WOMEN'S LEGAL CENTRE

7th floor Constitution House

124 Adderley Street

Cape Town

Email: bronwyn@wlce.co.za

Tel: 021 4245660

TO: THE REGISTRAR

HIGH COURT

**CAPE TOWN** 

AND TO: FAIRBRIDGES WERTHEIM BECKER ATTORNEYS

Attorneys for the Applicant

Adela Petersen

Standard Bank Centre

16th Floor, Main Tower

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apetersen@fairbridges.co.za

AND TO: THE LEGAL RESOURCES CENTRE

Attorneys for the Respondents

Sherylle Dass

Aintree Office Park, Block D

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sherylle@lrc.org.za

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Tenth Respondent

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Eleventh Respondent

# FOUNDING AFFIDAVIT IN APPLICATION TO BE ADMITTED AS AMICUS CURIAE

I, the undersigned,

## CHARLENE MAY

do hereby make oath and say:

- 1. I am a legal practitioner and an admitted attorney at the Women's Legal Centre ("WLC"), situated at 7<sup>th</sup> floor Constitution House, 124 Adderley Street, Cape Town.
- 2. The WLC Trust is a registered non-profit organisation with registration number 032-685-NPO and a registered public benefit organisation with tax exemption number 930-00-242. The Trust Deed, as amended, is attached hereto as "CM1". A copy of the Master's Certificate authorising the present Trustees to act on behalf of the Trust is annexed as "CM2".
- I am duly authorised to institute these proceedings and to depose to this affidavit on behalf of the WLC Trust. I attach a resolution adopted by the WLC Trust Board of Trustees on 9 May 2020, marked 'CM3'.
- 4. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise indicated by statement or context, fall within my personal knowledge.
- 5. In this affidavit, I deal with the following in turn:
  - 5.1. Introduction and background;
  - 5.2. The WLC Trust's interest in these proceedings;
  - 5.3. The WLC Trust's intended submissions and why they will be of assistance to the Court and different from the submissions of the parties; and
  - 5.4. Conclusion.

## A. INTRODUCTION AND BACKGROUND

- 6. On 5 May 2020 the applicant, the City of Cape Town ("the City"), brought this application on an urgent basis seeking a rule *nisi* as well as various interdicts against the South African Human Rights Commission ("the Commission") and a further ten respondents. The respondents have opposed the application.
- 7. Although at the time of drafting this application I have not had sight of the timetable for the further conduct of this matter, it is the WLC Trust's understanding that, by agreement between the parties, the respondents were to file answering papers by 20h00 on 8 May 2020; the applicants are to file replying papers by 20h00 on 12 May 2020; and the matter is set down for hearing on 14 May 2020.
- 8. The WLC Trust hereby applies for leave to be admitted as an *amicus curiae* in terms of Rule 16A of the Uniform Rules of this Court, and for condonation for non-compliance with the requirements of Rule 16A relating to form and timeframes, insofar as it may be necessary. If admitted as an *amicus curiae*, the WLC Trust requests leave to file written submissions and to advance brief oral argument at the hearing of 14 May 2020.
- 9. Although the WLC Trust became aware of these proceedings on 5 May 2020, a complete copy of both the application and opposing papers by the respondents was only provided to it late in the evening on Friday, 8 May 2020. On 9 May 2020 the WLC Trust addressed letters to the attorneys representing the applicant and the respondents requesting the parties' consent to the WLC Trust's admission as an *amicus curiae* to these proceedings. A copy of the letter is attached hereto as annexure "CM4". The City's attorney initially responded by email dated 10 May 2020, annexed as "CM5", objecting to the admission of the WLC Trust as an *amicus* on the basis that the third respondent has stated at paragraph 23 of his affidavit, that Ms Seehaam Samaai of the WLC Trust, was "our legal

representative" and had attended at the Strandfontein temporary emergency shelter ("the Shelter") on 1 May 2020 in that capacity. In this regard, I refer to the accompanying affidavit of Ms Samaai in which she denies these allegations and explains that she attended at the site as part of her involvement with a broad, informal social justice coalition formed by various NGO's in response to COVID-19. She did not attend the site as the third respondent's or anyone else's attorney of record. No mandate had been received by the WLC Trust to represent any of the respondents at the site on that day. Furthermore, as indicated below, the focus of our litigation is to assist women, and in particular vulnerable women. The third respondent is not in that category of persons. It is in any event evident in these proceedings that the respondents are in fact represented by the Legal Resource Centre ("the LRC") and not by the WLC Trust. On 11 May 2020 the City's attorneys sent a further letter formally objecting to the admission of the WLC Trust on the broad grounds that none of the concerns raised by the WLC Trust are novel or relevant to this matter. A copy of that letter is attached hereto as annexure "CM6". As the contents of this affidavit show, the submissions that the WLC Trust intends to advance are relevant to the proceedings and raise new contentions which may be useful for the determination of this matter.

10. On 11 May 2020, the LRC, which represents the respondents, responded by letter, stating that it had no objection to the admission of the WLC Trust as *amicus* if its contentions were to assist the determination of the matter. The letter of the LRC is annexed hereto and marked "CM7".

# B. THE INTEREST OF THE WLC TRUST IN THIS MATTER

11. One of the core objectives of the WLC Trust is to advance and protect the human rights of women and girls in South Africa. In so doing the WLC Trust seeks to contribute to

redressing the systemic inequality faced by women in South Africa. This intervention is particularly necessary in respect of women who suffer multiple and intersecting forms of disadvantage.

- 12. To this end the WLC Trust established the Women's Legal Centre ("WLC"). The WLC is an African feminist legal centre that advances women's rights and equality through strategic litigation, advocacy, education and training.
- 13. The WLC provides legal assistance to women litigants free of charge. It litigates on behalf of clients and in its own name with the broader aim of developing feminist jurisprudence that recognises and advances women's rights in South Africa. The WLC also participates in litigation in the role of *amicus curiae* to assist Courts in constitutional and public interest matters that concern women's rights and gender equality.
- 14. Since its inception, the WLC has participated in numerous cases concerning the rights of women. The WLC's litigation over the years has covered issues such as sexual and domestic violence, child abuse, vicarious liability of police officers in relation to sexual and domestic violence, as well as women's property rights on divorce or death of their partners and the rights of farm women to occupy housing in their own right.
- 15. The Women's Right to be Free from Violence is one of the WLC's four strategic programmes.
  - 15.1. The programme's vision is the recognition and implementation of an accessible and responsive justice system that takes account of, and supports, the particular needs of women who are survivors of violence, and which provides optimal services and protection.

- 15.2. Its core objectives include ensuring that there is a legislative framework to address violence against women which is compliant with international and constitutional obligations; ensuring that the state has implementation plans in place to action legal frameworks and policies; and holding the state and private entities accountable in the implementation of laws and policies, and in the development of due diligence standards relating to violence against women.
- 16. The prevention and redress of violence against women through the law and the pursuit of equality for women is central to the WLC Trust's mandate and daily work through the WLC.
- 17. In this context, the particular vulnerability of woman living on the streets cannot be understated and forms a significant part of the work of the WLC. According to the United Nations High Commissioner for Human Rights ("UNHCR"), women who find themselves living on the streets are a particularly vulnerable group of homeless persons, and may be described as internally displaced persons people who have been forced to flee home but remaining within the borders of the Republic. They accordingly need appropriate security and safety measures.
  - 18. Research and the WLC's experience have shown that by the time women are forced into homelessness, they have experienced various forms of intersecting discrimination, and find themselves homeless for a myriad of reasons and circumstances.
  - 19. In South Africa explanations for homelessness range from the structural causes of apartheid influences, uncoordinated planning, and a lack of coherent socio-economic policies and programmes. The causes are political, social and economic in nature. Cape Town has its own unique history in terms of displacement of people of colour to the periphery of the City, where they were required to provide labour, but live in abject

poverty because of the colour of their skin. A primary driver for homelessness, however, is economic, which includes housing; family conflict; overcrowding; lack of personal space and privacy; unemployment; poverty; lack of education formal or otherwise. There are also health drivers such mental illness, substance abuse, related criminal convictions and records.

- 20. These varying and often intersecting drivers of homelessness require multiple intervention approaches, which are simply not available in Cape Town or provided by the City.
- 21. In addition to the interests set out above, the WLC are the legal representatives of an 18-year-old female who was raped at the Shelter, thus raising concerns regarding the safety and security of women there. The relevant details of the rape incident are discussed later in this affidavit.
- 22. The WLC Trust accordingly has a clear and substantial interest in these proceedings and is well-placed to assist the Court in its consideration of the matter before it.

# C. THE WLC TRUST 'S POSITION AND INTENDED SUBMISSIONS

23. In its role as *amicus curiae* the WLC Trust will not repeat the issues raised by the other parties but rather intends to raise new contentions relevant to the issues before the Court. Ultimately, the WLC Trust seeks to provide a gender lens to the Court on why the relief sought by the City is wholly inappropriate, and why monitoring and investigative powers of Chapter 9 institutions established in terms of the Constitution of South Africa 108 of 1996 ("the Constitution") are critically important to vulnerable women such as those resident at the Shelter. The issues on which submissions are sought to be made may be summarised as follows:

- 23.1. The establishment of the Shelter must be viewed against the background of very high levels of sexual violence against women in South Africa. This background places a specific duty on the City to take measures to protect the women who are resident at its site.
- 23.2. Five days after the Shelter became operational, a female resident was raped by a male resident ("the rape incident"), indicating that the security and safety measures put in place by the City were not adequate.
- 23.3. In addition to this, the City appears to not have a comprehensive or adequate safety and security plan guiding its establishment of the Shelter or any other similar shelter, by which it may be held accountable. This is evidenced by the City's failure to provide the WLC with such a plan upon request or direct the WLC to where such a plan could be accessed. In addition, indications are that the measures that the City has put in place at the Shelter fall short of the international guidelines that have been issued for identifying and mitigating gender-based violence ("GBV") risks within COVID-19 responses by governments.
  - 23.4. The City has failed to and resisted facilitating access to justice to the residents at the Shelter, specifically women who may have been victims of GBV, which they are entitled to.
  - 23.5. The unsuccessful attempts of the WLC to engage the City regarding the defects and lacunae in its operations and policies referred to above, highlight the need for effective monitoring by a constitutional, statutory institution such as the South African Human Rights Commission. Access to, and effective monitoring

of the site by an independent institution is a reasonable and necessary method of ensuring and evaluating the safety and security of vulnerable women.

- 23.6. An interdict of the nature sought by the City will have the effect of unlawful and unconstitutional interference with the functions of the Commission, including its critical role in ensuring safety of vulnerable women.
- 24. The issues set out in this affidavit are relevant and provide the social context for the main issues between the parties. It is in the interests of justice that the issues raised in this affidavit should be placed before the Court when determining the main issues between the parties.
- 25. The above contentions are now dealt with below.

## D. SEXUAL VIOLENCE AGAINST WOMEN IN SOUTH AFRICA

- 26. Any consideration of the adequacy of the City's response to COVID-19, and specifically the establishment of the Shelter, must take into account the very high levels of sexual violence against women in South Africa.
- 27. The very high levels of sexual violence in South Africa are well-documented and recognised by our courts. Sexual violence goes to the very core of the subordination of women in society; and entrenches patriarchy as it imperils the freedom and self-determination of women.
- 28. In terms of section 7 of the Constitution of the Republic of South Africa ("the Constitution"), the State has a constitutional duty to address systemic inequality against women and protect women from violence in all its forms. The State's duty under section 7 includes both a negative obligation to protect these rights, but also a positive obligation

to take steps to respect, promote and fulfil the rights. The State's duty extends beyond its own action, and it must also take steps to protect these rights against damaging acts that may be perpetrated by private parties.

- 29. In South Africa, concerns have been raised, especially by civil society organisations who provide services to women that are victims of violence, that there may be an increased exposure of women to intimate partner violence due to tensions in the home in the face of dwindling family resources and under confinement conditions. The Human Science Research Council laments that 'the COVID-19 pandemic is exacerbating many of the factors that intersect to increase the risk for interpersonal violence, and in particular intimate partner violence"(http://www.hsrc.ac.za/en/news/general/SRHR-covid-19); while the National Shelter Movement argues that 'victims of GBV are some of those most at risk, not only from coronavirus, during the nationwide lockdown' (http://www.ngopulse.org/press-release/victims-gbv-are-some-those-most-risk-not-only-coronavirus-during-nationwide-lockdown%E2%80%9D-)
  - 30. The government has also expressed worry about violence against women, with Minister of Police, Bheki Cele stating that GBV remained a concern and he has called on communities to assist the police as most perpetrators are often known (https://ewn.co.za/2020/04/22/bheki-cele-concerned-about-gbv-while-other-crimes-decline-during-lockdown)
  - 31. The under-reporting of both sexual and domestic violence is a big challenge in South Africa, and it is expected that due to the strict lockdown regulations, underreporting will be heightened due to lack of access to resources, restrictions on movement, and the ability to physically report matters of violence to the police.

- 32. These challenges are exacerbated in situations where women may find themselves in temporary shelters and temporary sites established in terms of the Regulations. It is well-documented that living in shelters and on the streets is characterised by day-to-day threats to physical security and wellbeing at levels much higher than the general public. Different people's vulnerabilities influence how frequently and in what ways they are victimised. Many factors influence that vulnerability, including sex, gender, sexual orientation, financial status (employed or unemployed) as well as where the individual is sleeping (in a makeshift shelter on the streets, abandoned building or in a shelter) Secondary factors, which may influence vulnerability include a lack of social ties to people already living on the street, and organisations or institutions on which an individual can rely on for support. Substance abuse and dependency is another such secondary factor because women who are inebriated are much more likely to fall prey to sexual violence and rape.
  - 33. In a country where violence against women is so ingrained within our daily lives, the levels of violence that women living on the street experience increase their vulnerability. Their vulnerability due to their status on the street opens them up to multiple forms of sexual violence. They may experience violence from men living with them on the streets, strangers who they do not know men who frequent or work in shelters as well as from law enforcement officials themselves. Research and the WLC's experience has also shown that women living on the streets with compounded vulnerabilities are less likely to report such violence to the police or law enforcement, because of their experiences with militaristic authority who have criminalised their existence on the streets.
    - 34. Due to the high levels of violence generally against women wherever they may find themselves in South Africa, intersecting with the particular vulnerabilities that some women experience, such as being homeless, it is essential that women who find

themselves in temporary shelters or temporary sites established in terms of the Regulations of the Disaster Management Act 2002 are provided with independent oversight and monitoring mechanisms by legally mandated bodies, such as the Commission, to ensure their rights are being protected.

## **E.** THE RAPE INCIDENT

- 35. The factual events set out in this section must be read together with firstly, the accompanying statement of Ms AX, the victim of the rape incident, which was taken by the South African Police Service ("SAPS") on 11 April 2020, and is annexed hereto as "AX". Her identity is not revealed in these proceedings in order to protect her privacy in terms of the Criminal Procedure Act 51 of 1977. The second source for the contents of this section is a consultation held by Ms Pithey of the WLC Trust with Ms AX in Gugulethu on Friday 8 May 2020, after which Ms Pithey drew up a draft affidavit for Ms AX to depose. Unfortunately, since that consultation we have not been able to trace Ms AX for the purposes of deposing to her affidavit. She is again living on the streets. Because of the importance of the contents of that consultation, and the extremely urgent nature of this application, the contents of that consultation are relied upon in this section. I refer to the confirmatory affidavit of Ms Pithey in this regard.
  - 36. Ms AX is an 18-year old woman who has been living on the streets of Woodstock from time to time, for approximately two years. On 5 April 2020, the City relocated her and others to the Shelter ostensibly in terms of section 11D of the Regulations issued under section 27(2) of the Disaster Management Act 57 of 2002 ("the DMA"), as amended.
  - 37. On Wednesday 8 April 2020, Ms AX was raped at the Shelter by a male resident at the Shelter. According to Ms AX, the rape was preceded by very persistent and aggressive

sexual advances and sexual harassment by the perpetrator, including physical touching on various parts of her body, in plain sight of other residents. The perpetrator thereafter took Ms AX to where he was sleeping, where no one else was present, and he proceeded to rape her. All of this happened during the day.

- 38. According to Ms AX, during her stay at the Shelter, at no stage was she or any of the other women residents given an option to sleep in a separate tent from the men. She further avers that, had she been given that option, she would have chosen to sleep separately from the men.
- 39. Furthermore, during the whole time that Ms AX was a resident at the Shelter, the City's Law Enforcement officers and security personnel were based at the gate of the site. They did not patrol inside the site at all, during the day or the night. There were also no social workers who came to talk to her about any problems that she might have had. She was not told who she could approach if she needed help with anything, or to whom to report criminal activity.
- 40. Ms AX made the allegation of rape on Friday 10 April 2020, to another resident at the Shelter and one of the City's Law Enforcement Unit officers based at the Shelter. Following the report to the City Law Enforcement Unit based at the Shelter, she was transported by Emergency Medical Services to Victoria Hospital and later to Mitchell's Plain Hospital, where she was refused assistance for reasons unknown to the WLC Trust. Eventually, she was transported to the Heideveld Thuthuzela Care Centre ("the TCC").
- 41. The City however, did not contact the SAPS regarding the incident. It was only through the intervention of a board member of Ilitha Labantu, an NPO based in Gugulethu, that members of the SAPS became involved in the matter and took a statement from Ms AX

- on 11 April 2020. A police docket was opened under CAS 44/04/2020 Strandfontein, and the perpetrator appeared in the Magistrate's Court at Mitchell's Plain on rape charges.
- 42. The rape incident raised a number of concerns, specifically regarding the security and safety of women at the Shelter and any other similar shelter that may be erected pursuant to the Regulations. As a result, on 20 April 2020 the WLC directed correspondence to the City, which is attached hereto as "CM8", seeking the following information (at paragraphs 14.1 to 14.6):
  - "14.1 What security has been provided at the Shelter to ensure the safety and security of the residents, especially women.
  - 14.2 The detailed safety plan that specifically takes into account the particular vulnerabilities of women who have been placed in the Shelter.
  - 14.3 The role of the City of Cape Town's Special Investigation Unit in the investigation of this case, the presence of Mr Talmakkies at Ilitha Labantu on 11 April 2020, his specific legal mandate to interview Ms X, and on what basis he had sight of the contents of the SAPS docket (medical report).
  - 14.4 The specific processes and procedures in place at the Shelter for the residents to report criminal offences to the authorities at the Shelter and to the SAPS.
  - 14.5 The specific processes and procedures in place for the transport of victims of sexual and / or domestic violence for the purposes of medical and legal assistance.
  - With reference to points 14.4 and 14.5 above how this information is made available to the residents of the Shelter."
  - In summary, the City stated that it had consulted various departments, external organisations and NGOs regarding how best to deliver services and care for the homeless. Regarding the security and safety of women, similar to the founding affidavit in this matter, the City mentioned a twenty-four-hour security service on site which is supported by a 24-hour Law Enforcement ('LE') presence; access control to the site; foot-patrol by security and LE. It was also mentioned that provision was made for women to be

accommodated in a separate tent, which was rejected by most of the women. The City stated that the offer of separate accommodation to women remained open and could be made available if requested by any woman. The City undertook to ensure that the availability of a separate tent for women was again addressed during the daily meeting between the City and the Site Management consisting of NGOs to be relayed to the women on site.

It is immediately evident that the City's version contained in the letter dated 22 April 44. 2020 is at variance with the summarised version of Ms AX set out above. In any event, if the City's version is to be believed, what is clear is that despite the measures mentioned in its letter of 22 April 2020 which are repeated in the founding affidavit supporting this matter, the rape of Ms AX occurred. The obvious conclusion is that the security measures in place were inadequate, and that an appropriate security response and/or adjustment was required by the City. It does not appear from the letter of 22 April 2020 or in the founding affidavit supporting this application, that any additional security measures were put in place after the rape incident involving Ms AX. The letter from the WLC dated 20 April 2020 ("CM8") specifically requested that information in light of the rape incident of Ms AX. In this application, the City vaguely states in paragraph 45 of the founding affidavit that its 'initial response in establishing the site needed refinement and that these changes have been made as soon as possible and are constantly evolving to respond adequately and within its resources to the best of its ability'. However, no detail has ever been given regarding 'these changes'. In a similar vein, it is stated in paragraph 131 of the founding affidavit that "most, if not all of the issues raised in the report [of the Commission] have been addressed and are no longer in issue". It is not clear which issues have been addressed and are no longer in issue.

# F. REQUESTS FOR CITY'S SAFETY AND SECURITY PLAN FOR VULNERABLE WOMEN

- 45. There was no response from the City regarding the request for a detailed safety plan that specifically takes into account the particular vulnerabilities of women who have been placed in the Shelter. Despite our enquiries from officials of the City and online, the WLC has not been able to locate any such safety plan. There is therefore every reason to believe that there is no such plan guiding the City's response and, specifically the erection of the Shelter or any similar shelter. The same applies to the decommissioning of the Shelter or any similar shelter, which the City now intends to do. In addition to this, the City has not provided, or been able to clearly articulate a security and safety plan that takes into account the vulnerabilities of its women residents. This is concerning given the wide powers granted to the City in terms of Regulation D of Government *Gazette* No. 43148 of 25 March 2020 ("the Lockdown Regulations"), which provides as follows:
  - (1) For the period of the declaration of a lockdown, a person refusing to be evacuated from any place subject to lockdown, may be evacuated by an enforcement officer to a temporary shelter, if such action is necessary for the preservation of life.
  - (2) The State shall identify
    - a. temporary shelters that meet the necessary hygiene standards for homeless people; and
    - b. temporary sites for quarantine and self-isolation that meet the necessary hygiene standards for people who cannot isolate or quarantine in their homes."
  - 46. In light of these wide powers granted by the Lockdown Regulations, which have no accompanying guidelines, it difficult to hold the City accountable for its conduct in the establishment and erection of temporary shelters and other sites. The accountability is

made even more difficult if there is no or vague information forthcoming from the City on this issue. It is made even more difficult if no institution is allowed to have access to the site and monitor compliance with the City's obligations, as discussed below.

- Nations ("UN") and non-UN humanitarian partners, which was founded in 1992 to strengthen humanitarian assistance and improve the delivery of humanitarian assistance to affected populations, has issued guidelines for integrating GBV interventions in humanitarian action, and identifying & mitigating GBV risks within the COVID-19 response. (Inter-Agency Standing Committee, 2015, Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery; Inter-Agency Standing Committee, 6 April 2020, Identifying & Mitigating Gender-based Violence Risks within the COVID-19 Response) According to these guidelines, the safety measures that must be taken into consideration for vulnerable groups in emergency shelters include the following:
  - 47.1. The site location and safety procedures and common practices should not exacerbate GBV.
  - 47.2. The safety of women, girls and other vulnerable groups should be prioritized.
  - 47.3. Women, adolescent and child friendly spaces should be set up as a way of facilitating access care and support for survivors and those at risk of GBV.
  - 47.4. If there are no safety shelters that exist for GBV survivors then such a space should be made available and be separate from the rest of those residing in the camp.

- 47.5. Shelter personnel must be clearly identifiable to help prevent sexual exploitation and abuse as well as facilitate a transparent channel for reporting.
- 47.6. Safety audits of GBV risks should be undertaken regularly, preferably at multiple times of the day and night. There should be follow-up protocols on GBV issues and danger zones identified during the audit.
- 47.7. The findings for such an audit should be shared with the government, stakeholders, and other humanitarian actors.
- 47.8. Security personnel should regularly patrol the site including water, sanitation, and hygiene areas.
- 47.9. Security personnel should also receive GBV-sensitivity training.
- 47.10. GBV prevention and mitigation strategies should be incorporated into the shelter policies and standards. The shelter policies and guidelines should address the rights and needs of vulnerable groups particularly as they relate to GBV.
- 47.11. The policies and guidelines must be communicated to the whole shelter populace. Particular care should be taken to ensure that timely, reliable and objective information about COVID-19 and any changes in the availability or delivery of essential services reaches women and girls, so their access is not compromised and they are not at increased risk of marginalization. Suggested adaptations can include radio messages, and/or announcements in the site. Messages can be shared through mechanisms including but not limited to camp committees, women's groups and informal networks, adolescent youth and women with disabilities groups.

- 47.12. GBV prevention related messaging especially that relating reporting risks and accessing care should be placed in visible and accessible locations in the shelter.
- 47.13. The registration should incorporate questions that will allow the shelter organizers to profile and disaggregate data by sex, age, disability and other vulnerability factors. The registration form should also not be limited to binary indicators such as male and female.
- 47.14. With restrictions on travel and movement, civil society and humanitarian organizations play a critical role in supporting governments to respond.
- 48. The guidelines above have been issued with specific regard to responses directed at the COVID-19 pandemic. According to Ms AX, and indeed the disputed Report of the Commission, most, if not all these guidelines, have not been adhered to by the City. This situation is not only untenable, but also highlights the need for additional measures, including access by the residents to legal assistance and effective monitoring, which are discussed below.

## G. ACCESS TO JUSTICE AT THE SITE

49. In addition to the specific information requested from the City on 20 April 2020, the WLC requested access to the Shelter in order to consult with women who were victims of GBV. By that stage the WLC had received information that there were a number of such women at the Shelter. The intention was to assess the adequacy of the security and safety measures put in place by the City; and the need for legal assistance at the Shelter, including access to the SAPS and the courts. It will be remembered that the events immediately following the rape incident of Ms AX showed that the City had failed to facilitate access by residents to SAPS.

- 50. In its response dated 22 April 2020 ("CM9"), the City denied the WLC access to the site, citing the suspension of visits by all members of the public in terms of Regulation 7 of the Regulations issued in terms of section 27 (2) of the Act (Government *Gazette* No. 43107 GN 318 of 18 March 2020).
- 51. On 24 April 2020 the WLC sent a further letter to the City, a copy of which is annexed hereto as "CM10". In the letter the WLC Trust requested that mechanisms be established by the City as a matter of urgency to facilitate the access of legal practitioners to the Shelter in order to offer legal services to women in need thereof. The letter stated that -
  - 51.1. It was clear from both the experience of Ms AX, and the information contained in the City's letter of 22 April 2020 ("CM9"), that no provision had been made or mechanisms put in place for the reporting of criminal matters to the SAPS to ensure that the specialised services that SAPS offer to attend specifically to crimes against women were activated.
  - 51.2. The courts remained operational for urgent and essential matters in terms of Directions issued by the Minister of Justice and Correctional Services in terms of the DMA.
  - While most people were still able to access the above basic rights, the women residing at the Shelter were effectively deprived of the right to consult with legal practitioners.
  - 51.4. The Regulations issued up to that date, including those dated 18 March 2020 which restricted visits by members of the public to shelters, did not, and could not, translate into women not having access to legal assistance and recourse in the form of consulting a legal practitioner where their rights were violated.

- 51.5. Many issues facing women are by nature urgent and essential, especially matters of sexual violence.
- 51.6. In order to give full and substantive meaning and effect to the Directions issued by the Minister of Justice and Correctional Services, the City should make provision to afford women the opportunity to access and engage with legal practitioners in order to realise their rights.
- 51.7. It was not acceptable practice, as proposed in paragraph 16 of the City's letter dated 22 April 2020, to solicit the services of the on-site NGO's to consult with women to "assess and address possible sexual violence against women on site".

  In any event, those NGO's were not legally trained and had no experience in assessing whether women's constitutional rights had been legally infringed.
- 52. In the letter of 24 April 2020 ("CM10"), the WLC again requested the City to provide a comprehensive safety and protection plan which included the provision of access to justice specifically in relation to GBV, and addressed the concerns raised in previous correspondence. The City was requested to respond by Wednesday 29 April 2020. No response was forthcoming. As indicated in annexure "CM11" hereto, on 30 April 2020, a further email was sent to the City, requesting a response to the letter of 24 April 2020. None has been forthcoming.
- 53. The correspondence above shows that, despite the events that had unfolded, the City did not consider access to justice by the residents at the Shelter an imperative.
- 54. The unsuccessful attempts of the WLC to engage the City regarding the defects and lacunae set out above, highlight the need for effective monitoring by a constitutional, statutory institution such as the Commission, as discussed below.

# H. IMPORTANCE OF THE SAHRC'S MONITORING ROLE FOR VULNERABLE WOMEN

- 55. The Commission's power to monitor and assess observance of human rights is a specific power granted to it by section 181 and 184 of the Constitution. The UNHCR has recognised the need for independent monitoring by a body with statutory powers for the purposes of assessing and evaluating human rights issues at sites such as the Shelter.
- 56. The granting of these powers by the Constitution is a recognition of the values enshrined in our Constitution, namely human dignity, the achievement of equality and the advancement of human rights and freedoms. The achievement of these values for some of the most vulnerable in our society, namely the homeless woman cannot be understated.
- 57. The importance of these powers of the Commission is underscored by the fact that the Commission has been declared an essential service in terms of the Lockdown Regulations. Out of all its functions, it is arguable that the most relevant during a pandemic such as COVID-19, are monitoring and assessment.
- The WLC was, and remains, one of many institutions that expressed concerns, which were widely reported, regarding the safety and security of the residents at the Shelter, and specifically women. There are many other constitutional rights that are impacted through the City's conduct, including access to justice; section 12(2), access to health care (section 27), rights to equality (section 9); dignity (section 10); privacy (section 14), and sexual and reproductive health rights.
- 59. Given these concerns, and the fact that the City was not willing to grant satisfactory information and/or access to institutions such as the WLC, it is crucial for the Commission to be granted access to the Shelter and to perform its constitutional duties

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without fear, favour or prejudice. An interdict of the nature sought by the City undermines these critical international and constitutional imperatives.

- 60. The effect of reducing the number of monitors who can have access to the Shelter to one individual, as well as the remainder of the interdict sought in paragraph 2.1.2 of the notice of motion, is that no effective monitoring can take place at the Shelter, or any sites that may be established by the City. The interdict sought by the City also has a direct bearing on the rights of the vulnerable women at the Shelter, which have been discussed in this affidavit.
- Appropriate oversight by the Commission is particularly important given the vulnerable nature of the residents of the site in this case, namely homeless individuals, who are completely dependent on an organ of state such as the City for food and shelter. As borne out by the affidavits filed by the respondents in this case, the monitors have been the only effective way in which women have been able to raise concerns relating to their safety and healthcare. It appears that many of the residents were more comfortable in sharing their experiences with the independent monitors rather than the employees of the City. This is to be expected in the relationship dynamic between the homeless and the City.
- 62. The important role of the Commission's monitoring function is further illustrated by the fact that neither the City's founding affidavit, nor the report attached to it from the South African National Deforce Force ("SANDF"), annexed as "RGB4" (at pages 63 to 66), mention the rape incident in their assessment of the safety and security features at the shelter. This is a glaring omission.
- 63. I also observe that, given the constitutional role that the Commission fulfils, and was fulfilling when it commissioned the monitors, the relief sought by the City, namely to

interdict the monitors from accessing the site, is inappropriate. The City has another remedy namely to review the disputed report.

64. It is a constitutional imperative that organs of state should be subjected to effective monitoring by independent institutions. The independent monitoring is also important for the practical purpose of assisting organs of state. On the facts of this case, the only expertise that the City relied upon for the purposes of security, was the experience of a few homeless shelters. In that context, the Commission's attempt to bring, amongst others, experts in the fields of gender human rights, and gender rights in emergencies is understandable and reasonable.

#### I. CONCLUSION

- 65. In the circumstances, the WLC Trust submits that it has an interest in this matter, is able to assist the Court by making relevant, novel submissions that are important for the Court's determination. It is furthermore in the interests of justice that the issues raised in this affidavit should be placed before the Court when determining the main issues between the parties.
- 66. In the circumstances, the we pray for relief in terms of the notice of motion

CHARLENE MAY

I hereby certify that on the 12<sup>th</sup> day of May 2020 in my presence at Muizenberg the deponent signed this affidavit and swore and acknowledged that she knew and understood the contents thereof, had no objection to taking this oath and considered this oath to be binding on her

conscience, and uttered the words "I swear that the contents of this declaration are true, so help

me God".

COMMISSIONER OF OATHS

## **CHARL JOHN MAY**

COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE
PRACTISING ATTORNEY R.S.A./ PRAKTISERENDE PROKUREUR
TYGERVALLEY GRAMISERS OF AST FLOOR
27 WILLIE VAN SCHOOL DRIVE, T. C. M. VALLEY 7830

## AMENDED DEED OF TRUST

in respect of

#### THE WOMEN'S LEGAL CENTRE TRUST

entered into by

MARY SUSAN CAESAR

YASMIN TAYOB CARRIM

LEBOGANG TEMPERANCE MALEPE

HAPPY MASONDO

ALISON RACHELLE TILLEY

I certify this to be a true copy of the original Commissioner of oaths

Milliam

("the Trustees")

Practising Attorney
WOMEN'S LEGAL CENTRE
7th Floor, Constitution House
124 Adderly Street

124 Adderly Street Cape Town 8001

SERTIFIKAAT/CERTIFICATE

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CERTIFIED AS A PHOTOSTAX OPT OF DOCUMENT FILED IN THIS OFFICE,

MEESTER VAN DIE HOE HOF/MASTER OF THE HIGH COURT
MEESTER SE KANTOOR KAAPSTAD/MASTERS OFFICE CAP'S TOWN

MASTER OF THE HEAD

2009 -04- 03

KAAPSTAD





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Commissioner of oaths

Name: Vallicius Vallicius Practising Attorney Women's LEGAL CENTRE 7th Floor, Constitution House 124 Adderly Street Cape Town 8001

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#### INTERPRETATION

In this trust deed:-

- 1.1 clause headings are for convenience only and may not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention:-
  - 1.2.1 words indicating the singular includes the plural and vice versa;
  - 1.2.2 words indicating any one gender includes the other genders;
  - 1.2.3 any reference to a natural person includes a juristic person and vice versa;
  - 1.2.4 the words "capital" and "amount" are given their widest meanings and shall include assets or rights of any kind;
  - 1.2.5 the word "pay" and its derivatives means and includes the words "pay", "deliver", "give possession", "cede" or "transfer" and their respective derivatives.
- 1.3 the following words and expressions shall bear the meanings assigned to them and cognate words and expressions shall bear corresponding meanings, namely:-
  - 1.3.1 "Act" means the income Tax Act No. 58 of 1962, as amended from time to time, or any statute replacing it;
  - 1.3.2 "auditors" means the auditors of the company for the time being;
  - 1.3.3 "beneficiaries" means those who benefit in terms of the purpose and objects of the trust;
  - ....1.3.4 "Commissioner" means the Commissioner for the South African Revenue Services;
    - 1.3.5 "the Founder" means Corlaan De Villiers:
    - 1.3.6 "initial trustees" means:

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	1.3.6.1	Victoria Jane Mayer;	
	1.3.6.2	Coriaan De Villiers;	
	1.3.6.3	Karrisha Pillay;	
	1.3.6.4	Alison Rachelle Tilley;	
	1.3.6.5	Michelle Anne O'Sullivan;	
	1.3.6.6	Happy Masondo; and	
	1.3.6.7	Sandra Liebenberg;	
1.3.7	"net income" means the gross income of the trust less the costs of its administration;		
1.3.8	"Trustees" means the Trustees for the time being of the trust;		
1.3.9	"trust" means the Women's Legal Centre Trust, constituted in terms of this trust deed;		
1.3.10	1.3.10 "trust assets" means all income and capital of the trust and sha		
	1.3.10.1	all receipts, accruals, assets and rights of whatsoever nature which the Trustees may acquire in their capacities as such or which may accrue to or in favour of the Trustees in their capacities as such,	

immovable property; and

1.3.10.2 all additions, accruals, income, profit or interest arising out of the receipts and accruals referred to in 1.3.10.1 and/or the exercise by the Trustees of their

powers in terms hereof;

including without restricting the generality of the aforegoing, any right of whatsoever nature in or to

1.3.11 "WLC" means the Women's Legal Centre.

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- 1.4 reference to any statutory provision includes a reference to that provision as modified, amended, extended or re-enacted from time to time and to any statutory replacement thereof from time to time.
- 1.5 when a company is referred to it includes a close corporation or any other type of legal entity whether registered or not and any reference to shares in a company shall include interests in a close corporation or other legal entity.
- 1.6 reference to a month means a calendar month reckoned from the first of the month to the end of that month.
- 1.7 reference to days means calendar days, which shall be counted by excluding the first day and including the last day, unless the latter falls on a Saturday, Sunday or public holiday, in which event the last day shall be the first business day thereafter.
- if any provision in the definitions is a substantive provision conferring rights or imposing obligations on either party, then notwithstanding that such provision is contained only in the definitions, effect shall be given thereto as if such provision were a substantive provision in the body of this agreement.

### RECORDAL

- 2.1 The Founder and the initial trustees established a trust called the WLC Trust for the sole purpose of establishing, managing and controlling a Women's Legal Centre or Centres:
  - 2.1.1 where legal assistance will be given free of charge to the public, particularly to women, in cases which involve public interest or constitutional litigation;
  - 2.1.2 where legal research, education and training may also be undertaken; and
  - 2.1.3 for the purpose and objects as set out in clause 4 below.
- 2.2 The trust was registered by the Master of the Cape High Court on 18 September 1998 under trust registration number IT 3486/98.
- 2.3 Since the establishment of this trust, the Founder has resigned and various of the initial trustees have been substituted. The current trustees have decided

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### CREATION OF TRUST

- 3.1 A trust is hereby constituted and shall be known as the "Women's Legal Centre Trust".
- 3.2 The initial capital of the trust consisted of R100.00 (one hundred Rand) which the Founder donated. The Trustees hereby accept such donation, subject to the terms and conditions of this trust deed.
- 3.3 The initial subject matter of the trust shall be capable of being added to and increased from time to time and the trust capital shall consist of all assets, corporeal or incorporeal, which the trust may from time to time acquire pursuant to this trust deed and shall include any part of the net income of the trust which is not distributed.
- 3.4 The payment, delivery, cession or transfer of any asset to the Trustees shall be sufficient to vest the same in trust on the terms and conditions and for the purposes set forth in this trust deed.
- 3.5 The Truslees have agreed to accept office and to administer the trust for the objects set forth in this trust deed, and to enter into this written Deed of Trust to give effect to the said objects, as they hereby do.

### 4. PURPOSE AND OBJECTS OF THE TRUST

- 4.1 The trustees recognize the systemic discrimination and disadvantage suffered by women in South Africa.
- 4.2 The trustees therefore wish to manage, control and provide legal assistance to the WLC.
- 4.3 The main objects of the Trust and the WLC are to advance and protect the human rights of all women in South Africa, particularly black women, who suffer many different and intersecting forms of disadvantage and in so doing to contribute to redressing systemic discrimination and disadvantage and for that purpose:

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- 4.3.1 the main activity of the WLC is conducting public interest litigation, including constitutional litigation to advance the human rights of women;
- 4.3.2 the WLC Trust may conduct such litigation in its own name, including intervening in court proceedings as amicus curiae ("friend of the court");
- 4.3.3 the WLC provides legal services and representation free of charge, particularly to women, who would not otherwise be able to afford such services in conducting such litigation;
- 4.3.4 the WLC may employ and/or instruct counsel, attorneys, and other persons for the purposes of implementing the objects of the WLC;
- 4.3.5 other activities of the WLC, in furtherance of its objectives; may include:
  - 4.3.5.1 advocacy, policy and legal interventions, other than litigation;
  - 4.3.5.2 engaging in legal research;
  - 4.3.5.3 conducting training, workshops and seminars;
  - 4.3.5.4 publication of legal research and information dissemination;
  - 4.3.5.5 promotion of the development of women lawyers; including but not limited to establishing a scholarship;
  - 4.3.5.6 developing links and networks with groups who promote the objects of the trust;
  - 4.3.5.7 where possible, assisting groups to formulate their policy and legal interventions;
  - 4.3.5.8 developing a database of national and international organisations committed to human rights;

- 4.3.5.9 referral of cases which can more appropriately be dealt with by persons other than the WLC; and
- 4.3.5.10 providing assistance and training to legal clinics, para-legals and advice offices at which services are rendered to the public free of charge.

## 5. GUIDING PRINCIPLES AND NATURE OF THE TRUST

The Trustees in making their decisions in terms of this trust deed shall do so in a manner which is non-racial, non-sexist, impartial, democratic, accountable and financially responsible.

### 5.2 The Trust shall be:

- 5.2.1 an independent organisation and shall not engage in any activities of a party-political nature;
- 5.2.2 a non-governmental organisation; and
- 5.2.3 a not-for-profit organisation.

### 6. TRUSTEES

- 6.1 The current Trustees are:
  - 6.1.1 ALISON RACHELLE TILLEY;
  - 6.1.2 MARY SUSAN CAESAR;
  - 6.1.3 HAPPY MASONDO:
  - 6.1.4 YASMIN TAYOB CARRIM;
  - 6.1.5 LEBOGANG TEMPERANCE MALEPE;

and such Trustees by their signature hereto accept and confirm their appointment as such.

6.2 The Trustees shall at all times have the right to co-opt further Trustees, provided that such co-option is in accordance with the decision making

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procedures set out herein, and such further Trustees are authorised to act as such by the Master of the High Court, in terms of the relevant statute.

- 6.3 There shall at all times be not fewer than 3 Trustees in office for the valid exercise of the powers and discharge of the duties of the Trustees in terms of this trust deed. In the event of the above requirement not being fulfilled at any time, then the Trustees remaining in office shall be empowered to act only to appoint such further Trustees as are required to make up the minimum number of Trustees whereafter they shall again be charged with the duty of administering the trust.
- 6.4 The following persons shall be disqualified from serving or being appointed as Trustees:-
  - 6.4.1 any person who is disqualified in terms of the company laws for the time being of South Africa from occupying office as a director of a company;
  - 6.4.2 a person whose estate has been sequestrated (provisionally or finally) and has not been rehabilitated;
  - 6.4.3 a person who has been found, by a competent authority, to be of unsound mind or a lunatic or declared incapable of managing his own affairs;
  - 6.4.4 an employee of the WLC;
  - 6.4.5 a person, other than an employee of the WLC, who provides (paid) legal services to the WLC.
- 6.5 A trustee shall cease to hold office if:-
  - 6.5.1 he or she is disqualified from holding office as such in terms of clause 6.4 above;
  - 6.5.2 if he or she dies;
  - 6.5.3 he or she resigns his office as trustee by notice in writing to the Trustees;
  - 6.5.4 he or she becomes disqualified halaw to hold the office of trustee;

- 6.5.5 he or she is replaced as a trustee in accordance with the provisions of this trust deed
- 6.5.6 he or she is removed as a trustee by a resolution of two-thirds of the Trustees duly passed.
- 6.6 If a trustee wishes to apply for a position of employment at the Centre, she must resign prior to applying for such position.
- 6.7 Notwithstanding 6.4 and 6.6 a trustee may be appointed by a majority of the trustees in an acting capacity in the Centre for a period of 6 months in the event of an emergency.
- No portion of the trust assets shall form part of the personal estates of the Trustees nor shall it be paid or transferred directly or indirectly to the Trustees or any member of their families, and all trust assets shall be registered in the name of the trust.
- Any of the Trustees may, with the unanimous written consent of all the Trustees, be paid a reasonable remuneration which is not excessive, having regard to what is generally considered reasonable in terms of trustee's remuneration, and is commensurate with and in return for any actual services rendered to the trust.
- 6.10 The Trustees shall be entitled to the reimbursement of actual costs, expenses and commitments reasonably incurred in good faith on behalf of the trust and with its authority.

### APPLICATION OF TRUST FUNDS

- 7.1 The costs of administration of the trust shall be a first charge on the gross trust income which costs shall include, but not be limited to, all trust expenses, and any levy, duty or tax whatsoever levied on the Trustees in their respective capacities and all costs, charges and disbursements whatsoever incurred by the Trustees in or arising out of the performance of their actual duties under this deed.
- 7.2 The Trustees shall:

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- 7.2.1 apply so much of the available funds of the trust, whether capital or income, as they deem necessary solely for the attainment of the trust's objects as set out above;
- 7.2.2 not distribute any of its net income or gains to any person other than in terms of this trust deed.
- Subject to 7.2 above, the Trustees shall have the power, in their sole 7.3 discretion:-
  - 7.3.1 to determine the manner in which the trust capital and the net income shall be applied or dealt with from time to time;
  - 7.3.2 to determine the terms and conditions, if any, to be attached to the payment, application or expenditure of the net income or trust capital or any portion thereof;
  - 7.3.3 to determine when the trust capital or net income or any portion thereof shall be applied, expended, paid or used in any manner whatsoever towards the furtherance of the purposes and object of the trust;
  - 7.3.4 to accumulate, at any time and from time to time, any portion of the trust capital or net income for any capital project or projects or for any other purpose or reason whatsoever which they, in their discretion, deem to be in the interests of the trust and the beneficiaries in the furtherance of the purposes and object of the trust in terms hereof, provided that, in the event that the trust has been tax exempt, the prior consent of the Commissioner is first obtained;
  - 7.3.5 to invest responsibly any portion of the trust capital or net income:-
    - 7.3,5.1 with a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act No. 39 of 1984;
    - 7,3,5,2 in securities listed on a licensed stock exchange as defined in Section 1 of the Stock Exchanges Control

Act No. 1 of 1985;

7.3.5.3

in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations, provided that the provisions of this sub-clause shall not prohibit the Trust from retaining any investment in the form that it was acquired by way of donation, bequest or inheritance.

Subject to clause 6.9 and 6.10, the trust is to be administered in such a manner as to preclude any donor, trustee and/or their families from deriving any monetary advantage from moneys paid to, by or for the benefit of the trust.

#### 8. SECURITY DISPENSED WITH

No trustee, whether appointed or co-opted in terms of this trust deed, or appointed as a successor to a trustee, shall be required by the Master of the High Court, or any other competent authority, to furnish any security of any nature, nor shall any security be required for the due performance of any duty under the Trust Property Control Act No. 57 of 1988, as amended, or under any other statutory provision which may now be or may hereafter become of force or effect, the intent and purpose being that no trustee shall be required to give any security in respect of or in connection with or arising out of such appointment.

### 9. DECISIONS OF THE TRUSTEES AND PERFORMANCE OF THEIR DUTIES

9.1 The business of the trust shall be managed by the Trustees. Subject to the Trustees giving effect to the terms and conditions of this deed, they shall, in administering the trust and its affairs, generally adopt such procedures and take such administrative steps as they may from time to time deem necessary and advisable. They shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that the Trustees shall meet at least once a year, within 90 days of the end of the financial year.

- 9.2 The director of the WLC shall be entitled to be present at all meetings of the trustees, save where a conflict of interest may arise.
- 9.3 Any trustee shall at any time be entitled to summon a meeting of the Trustees provided that any trustee calling a meeting shall endeavour to give at least 15 (fifteen) days written notice to the Trustees thereof, save in respect of urgent matters requiring a meeting at less than 15 (fifteen) days notice.
- 9.4 The majority of the Trustees in office shall be required to form a quorum of Trustees for the purposes of meetings of the Trustees.
- 9.5 The Trustees shall appoint a chairperson and such other officers of the trust as they may decide.
- 9.6 Decisions and questions arising at any quorate meeting of Trustees shall be decided by a simple majority, save where otherwise provided herein.
- 9.7 A resolution in writing signed in favour thereof by a majority of Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted. Any trustee may indicate his or her agreement, in the context of this clause, by way of a signed letter or facsimile transmission or by electronic mail transmission. A resolution as contemplated in this clause may consist of several documents each signed by one or more of the Trustees (provided that in all, the requisite number of Trustees have signed) and shall be deemed to have been passed on the date on which it was signed by the last trustee who signed it (unless provided to the contrary in such resolution).
- 9.8 Subject to any provision to the contrary contained herein, all contracts, deeds, cheques or documents required to be signed on behalf of the Trust shall be signed in such manner as the Trustees from time to time determine.
- 9.9 All resolutions taken by the Trustees will be recorded and copies thereof kep by the Director.
- 9.10 A trustee may, if unable to attend any meeting of the Trustees, appoint another trustee in writing to act and vote on his behalf at any specified meeting of Trustees.
- 9.11 The Trustees may appoint any committee from among the Trustees, and may grant or delegate any of their powers to such committees. Any such

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delegation or grant of powers shall not preclude the Trustees from themselves exercising such powers. The Trustees may withdraw any such delegation or grant of powers at any time. The Trustees may authorise such committees to seek the advice of further persons, who are not Trustees.

9.12 The Trustees may co-opt people, whether Trustees or not, to attend meetings of the Trustees or their committees and to undertake any of the duties that the Trustees may from time to time delegate to them. Such persons who are not Trustees shall act in an advisory capacity only and shall not have a vote at any meeting of the Trustees.

#### 10. POWERS OF TRUSTEES

- 10.1 Subject to the express limitations on Trustees' powers set out in this trust deed, the Trustees shall have all such powers and capacity in relation to the trust and the trust assets as:-
  - 10.1.1 are legally required and/or permitted;
  - 10.1.2 any natural person with full legal capacity may have in relation to his own affairs.

and the discretionary powers vested in the Trustees in terms of this trust deed shall be complete and absolute, and any decision made by them pursuant to any such discretionary powers shall be unchallengeable by any person affected thereby.

- 10.2 The Trustees shall, subject to the provisions of clause 10.4, deal with the trust assets in order to achieve the objects of the trust and shall, subject to the provisions of this trust deed, possess and enjoy all ancillary and/or incidental rights and powers necessary for and incidental to such objects.
- 10.3 Without limitation of the general powers and discretion conferred on the Trustees, but subject to the limitations contained in clause 7 above they shall have, inter alia, the following rights and powers which they may exercise for the purposes of the trust in their discretion:-

10.3.1 to open and operate any banking account and/or building society account in the name of the fustion to draw and issue cheques

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and to receive cheques, promissory notes and/or bills of exchange, and to endorse any of the same for collection by the bank and/or building society at which the said account was opened. Withdrawals shall be made on the signature of at least two persons, one of whom must be a Trustee. The other signatories may be such persons as the Trustees may determine from time to time by written resolution, provided that withdrawals of a stipulated amount or less shall be made on the signature of such two persons as the Trustees may determine from time to time by written resolution;

- 10.3.2 to enter into any contracts and execute any documents by or on behalf of the trust, for the purpose of giving effect to the objectives of the trust;
- 10.3.3 to buy or sell (by public auction, private treaty or otherwise) movable, immovable or incorporeal property of whatever nature, and to sign and execute any agreement or deed of sale in relation thereto, and to sign and execute all requisite documents and do all such things necessary for the purpose of effecting and registering, if needs be, transfers according to law of any such property, whether movable, immovable or incorporeal, bought or sold by the Trustees, provided the powers in this sub-clause are exercised for the sole benefit of the beneficiaries;
- 10.3.4 to receive, accept or acquire, or donate, cede, assign or otherwise dispose of, any other right to or over immovable property not constituting full ownership, whether registerable or not;
- 10.3.5 to buy, sell and/or exchange shares, interest, debenture, stocks, units, promissory notes, bills of exchange and any other negotiable instruments and documents of any kind, and to do all things requisite and sign all documents requisite to acquire or, as the case may be, to give transfer and title thereto;
- 10.3.6 make loans for the benefit of beneficiaries (but not to a trustee, donor and/or any of their relatives or to any private company) on such terms and conditions and at such interest rate, if any, as the

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Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any such security;

- 10.3.7 to vary any investment made in terms hereof by realising the same and/or by substituting therefor any other investment which the Trustees are empowered in terms hereof to make;
- 10.3.8 to borrow money on such terms and conditions and at such interest and from such persons as the Trustees may determine, and either without security or upon such security over movable or immovable property as the Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any requisite instrument of debt and of any such security;
- to mortgage, pledge and/or hypothecate any movable, immovable or incorporeal property forming part of the assets of the trust, and enter into suretyships and, for the purpose of any such mortgage, pledge, hypothecation or suretyship, to sign and execute all requisite documents and do all things necessary for effecting and registering the same, provided that such power shall only be exercised for the benefit of the beneficiaries;
- 10.3.10 subject to clauses 6.4.1 and 10.4.5, to let, either by written agreement of lease or otherwise, improve, alter or maintain any immovable property belonging to the trust or any improvements thereon;
- 10.3.11 any asset acquired by way of donation, inheritance or bequest, may be retained or continued, in the form so acquired;
- 10.3.12 to sue for, recover and receive all debts or sums of money, goods, effects and things whatever, which may become due, owing, payable or belonging to the trust, and to take action in a court of law on behalf of the trust and/or defend any proceedings which may be instituted against the trust;

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- 10.3.13 to defend, oppose, adjust, settle, compromise and/or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the trust and any person, company, corporation or body whatever, and for the purposes aforesaid, to do and execute all necessary acts and documents;
- 10.3.14 to attend all meetings of creditors of any person, company, corporation or body whatever indebted to the trust, whether in insolvency, liquidation, judicial management or otherwise, and to vote for the election of a trustee or Trustees and/or liquidator/s and/or judicial manager/s and also to vote on all questions submitted to any such meeting of creditors and generally to exercise all rights accruing to a creditor;
- 10.3.15 subject to clause 10.4.5 to exercise and take up or to sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debentures or units forming part of the assets of the trust;
- 10.3.16 to cause, in the case of any company or unit trust scheme which is precluded by its articles of association or trust deed or which refuses to transfer any shares, debentures or units forming part of the assets of the trust into the name of the Trustees as such, the transfer of the said shares, debentures or units into their own names or into the name of a bank, trust company or other suitable nominee;
- 10.3.17 to give receipts, releases or other effectual discharges for any sum of money or things recovered;
- 10.3.18 to pay out of the funds of the trust all debts incurred on behalf of the trust by the Trustees in the exercise of their powers in terms hereof;
- subject to clause 10.4.2, to accept on behalf of the trust all or any donations of whatsoever nature, whether in the form of funds or movable or immovable property or any right therein, or otherwise, from the donor or from any other person whatever;

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- 10.3.20 to determine whether any surplus on the sale of any assets of whatever description of the trust, and whether movable or immovable property, and the receipt of any bonus, shares or units by the trust be regarded as income or capital of the trust and to revise any such decision taken by them;
- 10.3.21 to employ professional practitioners, agents and employees, including a Director, to administer the trust assets, to carry out the objectives of the trust and to pay their fees, commissions, remuneration and any other charges out of the funds of the trust, and to confer, if necessary, upon such agents or employees so appointed the right to exercise any discretion which may be vested in the Trustees;
- 10.3.22 to terminate the employment of any such professional practitioners, agents or employees;
- 10.3.23 to improve and develop immovable property acquired by the trust and to expend the capital and/or net income of the trust upon the preservation, maintenance and upkeep of any such property.
- 10.4 Notwithstanding anything to the contrary herein contained:-
  - 10.4.1 no benefits may be allocated by the trust during its existence for any purpose other than those envisaged in clause 7 above;
  - 10.4.2 all donations made by or to the trust must be irrevocable and unconditional and must be subject to the terms and conditions of the trust deed;
  - 10.4.3 no trustee shall have a direct or indirect interest in or benefit from any contract which the Trustees may conclude with any company (unless previously disclosed and agreed to unanimously by all the remaining Trustees);
  - 10.4.4 paid officials of the trust, other than Trustees, may only serve on the management committee or board of Trustees in an advisory capacity, and will have no voting rights;

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- the Trustees may not cause the trust to acquire immovable property solely for letting purposes nor may the Trustees engage in any trading operations or speculative transactions, including inter alia, ordinary trading operations in the commercial sense, speculative transactions, dividend stripping activities as well as letting property on a systematic or regular basis. Notwithstanding the aforegoing it is expressly provided that if immovable property is donated or bequeathed to the trust and such property is rent producing then the Trustees shall be permitted to continue letting the property without jeopardising the tax status of the trust, in the event that the trust has obtained a tax exemption;
- 10.4.6 The Trustees may not allow immovable property owned by the trust to be occupied free of charge by any person except beneficiaries, or officers or employees of the trust.
- 10.4.7 no competition, contest, game, scheme, arrangement or system in connection with which any prize may be won shall be conducted or caused to be conducted by the trust unless an authority in terms of the relevant Act has been obtained beforehand;
- should the services of a fund raiser be made use of for collection contributions, the expenses (remuneration and/or commission included) may not exceed 40% (forty percent) of the total turnover of such collection.

### 11. PATRONS

The trustees shall be further empowered to institute and award an honorific title of "Patrons", which may be accorded at their discretion from time to time to such one or more persons as they may deem appropriate, with a view to giving recognition to special relationships of value and significance to the Trust. Patrons shall have neither legal rights nor responsibilities, but may be consulted by the trustees and shall be entitled to give advice as they may consider relevant and appropriate.

### 12. DISPUTE RESOLUTION

12.1 In the event of a dispute arising between the Trustees relating to:-

- 12.1.1 the interpretation or application of this agreement;
- the proper attainment of the purpose and objects of the trust; 12.1.2
- 12.1.3 any other matter whatsoever pertaining to the carrying out of their duties as Trustees,

and the Trustees being unable to reach resolution of the dispute amongst themselves, the Trustees commit themselves to mediation, or, failing that, arbitration on the terms set out more fully below.

- 12.2 Within 15 (fifteen) days of the dispute arising, the dispute shall be referred to a mediator agreed upon between the Trustees.
- 12.3 In the event that the Trustees are unable to agree on a mediator within the said 15-day period, the mediator will be appointed by the Alternative Dispute Resolution Association of South Africa, or in the event that they are no longer in existence at the time, by the Arbitration Foundation of South Africa, which shall nominate a person or persons with expertise appropriate to the nature of the matter in dispute.
- 12.4 In the event of the mediator failing to resolve the dispute within a further period of 15 (fifteen) days from his or her appointment, the dispute shall be referred to an arbitrator agreed upon between the Trustees whose decision in regard to the dispute shall be final and binding. In the event that the Trustees are unable to agree upon an arbitrator, he or she or they shall be appointed by the Arbitration Foundation of South Africa, and either party may approach the said Foundation for such appointment.
- 12.5 The procedure for such arbitration shall be governed by the rules of the Arbitration Foundation of South Africa, provided that the arbitrator shall have due regard to the need for the dispute to be resolved expeditiously and shall endeavour to ensure that his or her decision thereon is made available to the Trustees within 21 (twenty-one) days of his or her appointment as arbitrator.
- The mediator and the arbitrator in making their decisions shall have due 12.6 regard to and shall be guided by the principles set out in clause 5 above.

**BOOKS OF ACCOUNT** 13.

- The Trustees shall keep true and correct records and books of account of their administration of the trust, in such manner and form as is necessary to reflect fairly the position of the trust at all times. There shall be recorded in such books and records, inter alia, any change of the trust assets from time to time, the income and all outgoings applicable to the administration of the trust.
- The Trustees shall cause the trust's books of account to be audited by the auditors and an annual income statement and balance sheet drawn within 6 (six) months after the year end reflecting the affairs of the trust for the year end and its assets and liabilities at the last day of the month of December of each year. The income statements and balance sheets shall be certified by the Trustees and the auditors and a copy thereof sent to the official designated for this purpose in terms of the Non-Profit Organisations Act, No 71 of 1997 in the event of the trust being a registered non-profit-organisation in terms of the said Act, and to the Commissioner, in the event that the trust has been granted tax exempt status.
- The audit of the trust's books of account shall be carried out by auditors to be appointed from time to time by the Trustees, who shall have the right to terminate any such appointment and to appoint any other auditors. The Trustees shall take all necessary steps to procure the appointment of auditors of the trust as soon as is reasonably possible after the date of execution hereof and there shall at all times thereafter be auditors of the trust.
- 13.4 The Trustees shall not be bound to file any liquidation, distribution or administration accounts with any officer, official or person except insofar as they may be obliged to do so in terms hereof or under the provisions of any law.

### 14. LOSSES

None of the Trustees shall be answerable for or liable to make good any loss occasioned to or sustained by the trust from any cause whatever, save for any loss as shall arise from a wilful act of dishonesty of the trustee involved. No trustee shall be liable for any act of dishonesty committed by any trustee unless he or she was a party thereto. The Trustees shall at all times be deemed to have been indemnified out of the assets of the trust against all claims and demands of whatever nature arising out of the exercise or purported exercise by them of any powers conferred under this trust deed.

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### 15. LEGAL PROCEEDINGS

All legal proceedings by or against the trust, including proceedings in the interest of the public, shall be instituted in the name of the trust. However, when the trust acts on behalf of a client, it shall institute legal proceedings in the name of such client.

### 16. TERMINATION OF TRUST

- 16.1 The trust may be terminated by a resolution passed by at least a 75% (seventy five percent) majority of all Trustees in office at a special meeting convened for a purpose of considering such matter. Not less than 21 (twenty one) days notice shall be given of such meeting and the notice convening the meeting shall clearly state that the dissolution of the trust and disposal of its assets will be considered.
- Any resolution to terminate the trust shall provide for the payment of all costs involved in the dissolution of the trust and the application of the trust assets.
- On dissolution of the trust, the remaining trust assets, if any, will be transferred to a similar public benefit organisation which has been approved in terms of section 30 of the Act.

## 17. NOTICES AND GENERAL

- 17.1 Any notice required to be given in terms of this trust shall be given in writing and may be given by telex, cablegram, telegraph, email or facsimile, provided that, in the case of a telex, facsimile or email it is acknowledged as having been received.
- 17.2 Each trustee for the time being shall, upon assuming office, nominate in writing a street address and a facsimile number, if any, at which any notice required to be given in terms hereof may be given to him or her and may, from time to time by notice in writing, vary the address to another such address.

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17.3 Any notice to a trustee at the address for the time being nominated by him or her in terms of 17.2 or at any other address at which the trustee shall have acknowledged receipt shall be regarded as sufficient notice to that trustee.

### 18. AMENDMENT OF TRUST DEED

The provisions of this trust deed may from time to time be amended, altered, varied, added to and/or deleted at a meeting of the Trustees, by resolution signed in favour thereof by 75% (seventy five percent) of the Trustees then in office, and provided that 21 (twenty one) days notice of such meeting is given in writing to the Trustees, which notice contains substantially the terms of the amendments so contemplated. In the event of such an amendment, variation, alteration, addition and/or deletion being effected, a copy of all such amendments, alterations, variations, additions and/or deletions shall be submitted to the Commissioner if the trust has been approved by the Commissioner as tax exempt before the date of such resolution, and to the official designated for this purpose in terms of the Non-Profit Organisation Act in the event the trust is registered as a Nonprofit Organisation in terms of the Non-Profit Organisation Act 71 of 1997. The provisions of this trust deed have been formulated on the basis that the commissioner will grant the trust tax exempt status, and the Trustees' powers have accordingly been limited. The Trustees may amend the trust at any time to comply with any requirements of the commissioner or other relevant authority.

### 19. ACCEPTANCE

The first Trustees, by their signature hereto, undertake to discharge their duties in terms of this trust deed and to carry out the terms and conditions herein contained.

SIGNED BY THE PARTIES ON THE DATE AND AT THE PLACE AS INDICATED ALONGSIDE THEIR RESPECTIVE SIGNATURES, THE SIGNATORY WARRANTING HIS/HER AUTHORITY TO DO SO.

Date / MARCH 2003 Place CAPE TOWN

Signature

MARY SUSAN CAESAR

YASMIN TAYOB CARRIM

Page 235

LEBOGANG TEMPERANCE MALEPE

HAPPY MASONDO

ALISON RACHELLE TILLEY

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G.P -S. 003-0148



REPUBLIC OF SOUTH AFRICA

# MAGTIGINGSBRIEF LETTERS OF AUTHORITY

Ingevolge Artikel 6(1) van die Wet op Beheer oor Trustgoed, 1988 (Wet 57 van 1988) In terms of Section 6(1) of the Trust Property Control Act, 1988 (Act 57 of 1988)

No: IT 3486/98

Hiermee word gesertifiseer dat /

This is to certify that

## NOZIZWE SILINDILE VUNDLA

(Identiteitsnommer / Identity Number: 760314 0300 08 2),

## NASREEN RAJAB-BUDLENDER

(Identiteitsnommer / Identity Number: 761209 0199 08 9),

## MICHELLE ANN CRYSTAL

(Identiteitsnommer / Identity Number: 661211 0214 08 3),

## CAROL KHOLEKA ZAMA

(Identifeitsnommer / Identity Number: 771217 0284 08 0),

## PENELOPE JOY PARENZEE

(Identiteitsnommer / Identity Number: 711221 0345 08 4),

### NICOLE LOUISE FRITZ

(Identiteitsnommer / Identity Number: 750111 0036 08 4) en / and

## TEBOHO BASETSANA MOLEBATSI

(Identiteitsnommer / Identity Number: 760111 0404 08 2)

gemagtig word om op te tree as trustee(s) van / is/are hereby authorized to act as trustee(s) of

## **WOMEN'S LEGAL CENTRE TRUST**

GEGEE onder my hand te KAAPSTAD op hede die

GIVEN under my hand at CAPE TOWN this

Signature

**ASSISTENT MEESTER ASSISTANT MASTER** 

T/E

dag van Mei 2017

day of May 2017

MASTER OF THE WESTERN CAPE HIGH COURT CAPE TOWN

2017 -05- 0 4

KAAPSTAD

MEESTER VAN DIE WES-KAAP HOË HOF

### RESOLUTION OF THE WOMEN'S LEGAL CENTRE TRUST

The Trustees of the Women's Legal Centre ("Trust") resolve that:

- 1. The Trustees on behalf of the Trust will bring an application to intervene as amicus curiae in the matter of THE CITY OF CAPE TOWN v THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION, and OTHERS, in the High Court of South Africa, WESTERN CAPE Division, CAPE TOWN, under case number 5663/20, in relation to the need to ensure the safety and security of women during the period of the National Disaster declared as a result of COVID 19.
- 2. The Trustees hereby delegate authority to CHARLENE MAY who is a Legal Practitioner of the Women's Legal Centre and an admitted attorney:
  - To take all necessary steps to sign all papers in order to bring the application on behalf of the Trust;
  - b. Brief Counsel to argue the matter; and
  - c. To take all necessary steps on behalf of the Trust to advance arguments in the application.

Dated at CAPE TOWN on this " h day of MAY 2020.

PENELOPE PARENZEE

(Chairperson of the Women's Legal Centre Trust)



7th Floor Constitution House 124 Adderley Street Cape Town

> Tel: (021) 424 5660 Email: info@wlce.co.za Web: www.wlce.co.za

### FAIRBRIDGES WERTHEIM BECKER ATTORNEYS

Standard Bank Centre

16th Floor, Main Tower, Heerengracht

CAPE TOWN

Attention:

Ms Adela Petersen

apetersen@fairbridges.co.za

### THE LEGAL RESOURCES CENTRE

Aintree Office Park, Block D

Doncaster & Lorch Road

Kenilworth

CAPE TOWN

Attention:

Ms Sherylle Dass

sherylle@lrc.org.za

PER EMAIL

9 May 2020

Dear colleagues

CITY OF CAPE TOWN / SOUTH AFRICAN HUMAN RIGHTS COMMISSION CASE NUMBER 5633/2020 - WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AMICUS CURIAE

> Director; S Samaai Legal Practitioners; C May, B Pithey, C Blouws, N Solomons

> > PBO and Section 18A: 930 00 242

Vat Number: 419 025 3296

- 5. Briefly, our submissions will address:
  - The nature, extent and impact of violence against women in South Africa, including an analysis of intersectionality, discrimination and violence. Violence against women implicates a number of women's constitutional rights, *inter alia*, equality, dignity, and the right to be free from all forms of violence.
  - 5.2 The specific safety, security, and sexual and reproductive health needs of women in South Africa specifically as it relates to women placed in temporary shelters or temporary sites established in terms of the Regulations during the COVID-19 pandemic.
  - 5.3 The importance of independent oversight and monitoring of shelters and sites, established in terms of the Regulations, by legally mandated bodies, such as the South African Human Rights Commission, given the particular vulnerabilities of all women, including LBTI women. We will address the critical importance of the need for oversight and monitoring to ensure the safety and security of women throughout the country, including the current site at Strandfontein.
- We therefore request your client furnish us with written consent for the Women's Legal
   Centre Trust to intervene as amicus curiae in the matter.
- 7. We intend filing our application by Tuesday 12 May 2020.
- In the interest of avoiding any delays in the matter, we request that written consent be provided by email by close of business on Monday 11 May 2020.

Regards

Bronwyn Pithey



### **Bronwyn**

From:

Adela Petersen <apetersen@fairbridges.co.za>

Sent:

Sunday, 10 May 2020 1:04 PM

To:

Bronwyn

Cc:

Sherylle Dass; Charlene; Nasreen; Aretha

Subject:

Re: City of Cape Town / South African Human Rights Commission and others Case

No 5633/2020

### Dear Bronwyn

I will refer your request to the City for instructions and will revert thereafter. However I must point out that the third respondent in his answering affidavit states that the Director of your organization is his legal representative and that of some of the other monitors.

I am of the view that it is thus not appropriate for your organization to act as an amicus.

Kind regards

Adela Petersen

Sent from my mobile: Apologies for any typos

On 10 May 2020, at 12:47 PM, Bronwyn <a href="mailto:sronwyn@wlce.co.za">bronwyn@wlce.co.za</a> wrote:

### Dear colleagues

With reference to the above matter, please find attached correspondence for your urgent attention.

### Regards

Bronwyn Pithey Legal practitioner

<image003.png>

7<sup>th</sup> Floor Constitution House 124 Adderley Street Cape Town 8001 Tel: 021 424 5660

Website: www.wlce.co.za

<WLC - CoCT.SAHRC Consent letter 09.05.2020.pdf>

EXTREMELY IMPORTANT: Due to the risk of email related fraud, we will never notify you by email of any change to our bank account details. You should not act on any email purportedly from us changing our bank details, but kindly inform us immediately.



Our ref:

AP/aa/ CIT125/0046

Your ref:

**B** Pithey

Date:

11 May 2020

WOMENS LEGAL CENTRE
7<sup>th</sup> Floor, Constitution House
124 Adderley Street
CAPE TOWN

ATT: B PITHEY

Via E-Mail:

Dear Sirs

CITY OF CAPE TOWN / SOUTH AFRICAN HUMAN RIGHTS COMMISSION CASE NUMBER 5633/2020 - WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AMICUS CURIAE

We refer to the above matter and your letter dated 9 May 2020 received by us on 10 May 2020 requesting consent to join the application as an amicus curiae. ("amicus")

The City of Cape Town is not prepared to grant you consent for the reasons set out below.

The underlying principles governing the admission of an *amicus* in any given case, apart from the fact that it must have an interest in the proceedings, are whether the submissions to be advanced by the *amicus* are relevant to the proceedings and raise new contentions which may be useful to the Court.

The role of an amicus is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn.

The amicus must not repeat arguments already made but must raise new contentions; and generally these new contentions must be raised on the data already before the court.

Tel: +27 21 405 7300 • Fax: +27 21 419 5135 • Email: attorneys@fairbridges.co.za • Website: www.fairbridges.co.za

16th Floor South Tower. The Towers Heerengracht, Cape Town, 8001 • P.O. Box 536, Cape Town, 8000, South Africa • Docex 2, Cape Town,

Directors: Deirdré Olivier (Chairperson), Sheri Breslaw, Richard Cheeseman, Caroline Dichmont, Claire Gaul, Shivani Govender, Bob Groeneveld, Kevin Hacker, Jean Herbert, Graham Houston, Amish Kika, Melanie Kilian, Palesa Maseko, Gaby Meintjes, Karol Michalowski, Julia Penn, Greer Penzhorn, Adela Petersen, Jodi Poswelletski, Diane-Maree Rauch, Darryl Reece, David Short, Waheeda Shreef, Daniel Treves, Matthew van der Want, Jaco van der Westhuizen, Johann van Eeden, André van Rensburg. Senior Associates: Dhahini Naidu. Associates: Henrietta Botha, Philippa Campbell, Zamuxolo Gulwa, Felicia Hlophe, Garth Kallis, Keorapetse Matlala, Nosisa Matsebula, Errol Melamu, Tatenda Mudimu, Nicola Mullineux, Emlyn Williams. Consultants: Anne Boag, John Bromley, Solomon Gordon, Monty Hacker, Bernard Joffe, Steven Kapeluschnik, Louis Le Roux, Pieter Pretorius, Wickaum Smith, Cyril Ziman. Practice Manager: Robin Kirkbyy

Also in Johannesburg.

FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

It appears at this stage that none of the concerns raised by you are novel and that the content of your letter is **unrelated to the specific facts of this matter**. (own emphasis) Furthermore the South African Human Rights already address the need for oversight and monitoring at the Strandfontein site.

Any application for admission as an *amicus* will be opposed and an appropriate costs order will be sought against the organisation.

Yours faithfully FAIRBRIDGES WERTHEIM BECKER

ADELA PETERSEN

E-mail address: apetersen@fairbridges.co.za

Direct line: 021 405-7337 Direct fax: 0866394266



#### **Cape Town Office**

Aintree Office Park • Block D • Ground Floor • cnr Doncaster Road and Loch Road • Kenilworth, Cape Town 7708 • South Africa

PO Box 5227 • Cape Town 8000 • South Africa

Tel: (021) 879 2398 • Fax: (C11 413 0935 • Website • www.lrc.org.za

PBO No. 930003292 NPO No. 023-004



Your Ref:

Our Ref: CoCT // SAHRC and Others

11 May 2020

TO:

**BRONWYN PITHEY** 

Womens Legal Centre

Per email: Bronwyn@wlce.co.za

AND TO:

ADELE PETERSON

Attorney for the Applicant

Fairbridges Wertheim Becker Attorneys

Per email: apetersen@fairbridges.co.za

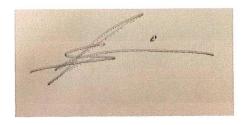
## CITY OF CAPE TOWN / SOUTH AFRICAN HUMAN RIGHTS COMMISSION CASE NUMBER 5633/2020 - WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AMICUS CURIAE

- We refer the letter sent on 9 May 2020 in which the Women's Legal Centre 1. (WLC) requested consent to intervene as amicus curiae in the above matter.
- 2. We confirm that the Respondents have no objection to this amicus curiae intervention and trust that the submissions made by the WLC will be of assistance to the court in adjudicating this matter.

Yours faithfully,

## LEGAL RESOURCES CENTRE

Per:



SHERYLLE DASS



7th Floor Constitution House 124 Adderley Street Cape Town 8001

> Tel: (021) 424 5660 Email: info@wlce.co.za Web: www.wlce.co.za

To:

Mr Dan Plato

Executive Mayor: City of Cape Town

c/o Ms Ngesi

asiphe.ngesi@capetown.gov.za

And to:

Mr Richard Bosman

**Executive Director: Safety and Security** 

Disaster Risk Management Centre

City of Cape Town

Richard.Bosman@capetown.gov.za

Cc:

Alfonso Sauls

Director: Social Development and Early Childhood Development

Social Development and Early Childhood Development

City of Cape Town

Alfonso.Sauls@capetown.gov.za

Cc:

Brigadier Sonia Harri

Provincial Head: FCS Unit

HarriS@saps.gov.za

20 April 2020

Dear Mr Bosman

# STANDFONTEIN TEMPORARY SHELTER: SAFETY OF WOMEN IN RESPECT OF SEXUAL VIOLENCE

1. We write to you on behalf of two of our clients. Our first client is Ms X, an 18-year-old woman who was raped at the Standfontein temporary shelter ("the Shelter") on 8 April 2020 (we will refer to her in our correspondence as Ms X to protect her identity). Our second client is Ilitha Labantu, an NPO

Director: S Samaai Legal Practitioners: C May, B Pithey, C Blouws, N Selemons

NPO Number: 032-685 NPO

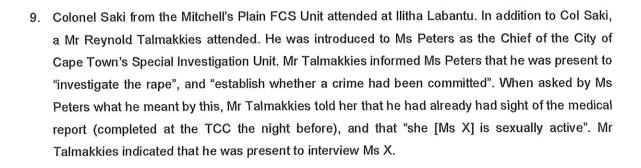
PBO and Section 18A: 930 00 242

Vat Number: 419 025 3296

based in Gugulethu, Cape Town since 1989 which provides emotional support, practical advice and education regarding of violence against women, as well as running a shelter for victims of domestic and sexual violence.

- 2. Ms X is a homeless person, who has been living on the streets of Woodstock. Pursuant to Covid19 and the promulgation of Regulations, she was relocated to the Shelter in terms of section 11D of the Regulations issued under section 27(2) of the Disaster Management Act, as amended.
- 3. On Friday 10 April 2020 an allegation of rape was made by our client against a male resident of the Shelter. The City of Cape Town Law Enforcement Unit based at the Shelter were alerted by another resident of the Shelter that this incident had occurred. The rape had been committed on Wednesday 8 April 2020.
- 4. Our instructions are that on 10 April 2020, following the report to the City Law Enforcement Unit based at the Shelter, our client was transported by Emergency Medical Services to Victoria Hospital for medical and legal assistance. For reasons unknown to us and our client, she was refused medical and legal assistance at Victoria Hospital; she was thereafter taken to Mitchell's Plain Hospital, where again she was not given any medical legal assistance. She was thereafter transported to the Heideveld Thuthuzela Care Centre ("the TCC").
- 5. A Board Member from Ilitha Labantu, Ms Caroline Peters, was alerted about the case via various networks, and contacted the nurse at the TCC to offer assistance to Ms X.
- 6. Our further instructions are that following her medical examination at the TCC, the nurse on duty at the TCC informed Ms Peters telephonically that she (the nurse) was waiting for the South African Police Services to arrive at the TCC to take Ms X back to the Shelter. Ms Peters was also informed by the nurse that the SAPS Family Violence, Child Protection and Sexual Offences Unit ("the FCS") would not be attending at the TCC to take a statement from Ms X that evening (10 April 2020).
- 7. Following Ms Peters' intervention, SAPS from the Manenberg Police Station attended at the TCC to take a statement from Ms X. Ms Peters also insisted that Ms X was not taken back to the Standfontein Shelter; alternative accommodation was organised for Ms X at the Ilitha Labantu Shelter by Ms Ella Mangisa, Director of Ilitha Labantu.
- 8. On Saturday 11 April 2020 Ms Peters, in her capacity as a Board Member from Ilitha Labantu, continued to support Ms X. She arranged for Ms X to meet with the FSC Unit at Ilitha Labantu premises in Gugulethu after Ms X had received counselling support from Ilitha Labantu social worker Ms Zoliswa Mbekwa.





- 10. Ms Peters refused for Mr Talmakkies to interview Ms X as he was not a member of SAPS/FCS who are constitutionally mandated to investigate the case.
- 11. Once Col Saki had interviewed and taken a statement from Ms X, she was taken to the Shelter to point out the suspect. On the insistence of Ms Peters, both she and the social worker Ms Zoliswa Mbekwa from Ilitha Labantu accompanied Ms X back to the Shelter for the pointing out.
- 12. The suspect was arrested and subsequently appeared in Mitchell's Plain court on Tuesday 14 April 2020. The matter was postponed for 7 days to 21 April 2020 for bail application.
- 13. Our instructions are that Ms X was raped at the Standfontein Shelter on Wednesday 8 April by another resident of the Shelter. The rape took place during the day, in the tent in which the perpetrator was residing.
- 14. Given that the Standfontein Shelter has been established by the City of Cape Town in terms of the aforementioned Regulations, we request that the City provide us with the following information:
  - 14.1 What security has been provided at the Shelter to ensure the safety and security of the residents, especially women.
  - 14.2 The detailed safety plan that specifically takes into account the particular vulnerabilities of women who have been placed in the Shelter.
  - 14.3 The role of the City of Cape Town's Special Investigation Unit in the investigation of this case, the presence of Mr Talmakkies at Ilitha Labantu on 11 April 2020, his specific legal mandate to interview Ms X, and on what basis he had sight of the contents of the SAPS docket (medical report).
  - 14.4 The specific processes and procedures in place at the Shelter for the residents to report criminal offences to the authorities at the Shelter and to the SAPS.





- The specific processes and procedures in place for the transport of victims of sexual and / or domestic violence for the purposes of medical and legal assistance.
- 14.6 With reference to points 14.4 and 14.5 above how this information is made available to the residents of the Shelter.
- 15. In addition to the above issues, we have received information that there are a number of women in the Shelter who are victims of sexual violence. We request that we as lawyers from the Women's Legal Centre are given access to the Shelter in order to consult with these women to establish their safety, and whether the safety measures, if any, which have been put in place by the City are sufficient.
- 16. Please respond to the above request by Wednesday 22 April 20202.

Regards

Adv. Bronwyn Pithey (signed electronically)





#### **SAFETY & SECURITY**

RICHARD BOSMAN

Executive Director: Safety & Security

T: +27 21 400 2710 F: +27 86 400 5923 E: richard.bosman@capetown.gov.za

22 April 2020

TO: WOMEN'S LEGAL CENTRE

c/o Adv Bronwyn Pithey bronwyn@wlce.co.za

Dear Adv. Pithey

# IN RE: STRANDFONTEIN TEMPORARY SHELTER: SAFETY OF WOMEN IN RESPECT OF SEXUAL VIOLENCE

- The above matter and your letter to the City of 20 April 2020 refers. At the outset we
  must advise that the City does not condone gender based violence and has avidly
  campaigned and advocated against it.
- 2. Please note that we will not respond to each and every allegation contained in your said letter. This must however not be construed as an acceptance of the correctness of the contents thereof and the City reserves to itself the right to respond to the allegations at a later stage should it become necessary.
- 3. On 15 March 2020, Cooperative Governance and Traditional Affairs Minister Nkosazana Dlamini Zuma ("the Minister") declared a National State of Disaster in Government Gazette 43096, citing the magnitude and severity of the Covid-19 outbreak which has been declared a global pandemic and the need to augment the existing measures undertaken by organs of state to deal with the pandemic as reasons.
- 4. On the same day, the President of South Africa, the Honourable Mr Cyril Ramaphosa ("the President) in his speech said, ... "We have decided to take urgent and drastic measures to manage the disease, protect the people of our country and reduce the impact of the virus on our society and on our economy. We have now declared a National State of Disaster in terms of the Disaster Management Act." He further explained that this will enable the government to have an integrated and coordinated disaster management mechanism that will focus on preventing and reducing the outbreak of this virus.

CIVIC CENTRE IZIKO LEENKONZO ZOLUNTU BURGERSENTRUM
12 HERTZOG BOULEVARD CAPE TOWN 8001 PO BOX 298 CAPE TOWN 8000
www.capetown.gov.za

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- 5. Acting on the declaration by the Minister, the City of Cape Town ("the City") has made provision for a temporary shelter at Strandfontein for the homeless people with services being provided.
- The City, as an organ of state, is compelled in terms of the Regulations and directions published in terms of the DMA to implement measures that would mitigate against the spread of the virus. It is clear that the above measures and the Regulations published affect a number of rights in the Constitution.
- 7 The City consulted with its various departments and external organisations and NGOs on how best to deliver services and care for the homeless during this time prior to the establishment of the temporary accommodation facility.
- The City identified, as part of this process, the Strandfontein Sport Complex ("the Strandfontein Site"). It contracted expert NGO partners to manage care for the homeless on-site, including Haven Night Shelter, Ubuntu and Oasis. These NGO's have decades of experience in caring for homeless persons.
- 9. Based on expert advice, the centralized facility at Strandfontein offered a number of vital advantages, inter alia:
- the coordinated ability to screen, test and isolate for COVID-19 and TB
- **the concentration of medical services** and professionals offering daily clinic services, medication, psycho-social support and referrals to specialist care facilities
- the ability to monitor services and standard of care to the homeless in one place, including a minimum of 3 meals per day plus snacks between meals, hot shower and ablution facilities, laundry services, and shelter from the elements in large weather-proof marquees with blankets and mattresses.
- enhanced Safety and Security services in one location rather than spread thinly across dozens of sites. Three layers of security to enhance the safety of those inside and outside the property, over 100 security officials including 40 50 law enforcement officers and over 60 private security guards in total to assist with the security on site.
- 10. There is currently a twenty-four-hour security service on site which is supported by a 24-hour Law Enforcement ('LE') presence. There is further access control to the site in order to ensure the safety of the occupants. The site together with the tents are patrolled on foot by security and LE. Occupants of the site can report any criminal offence to the security and/or LE who will assist the complainant. Occupants of the shelter were informed that all complaints, depending on the nature and seriousness, should be reported to the NGO assigned to their tent and/or LE on site. The required assistance together with medical assistance will be provided by LE and the medical staff on site, alternatively emergency services.
- 11. The investigation in relation to the alleged rape of your client is the responsibility of SAPS. The City can unfortunately not respond to this. The role of the City's Special Investigation Unit is to provide support to SAPS in their investigation due to the fact that it happened at a City facility. We sympathise with the treatment that your client

- received at the various health facilities but we are not in a position to comment on that as it does not fall within the purview of the City.
- 12. Provision is made at the Strandfontein Shelter for women to be accommodated in a separate tent. However, most of the women did not want to be accommodated in a separate tent and elected to be accommodated with the rest of the individual community which they formed part of prior to the relocation.
- 13. The offer to women to be accommodated in a separate tent remains open and can be made available if requested by any woman wanting to accept this offer. We will ensure that the availability of a separate tent for women is again addressed during the daily meeting between the City and the Site Management consisting of NGOs to be relayed to the women on site.
- 13 The City Health department is coordinating all health services at the Strandfontein Site. SHAWCO and City Health provide most of the health services from 8:30 to 16:30 and EMS is contacted for after-hour emergency services. The contact details of EMS are available on site after hours should an emergency occur. The situation is monitored constantly and will be adapted should circumstances change. All residents are informed of the health services available on site and know where to request assistance.
- 14 There are currently 1234 persons on site who are accommodated in 24 tents. Each of these tents have an NGO overseeing the wellbeing of the occupants. Every occupant of a tent has free access to this NGO to raise issues and/or complaints.
- We will unfortunately not be able to provide you with access to the site. Regulations in terms of s 27(2) of the Disaster Management Act provide that:

  "Suspension of visits
  - 7. All visits by members of the public to—
  - (a) Correctional Centres;
  - (b) Remand Detention Facilities;
  - (c) Holding Cells;
  - (d) Military Detention Facilities; and
  - (e) Department of Social Development facilities, including Child and Youth Care Centres, **shelters**, One Stop Centres, and Treatment Centres, are suspended for a period of 30 days from the date of publication of this Notice, which period may be extended for any period, but not beyond the duration of the national state of disaster by the cabinet member responsible"
- The above regulation limits public access to shelters. The health of the occupants is paramount and should be protected. Each person is screened when they arrive at the site and we cannot allow persons from outside who have not yet been screened on site. The possible risks are too high. We do however propose that we raise this issue at our next management meeting with the site management and NGOs and request that the necessary consultations be conducted with each woman in order to assess and address possible sexual violence against women on site appropriately.

- 17 Given the danger posed by Covid there is simply no other means within the City's resource capability other than to limit the right to ensure that the rights of those, for whom the City is responsible, in the shelters are protected.
- 18 The City of Cape Town is going to great lengths to care for the homeless during the National State of Disaster. A number of the occupants have expressed great appreciation for the shelter that has been provided.
- 19 We endeavour to improve the services at the Strandfontein site on a daily basis bearing in mind that this is a temporary holding location that will allow for the transfer of groups to decentralised facilities once they are ready. This temporary emergency accommodation allowed for homeless people to be kept away from outside people who would inadvertently expose them to the virus. By virtue of the homeless being 'isolated' on site we know that they are safe from the virus as they have been screened and tested as needed in addition to having access to the ongoing medical care that they may need.
- 20 Kindly note that the City's rights remain reserved.

Kind regards

\_\_\_\_\_Richard Bosman\_\_\_\_

Richard Bosman

Executive Director: Safety & Security - City of Cape Town

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7th Floor Constitution House 124 Adderley Street Cape Town 8001

> Tel: (021) 424 5660 Email: info@wlce.co.za Web: www.wlce.co.za

To:

Mr Dan Plato

Executive Mayor: City of Cape Town

c/o Ms Ngesi / Ms Geduld

asiphe.ngesi@capetown.gov.za / Jennifer.Geduld@capetown.gov.za

And to:

Mr Richard Bosman

Executive Director: Safety and Security

Disaster Risk Management Centre

City of Cape Town

Richard.Bosman@capetown.gov.za

Cc:

Alfonso Sauls

Director: Social Development and Early Childhood Development

Social Development and Early Childhood Development

City of Cape Town

Alfonso.Sauls@capetown.gov.za

24 April 2020

Dear Mr Bosman

# STANDFONTEIN TEMPORARY SHELTER: SAFETY OF WOMEN IN RESPECT OF SEXUAL VIOLENCE

1. We refer the above and your correspondence dated 22 April 2020.

Director: S Samaai Legal Practitioners: C May, B Pithey, C Blouws, N Solomons

NPO Number: 032-685 NPO

PBO and Section 18A: 930 00 242

Vat Number: 419 025 3296

- 2. We do not intend to respond to all aspects of your letter; where we do not specifically respond to information provided in your letter, statements made, or details provided on health and other services delivered by the City or its partners, it must not be taken as an acceptance on our behalf of the veracity or appropriateness of said information and / or services provided.
- 3. We will respond to said correspondence by dealing with three aspects of the safety of women at the Strandfontein shelter:
  - 2.1 The criminal matter in which our client Ms X is the complainant and a previous resident of the shelter.
  - 2.2 The safety of women at the shelter.
  - 2.3 Women's access to legal services.

# The criminal matter:

- 4. On reporting the rape to the authorities on 10 April 2020, Ms X was assisted by EMS and transported to Victoria Hospital. As previously detailed, our client was turned away from both Victoria Hospital and Mitchell's Plain Hospital before finally being assisted at Heideveld Thuthuzela Care Centre.
- 5. While you have indicated your sympathy at the treatment of our client regarding her health care, you have distanced yourself from said treatment as these health services do not fall within the purview of the City.
- 6. We submit that it is as a result of ineffective and insufficient security and reporting mechanism at the shelter that our client was subjected the treatment she endured as detailed in paragraph 4 of our correspondence dated 20 April 2020. It is clear from both

the experience of our client, and the information contained in paragraph 10 of you letter of 22 April 2020, that no provision is made or mechanisms put in place for the reporting of criminal matters to the South African Police Service to ensure that the specialised services that SAPS offer to attend specifically to crimes against women are activated. We reserve our clients' rights in relation to this omission.

- 7. Ad paragraph 11 of your letter, we are cognisant that the investigation into the allegation of rape is the purview of the South African Police Services. We acknowledge that, given the incident took place in a City facility, the City Special Investigation Unit may provide support to the SAPS in its investigation.
- 8. However, we note that you have chosen not to respond to our request for an explanation regarding the presence of Mr Talmakkies at Ilitha Labantu on 11 April 2020, his claim that he was present to "investigate the rape" and to establish "whether a crime had been committed", his intention to interview the complainant, Ms X, and his statement that he had had sight of the medical report (see paragraphs 9 and 14.3 of our correspondence dated 20 April 2020). We reserve our clients' rights in relation to this conduct.

# The safety of women at the shelter and their access to legal services

- 9. With reference to our requests contained in paragraph 14 of our letter dated 20 April, we note that you have not provided a safety plan that specifically addresses the particular vulnerabilities of women. While you have chosen to detail the health services offered at the Shelter, no safety plan has been made available as per our request.
- 10. We also note that no information has been made available regarding the processes and procedures for women to report criminal offences. Paragraph 10 of letter of 22 April 2020 alludes to reporting of a criminal offence but refers to reporting of incidents to the on-site



security or Law Enforcement; no mention is made of processes and procedures to contact SAPS.

11. We reiterate the request to have sight of a comprehensive safety plan which must incorporate all the above aspects as well as those contained in paragraph 14.1, 14.2, 14.4 and 14.5 of our letter dated 20 April 2020.

# Women's access to legal services.

- 12. While the Regulations in terms of the Disaster Management Act and attendant Directives have to some extent curtailed several constitutional rights, they have not negated them entirely.
- 13. Our constitution guarantees the rights of people to access justice, including access to the courts.
- 14. All police services remain available, including the reporting and investigation of criminal matters.
- 15. On 30 March 2020 the Minister of Justice and Correctional Services issued Directions ("the Directions") in terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002. These Directions state that the courts will remain operational in respect of urgent and essential matters.
- 16. While most people are still able to access these basic rights, the women who are currently residing at the Strandfontein Shelter are effectively deprived of the right to consult with legal practitioners. The Regulations, including those addressing 'visits by members of the public to....shelters' does not, and cannot, translate into women not having access to legal assistance and recourse in the form of consulting a legal practitioner where their rights are violated.

- 17. Many issues facing women are by nature urgent and essential, especially matters of sexual violence. In order to give full and substantive meaning and effect to the Directions issued by the Minister of Justice and Correctional Services, the City must make provision to afford women the opportunity to access and engage with legal practitioners in order to realise their rights. Women in the Shelter must have access to legal assistance to place them adequately on a path towards rights vindication.
- 18. It is not acceptable practice, as proposed in paragraph 16 of your letter dated 22 April 2020, to solicit the services of the on-site NGO's to consult with women to "assess and address possible sexual violence against women on site". These NGO's are not legally trained and have no experience in assessing whether women's constitutional rights have been legally infringed.
- 19. We therefore request that mechanisms be established by the City as a matter of urgency to facilitate the access of legal practitioners to the Strandfontein Shelter in order to offer legal services to women in need thereof.
- 20. In summary, please provide a comprehensive safety and protection plan that includes the provision of access to justice specifically in relation to violence; the plan must address the concerns raised in this and previous correspondence.
- 21. Please respond to the above requests by Wednesday 29 April 2020.

Regards

Adv. Bronwyn Pithey (signed electronically)



### **Bronwyn**

From:

Bronwyn

Sent:

Thursday, 30 April 2020 1:49 PM

To:

Richard Bosman; Asiphe Ngesi; Alfonso Sauls; Jennifer Geduld; Lameez Matthys

Cc:

Seehaam; Aretha

Subject:

RE: Strandfontein Shelter Sexual Violence matters

## Good day

We refer to our correspondence of 24 Aril 2020 and your email indicating that you would respond, as requested, by yesterday 29 April 2020.

According to our records, we have not received an correspondence from you as undertaken; please indicate when we may expect to receive same.

#### Regards

Adv. Bronwyn Pithey



7<sup>th</sup> Floor Constitution House 124 Adderley Street Cape Town 8001

Tel: 021 424 5660

Website: www.wlce.co.za

From: Richard Bosman < Richard Gavin. Bosman@capetown.gov.za>

Sent: Friday, 24 April 2020 15:55

To: Bronwyn <brownyn@wlce.co.za>; Asiphe Ngesi <Asiphe.Ngesi@capetown.gov.za>; Alfonso Sauls <Alfonso.Sauls@capetown.gov.za>; Jennifer Geduld <Jennifer.Geduld@capetown.gov.za>; Lameez Matthys

<Lameez.Matthys@capetown.gov.za>

Cc: Seehaam <seehaam@wlce.co.za>; Aretha <aretha@wlce.co.za>

Subject: RE: Strandfontein Shelter Sexual Violence matters

#### Good afternoon

Thank you for the correspondence

We will reply by the due date as requested

**Kind Regards** 

Richard Bosman

From: Bronwyn < bronwyn@wlce.co.za > Sent: Friday, April 24, 2020 3:53 PM

To: Asiphe Ngesi < Asiphe. Ngesi@capetown.gov.za >; Richard Bosman < RichardGavin. Bosman@capetown.gov.za >

petown gov.za>;

Matthys < Lameez. Matthys@capetown.gov.za >

Cc: Seehaam < seehaam@wlce.co.za >; Aretha < aretha@wlce.co.za >

Subject: Strandfontein Shelter Sexual Violence matters

Dear Mr Plato and Mr Bosman

Please find attached further correspondence in the above matter for your urgent attention.

Regards

Adv. Bronwyn Pithey Legal practitioner



7<sup>th</sup> Floor Constitution House 124 Adderley Street Cape Town 8001

Tel: 021 424 5660

Website: www.wlce.co.za

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# IN THE HIGH COURT OF SOUTH AFRICA WESTERN CAPE DIVISION, CAPE TOWN

Case No. 5633/2020

## SUPPORTING AFFIDAVIT

I, the undersigned,

#### SEEHAAM SAMAAI

do hereby take oath and state: -

- 1. I am an adult female employed as the Executive Director of the Women's Legal Centre ('WLC'), situated at 7<sup>th</sup> floor Constitution House, 124 Adderley Street, Cape Town.
- 2. The facts deposed to herein are within my personal knowledge, unless contrary appears from the context, and are to the best of my knowledge true and correct.
- 3. It has been brought to my attention that the applicant ("the City") objects to the admission of the Women's Legal Centre Trust ("WLC Trust") as an amicus curiae in this matter on the basis that the third respondent has referred to me as "our legal representative" in paragraph 23 of his answering affidavit, and has suggested that I attended at the Strandfontein temporary shelter ("the Shelter") on 1 May 2020 in that capacity.
- 4. I hereby deny these averments, and wish to clarify the circumstances which may have led to this misconception.

( ) ( )

# **L** INFORMAL COVID-19 COALITION

- The misconception is based on the WLC's involvement with a broader social justice coalition that has informally come together to provide support to communities across the Western Cape in dealing with the COVID-19 pandemic ("the Coalition"). Parties involved in the Coalition include Tshisimani, Centre for Activist Education, Equal Education, Equal Education Law Centre, Lawyers for Human Rights, and the Social Justice Coalition, to name a few of the organisational members. The involvement of the WLC in the Coalition amounts to staff members participating in different discussions and providing resources, information, and strategic input on 'Watsapp' groups that have been set up to deal with various issues. This includes groups dealing with violence against women, health care and a legal support group.
- 6. I am part of the legal support group, and our role is not to provide legal representation to the Coalition, but to provide strategic advice and support on the interpretation of the Disaster Management regulations to communities. As part of this group we recently addressed the Portfolio Committee on Police on the implementation of the restriction on movement of women who are providing food security through home-based food kitchens. We have also engaged the Minister of Justice and Constitutional Development to address access to justice for women who are victims of violence during this time.
- 7. The WLC does not formally represent any of the members of the Coalition and we view our role as a supportive role to strengthen the capacity of civil society organisations and communities to engage with the current restrictions while understanding the law.

# II. THE EVENTS OF 1 MAY 2020

6

On the evening of 1 May 2020, I received a frantic call from one of the women's rights activists who are part of the Coalition, Kelly Gillespie. Because of the urgency with which this application has been prepared, I have not managed to obtain a confirmatory affidavit from her, but will do so in due course. She advised that Zelda Holtzman, the eleventh respondent had been arrested and that legal support was required. Zelda and I have known each other for many years, and in a previous capacity I lectured her son, so I was concerned that something had happened to her. I, however, did not intend to legally represent her myself because the WLC has very specific processes that need to be followed before a matter or case can be taken on. This includes a case motivation and a meeting of all the legal practitioners to discuss and decide whether the case falls into the mandate and strategic objective of the WLC. My immediate aim was to ascertain the factual situation, and then to later assess was required in order to support her. It was on that basis that I agreed to travel with the women's rights defender to Mitchells Plain. At this stage I believed that Zelda was at the Strandfontein Police Station. However, on our way there we were telephonically advised that she was in fact at the Shelter. During our travel to the Shelter, we were unable to reach Zelda telephonically.

8.

9. When we arrived at the Shelter there was a fair bit of chaos at the front gate. I identified myself to one of the Law Enforcement officials at the gate and proceeded to explain that I was a legal practitioner and had been informed that Zelda was inside the site and that concern had been raised that she had been arrested. I wanted to get clarity on the situation. The Law Enforcement officials refused to grant me access to the Shelter. However, I was able to establish that Zelda was inside the Shelter in one of the tents. The law enforcement official wanted to take down my details, and I gave him my business card. I noticed during this time that another law enforcement official was making a video. I asked why the video was being



made but I did not get an answer. I do not know if I appear of the video recording and I did not consent to be recorded.

- 10. During this time, the third respondent came towards us from inside of the Shelter. There was a group of the residents of the Shelter with him. He spoke to the women's rights defender that accompanied me. I asked after Zelda and the third respondent realised who I was because we know each other from being active in our local community civic associations. We had, in the past, attended similar activist events and have therefore met each other. He knew that I was an attorney and told those around him that a lawyer was present. He informed me that Zelda was inside the Shelter and that the occupiers of the Shelter were unhappy with the City, and that they (the third respondent and others) were trying to give support to the residents. He pleaded with the law enforcement to allow me to enter the Shelter to no avail. After I was refused access to the Shelter I left the fence to stand on the opposite side of the road.
- 11. The situation had increasingly grown tense it did not seem that the law enforcement officials on site were equipped to deal with the tensions. I telephonically called a professional contact of mine in the South African Police Services and explained the situation to him. I did this out of concern for the tension and chaos that what was unfolding and not because anyone had legally instructed me to do so. The Police arrived shortly thereafter, and I left the site and had no further dealings with the respondents.
- 12. I was not at the Shelter to provide legal representation to anyone. I was merely there to assess the situation and to see what was needed by the eleventh respondent.
- 13. I cannot say why the third respondent construed my presence at the Camp on the evening as being there to represent him. The WLC does not provide legal advice, support, or



5

representation to men. As far as we are aware the respondents are all being represented by the Legal Resources Centre in the matter before this Court.

14. We have never acted as the legal representatives to any of the respondents before the Court in respect of the matter before the Court. As part of the Coalition we have engaged with some of the respondents as set out above. The social justice sector in South Africa and Cape Town is very small and many of us activists have at some point worked together. Our active participation in activist movements however cannot be construed as legal representation.

SEEHAAM SAMAAI

I certify that on this \2 \ day of May 2020, in my presence at CAPE TOWN the deponent signed this declaration and declared that she:

- a) knew and understood the contents hereof;
- b) has no objection to taking this oath;
- c) considered this oath to be binding on his/her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".

COMMISSIONER OF OATHS

**CHARL JOHN MAY** 

COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE PRACTISING ATTORNEY R.S.A./PRAKTISERENDE PROKUREUR TYGERVALLEY CHAMBERS ONE, 19T-FLOOR 27 WILLIE VAN SCHOOR DRIVE, TYSER VALLEY 7530

# IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 5633/2020

#### **AFFIDAVIT**

I, the undersigned,

# $\mathbf{A}\mathbf{X}$

do hereby make oath and state:

- I am an 18 year old woman, born 16 July 2001, currently residing at NY117, Number 14,
   Gugulethu, Cape Town. I completed grade 8 schooling in 2019 and I am unemployed.
- 2. I have lived predominantly with my grandmother for most of my life. Since I was 16 years old, I have spent periods of time living away from my grandmother and chosen to live as a homeless person on the streets in Woodstock. I would alternate between living with my grandmother in Gugulethu and living on the streets in Woodstock.
- 3. In March 2020 I was living on the street in the Woodstock area. My boyfriend at the time told me that he had heard at his place of work that shops and workplaces would be closed due the coronavirus and the lockdown, and that we wouldn't be allowed to live on the street anymore. I however continued to live on the street for a few more days in the area near to

the Culemborg Safe Space Shelter, which is based at Nelson Mandela Blvd, Foreshore, Cape Town.

- 4. Approximately near the end of March 2020 I moved into the Culemborg Shelter. When I arrived there, we were instructed to enter two persons at a time. We had to fill in a register with our names and the details of where we had been living before we came to the shelter. We were asked if we were sick, if we had a headache or cough. Those people who said they were sick were separated from the rest of us and I think they went to a doctor. I was not sick, so I was allowed to enter the shelter. I was not tested for any sickness. We were all told that we would have to stay at the shelter for a while and that we would be taken back to where we came from at some later stage.
- 5. I was given a toothbrush, toothpaste, a washcloth, soap, body lotion, baby wipes, a mask and sanitary pads. I was not given any hand sanitizer. Only those shelter residents who were assisting with handing out of food were given hand sanitizer.
- 6. I do not know how many people there were staying in the shelter when I was there. There were about ninety (90) two person tents on the site that accommodated both men and women. There was no separation between men and women, and people could share a tent with whomever they wanted.
- 7. There were a sufficient number of toilets, but there was no separation between toilets for men and toilets for women; none of the toilets had signs on them to show they were for men or women. There was only one shower for women.

- 8. The tents were spread out on a big field. There was no common area for socializing or eating together. Meals were brought in from the outside and served in a soup kitchen type style. We mostly ate our meals in our tents.
- 9. There was sufficient lighting at the shelter, around the tents and the toilets. There was security at the shelter: as far as I know, the City of Cape Town Law Enforcement had a caravan based at the gate which prevented people from coming into or leaving the shelter without permission. Law Enforcement also patrolled inside the shelter regularly.
- 10. I stayed at the Culemborg shelter for about one week. In the second week I was moved to the Strandfontein Shelter. I think we were moved on or about 5 April 2020. We saw buses arriving at the Culemborg Shelter. We were told that we were being taken to Strandfontein and that no one was allowed to stay at Culemborg. We were given no choice; we had to leave on the buses; we were specifically not allowed to go back to live on the street. Nothing more was explained to us other than we had to go to Strandfontein because of the coronavirus. Law Enforcement made sure that we all got on the buses, and they accompanied us on the buses to Strandfontein.
- 11. When we got to Strandfontein, we had to sign another register just outside the site and we were asked again to indicate if we were sick. We were asked a lot of questions about our health, like if we had a cough, and if we were sweating. If people were sick, they were separated and were seen by a doctor. I do not know if they were tested for any illnesses.
- 12. Those of us who were not sick were given hand sanitizer and taken into the site. We had to sign another register with our names, and our photographs were taken. This happened in one of the big tents.

- 13. We were then told to wait outside the big tent as the tents in which we were going to stay were not yet ready. We were not told what was happening, why we were there, how long we would be staying there, or when we would be taken back to where we came from.
- 14. We were only given soap at Strandfontein. No other toiletries were provided, including no female specific hygiene products. We were told that if we were menstruating and needed sanitary pads, we must ask for them.
- 15. After sitting outside for a few hours, we moved into a big tent where we were told we would be sleeping. At this stage only the people who had been staying at the Culemborg shelter were at the Strandfontein site. In the big tent, which I later found out was Tent 2, there were also people who I presumed were staff setting up to provide us with food and counting blankets. We were all given blankets a bit later.
- 16. When we left Culemborg shelter we had been told to bring our two-person tents with us. At Culemborg shelter I had shared a tent with a particular woman, but I did not want to share with her anymore once I got to Strandfontein. We were told at Strandfontein we could either sleep in the two-person tents we had brought with us in Tent 2 (i.e. small tents in the big tent), or just sleep in the big tent. I didn't have a small tent anymore as it had been taken from me by another resident.
- 17. We were not given any other option other than to sleep in Tent 2 either in the small tents from Culemborg if we still had them, or in the open Tent 2 generally. We were not given any option as women to sleep in a separate tent from the men. On that first night, I shared one of the small tents with a man who still had his small two-person tent as I wanted to sleep inside a small tent and he had extra blankets.

- 18. The City of Cape Town Law Enforcement officers and security people were based at the gate of the site. They did not patrol inside the site at all, not during the day or the night in all the time I was resident at Strandfontein.
- 19. On that first day we were told that we could not leave the site for two weeks. We were told that after two weeks we would be taken back to where we came from. We were specifically told we could not leave Strandfontein.
- 20. The next day more people arrived. They came from the Cape Town city area. They were moved into the same Tent 2 together with us, the Culemborg people. When more people from other areas arrived, they were placed in other big tents that had been erected.
- 21. We received very little information about what was happening. We were only told that if we were sick we must tell the people running the site and we would be taken by ambulance to the hospital.
- I was not told who I could approach if I needed help with anything, or who I could report to if there was any criminal activity. I was only told that if I had my period I could ask for sanitary pads, and I could ask for more soap.
- 23. There were showers and toilets on the site, the toilets for women were separate from those for men but were not marked as such. There was lighting around the toilets and the whole site.
- 24. I was never given the option to sleep in a separate tent from the men. If I had that option I would have chosen to sleep separately.

- 25. On Wednesday 8 April 2020, after I had been at Strandfontein for a few days, I was spending time with some other residents outside the tents in the afternoon. I was approached by a man who I now know as Siyabonga Maqondoza. He told me he wanted to have sex with me. I tried to ignore him, but he was very persistent and aggressive, and kept physically touching me on various parts of my body. I recognised him from the Culemborg shelter.
- 26. Later that day, at about 17h00, we were told by the people looking after us to return to our tents to sleep. Maqondoza took me to where he was sleeping which was in in a tent separate from where I was sleeping. There was no one else in that tent when we entered. He then proceeded to rape me.
- 27. After he was finished, I left his tent and went back to my tent. I did not tell anyone.
- 28. On Friday 10 April 2020 at approximately 20h00 I was standing with some people outside the big tent when a female officer from Law Enforcement came to talk to me. I now know that one of the other residents had noticed that I had not gone to meals for the past two days because I was so upset from being raped. The female officer and the resident asked me if I was alright and I told them I had been raped.
- 29. They called an ambulance and I was taken to the Heideveld Thuthuzela Care Centre at Heideveld Hospital where I was examined.
- 30. I was then taken to a safe house to spend the night, which was organised by an NGO in Gugulethu, Ilitha Labantu.

31. The next day I was interviewed by a detective Saki from the Mitchell's Plain Family Violence, Child Protection, and Sexual Offences (FCS) Unit. I was then taken by the police back to Strandfontein to point out the man who had raped me. A counsellor social worker from Ilitha Labantu came with me. The accused, Maqondoza, was arrested. He has appeared in Mitchell's Plain court and the matter is under investigation.

### DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at on this the day of 2020, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full Names:

Capacity:

Designation:

Address:

# AX Stepholiontein CAS 44/0/4/2020 A AX Stode under outh in Yhosa

I am or woman, born 2001-07-16, 18 years old, residing out NYIM No. 14, Griguloter. I am unemployed.

On woohesday 2020-04-08 I was sold behind the fond with other beable at 3 transfortein stadium It was during day, I can not remember the time. The was a man among us who help on tous one saying he want to have sex with me. He was aggresive while saying this to me by touching me constitutiously. I aid not respond to him. I just ignored him.

On the same aby at approximately 17100 we were told by the bookle who looked after to so not one of the more one to a fort where he sleeps. The more no one plee in the very the stainted me and I told him to stop what he doing the consinued touching me afthoughted him to stop. He stainted undressing me afthoughted him to stop. He stained undressing me after any clothes, the the couled one on the ground but holding me pressing me abun with one hand the removed my dight I had on the but a condorn on his beaus before dried to remove my clothes, the then bressed me

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I was standing with other books noxt do the big tand. A law enforcement officer consult has books to talk to me. The dold one of with her I good to ap to hospital, there a lot of people there out the comp who they then took me to hospital where i a doctor with the law enforcement officer present what happened to me.

E trow the berson who raked me and I will be able to identify him the is also straying with us in the comp. It was the first time he did that to one the did not robe me again. No one also rouped me in the continue of the contents of

I have no dejections to taking the presentation of court. I consider the prosesition out to be binding a my conscience.

# IN THE HIGH COURT OF SOUTH AFRICA WESTERN CAPE DIVISION, CAPE TOWN

Case No. 5633/2020

# **CONFIRMATORY AFFIDAVIT**

I, the undersigned,

# **BRONWYN PITHEY**

do hereby take oath and state: -

- 1. I am an adult female employed as a legal practitioner at the Women's Legal Centre ('WLC'), situated at 7th floor Constitution House, 124 Adderley Street, Cape Town.
- 2. The facts deposed to herein are within my personal knowledge, unless contrary appears from the context, and are to the best of my knowledge true and correct.
- 3. I have read the affidavit of **CHARLENE MAY** and confirm the contents thereof insofar as they refer to me.

**BRONWYN PITHEY** 

I certify that on this \times \times \text{May of May 2020, in my presence at CAPE TOWN the deponent signed this declaration and declared that she:

- a) knew and understood the contents hereof;
- b) has no objection to taking this oath;
- c) considered this oath to be binding on his/her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".

COMMISSIONER OF OATHS
CHARL JOHN MAY

COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE PRACTISING ATTORNEY R.S.A./ PRAKTISERENDE PROKUREUR TYGERVALLEY CHAMBERS ONE, 18T FLOOR 27 WILLIE VAN SCHOOR DRIVE, TYSER VALLEY 7530