

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 29573/16

In the application for admission as amicus curiae

by:

NASREEN RAJAB

MICHELLE ANN CRYSTAL HUBER

CAROL KHOLEKA ZAMA

PENELOPE JOY PARENZEE

BASETSANA MOLEBATSİ

NICOLE LOUISE FRITZ

SHEREEN MILLS

Acting in their capacity as



THE TRUSTEES FOR THE TIME BEING OF THE

Applicant

WOMEN'S LEGAL CENTRE TRUST

In the matter between

NICOLE LEVENSTEIN

First Applicant

(ID No. 6902130169080)

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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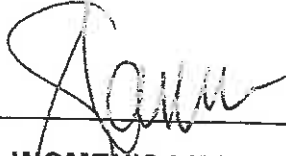
Applicant

In the matter between

NICOLE LEVENSTEIN

(ID No. 6902130169080)

First Applicant



WOMEN'S LEGAL CENTRE

7th Floor, Constitution House
124 Adderley Street
Cape Town

Ref: Ms Bronwyn Pithey

Email: bronwyn@wlce.co.za

c/o WOMEN'S LEGAL CENTRE

9th Floor, OPH
112 Main Street
Johannesburg

Tel: 011 339 1099

1 424 5660

(Ref: Mosima Kekana)

Email: Mosima@wlce.co.za

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

AND

TO: IAN LEVITT ATTORNEYS

Applicant's Attorneys
19th Floor, Sandton City Office Towers
Cnr Rivonia & 5th Street
Sandton

Ref: I Levitt/A Charalambous/MAT1643)

RECEIVED
29 SEP 2016
IAN LEVITT
Received without prejudice to clients rights
Driving centres benefiting from clients no-fee
19th Floor Sandton City Office Towers
Cnr Rivonia & 5th St, Sandton
P.O. Box 74524, Sandton 2146
Tel: 011 261 8000 Fax: 011 754 3200

IAN LEVITT ATTORNEYS
TIME: 11:00
SIGNATURE: 

(angelike@ianlevitt.co.za)

AND

TO: BILLY GUNDELFINGER
First Respondent Attorneys
91 Iris Road
Norwood
Johannesburg

29/09/16
R. Bey

BILLY GUNDELFINGER
RECEIVED WITHOUT PREJUDICE

11:40

AND

TO: THE OFFICE OF THE STATE ATTORNEY
Second Respondent's Attorneys
12th Floor, North State Building
95 Albertina Sisulu Street (corner of Kruis Street)
Johannesburg

R. Bey

AND

TO: DIRECTOR OF PUBLIC PROSECUTIONS, GAUTENG LOCAL DIVISION
Third Respondent
Innes Chambers, cnr Pritchard & Kruis Street
Johannesburg

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In the matter between


NICOLE LEVENSTEIN
(ID No. 6902130169080)

First Applicant

PAUL DIAMOND (ID No. 710125007088)	Second Applicant
GEORGE ROSENBERG (ID No. 710305033086)	Third Applicant
KATHERINE ROSENBERG (ID No. 7411010057083)	Fourth Applicant
DANIELA Mc NALLY	Fifth Applicant
LISA WEGNER (ID No. 6411260037083)	Sixth Applicant
SHANE ROTHQUEL (ID No. 7705015037085)	Seventh Applicant
MARINDA SMITH (ID No. 6406200101080)	Eighth Applicant
and	
SIDNEY LEWIS FRANKEL (ID No. 4810085014080)	First Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
DIRECTOR OF PUBLIC PROSECUTIONS, GAUTENG	Third Respondent

FILED HEREWITH: APPLICANT'S AFFIDAVIT

DATED AT 28TH ON THIS DAY OF SEPTEMBER 2016.



WOMEN'S LEGAL CENTRE

7th Floor, Constitution House

124 Adderley Street

Cape Town

Ref: Ms Bronwyn Pithey

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9th Floor, OPH

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1 424 5660

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Applicant's Attorneys

19th Floor, Sandton City Office Towers

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Sandton

Ref: I Levitt/A Charalambous/MAT1643)

(angelike@ianlevitt.co.za)

AND

TO: BILLY GUNDELFINGER
First Respondent Attorneys
91 Iris Road
Norwood
Johannesburg

AND

TO: **THE OFFICE OF THE STATE ATTORNEY**
Second Respondent's Attorneys
12th Floor, North State Building
95 Albertina Sisulu Street (corner of Kruis Street)
Johannesburg

AND

TO: **DIRECTOR OF PUBLIC PROSECUTIONS, GAUTENG LOCAL DIVISION**
Third Respondent
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(ID No. 6902130169080)

First Applicant

PAUL DIAMOND Second Applicant

(ID No. 710125007088)

GEORGE ROSENBERG Third Applicant

(ID No. 710305033086)

KATHERINE ROSENBERG Fourth Applicant

(ID No. 7411010057083)

DANIELA Mc NALLY Fifth Applicant

LISA WEGNER Sixth Applicant

(ID No. 6411260037083)

SHANE ROTHQUEL Seventh Applicant

(ID No. 7705015037085)

MARINDA SMITH Eighth Applicant

(ID No. 6406200101080)

and

SIDNEY LEWIS FRANKEL First Respondent

(ID No. 4810035014080)

MINISTER OF JUSTICE AND CORRECTIONAL Second Respondent

SERVICES

DIRECTOR OF PUBLIC PROSECUTIONS, Third Respondent

GAUTENG

NOTICE OF MOTION-

BE PLEASED TO TAKE NOTICE that the WOMEN'S LEGAL CENTRE TRUST hereby makes application to this Honourable Court in terms of Rule 16A for an order in the following terms:

1. That the WOMEN'S LEGAL CENTRE TRUST is admitted as amicus curiae to the proceedings;
2. That the WOMEN'S LEGAL CENTRE TRUST shall be entitled to make written and oral submission in the proceedings.

BE PLEASED TO TAKE NOTICE FURTHER that this application is supported by the affidavits of SEEHAAM SAMAAI, attached hereto.

TAKE FURTHER NOTICE THAT if you intend opposing this application, you are required to file an answering affidavit, clearly and succinctly setting out the grounds for opposition, within 5 days of receipt hereof.

TAKE NOTICE FURTHER THAT If no such Answering Affidavit is provided, the application will be set down for hearing accordingly.

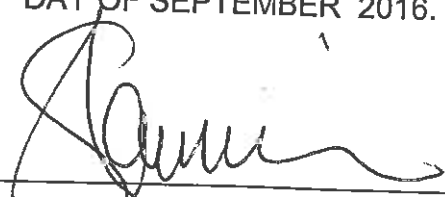
TAKE NOTICE FURTHER that the Trust has appointed the address below as the address at which it will accept notices and service of all process, documents and notices in these proceedings.

KINDLY ENROLL THE MATTER FOR HEARING ACCORDINGLY

DATED AT

28TH

ON THIS DAY OF SEPTEMBER 2016.



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124 Adderley Street
Cape Town
Ref: Ms Bronwyn Pithey
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(angelike@ianlevitt.co.za)

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TO: BILLY GUNDELFINGER

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TO: THE OFFICE OF THE STATE ATTORNEY

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Acting in their capacity as

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In the matter between

NICOLE LEVENSTEIN

First Applicant

(ID No. 6902130169080)

M.M.
1

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and	
SIDNEY LEWIS FRANKEL (ID No. 4810085014080)	First Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent

AFFIDAVIT

I, the undersigned:

SEEHAAM SAMAAI

do hereby make oath and state that:

1. I am the Director of the Women's Legal Centre based at 7th Floor, Constitution House, 124 Adderley Street, Cape Town and duly authorised to bring this application.

2. The facts contained in this affidavit are true and correct and, save where the context indicates to the contrary, are within my personal knowledge. Where allegations are made of a legal nature, these are made on the advice of my legal representatives and I believe them to be true and correct.

3. This is an application in terms of Rule 16A of the Rules of this Court on behalf of the Women's Legal Centre Trust ("the Trust"), seeking leave to intervene in the above matter as *amicus curiae*. The main application seeks to challenge the constitutionality of Section 18 of the Criminal Procedure Act 51 of 1997 ("the Criminal Procedure Act") to the extent that it bars the right to institute a prosecution for all offences as contemplated by the Criminal Law (Sexual

Offences and Related Matters) Amendment Act, 2007 ("SORMA"), other than rape or compelled rape, after the lapse of 20 years from the date that the offence was committed ("the main application").

4. While the Trust broadly supports the case of the applicants, it wishes to make submissions on the relief that should be granted. The relief proposed by the Trust is that Section 18 of the Criminal Procedure Act is declared unconstitutional to the extent that it bars the right to institute a prosecution for all sexual offences other than the common law of rape prior to the amendment to s18 by SORMA after the lapse of 20 years from the date that the offence was committed; and to the extent that it bars the right to institute a prosecution for all sexual offences as contemplated by SORMA, other than rape or compelled rape, offences relating to using a child or person who is mentally disabled for pornographic purposes, and certain offences relating to the Prevention and Combating of Trafficking in Persons Act, 2013 after the lapse of 20 years from the date that the offence was committed. The reasons to substantiate the proposed relief will be set out below.

5. The Trust further applies to place oral evidence of an expert nature on the narrow issues of rationale for prescription, the rationale for exclusion of some offences from prescription, and delayed reporting and prescription before the Court should the Court deem same to be of assistance.

The interest of the Trust in these proceedings

6. The Trust is a juristic person created in terms of a trust instrument dated 3 August 1998. The Trust Deed (as amended, and attached as “SS1”) authorises the Trust to litigate in its own name. A copy of the Master’s Certificate authorising the present Trustees to act on behalf of the Trust is annexed as “SS2”.

7. The Trustees have duly resolved to bring an application to intervene as *amicus curiae* in the main application, in furtherance of the Trust’s objectives. Further, I am authorised to depose to this affidavit and to bring this application on their behalf. A copy of the resolution is annexed marked “SS3”.

8. A core objective of the Trust is to advance and protect the human rights of all women and girls in South Africa, particularly women who suffer many intersecting forms of disadvantage. In doing so, the Trust seeks to redress the systematic discrimination and disadvantage that women face. Clause 4 of the Trust Deed catalogues the Trust’s core objectives in greater detail.

9. The Trust fulfils its main object by rendering legal assistance to women litigants at no cost, and by making *amicus curiae* submissions in order to assist courts in constitutional and public interest matters that concern women’s rights and gender equality. To this end, the Trust established the Women’s Legal Centre (“the WLC”) in order to conduct public interest litigation. Since its inception, the WLC has participated in numerous cases concerning the rights of women. These includes the following reported cases relating to violence against women:

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Van Eeden v Minister of Safety and Security (Women's Legal Centre Trust as Amicus Curiae) 2003 (1) SA 389 (SCA);
S v Ferreira [2004] 4 All SA 373 (SCA);
Van Zijl v Hoogenhout 2005 (2) SA 93 (SCA);
K v Minister of Safety and Security 2005 (9) BCLR 835 (CC);
Van der Merwe v Road Accident Fund and Another (Women's Legal Centre Trust as Amicus Curiae) 2006 (4) SA 230 (CC);
Omar v Govt of the RSA (Commission for Gender Equality, Amicus Curiae) 2006 (2) SA 289 (CC);
F v Minister of Safety & Security 2012 (1) SA 536 (CC); and
Director of Public Prosecutions, Western Cape v Prins and Others 2012 (2) SACR 183 (SCA);
Naidoo v Minister of Police (Women's Legal Centre Trust Intervening Amicus Curiae) 2015 JDR 2107 (SCA)

10. The WLC has, over the years, often been approached for legal advice in cases involving violence against women, and child abuse in particular. The Trust represented Ms Van Zijl in the matter referred to in paragraph 9 above which dealt with the prescription of civil claims for damages by adults for sexual abuse when they were children.

11. In addition, the Trust has made numerous written and oral submissions in response to key legislation aimed at advancing the rights of women, including the legislation relating to SORMA.

12. The Trust has developed a level of expertise by virtue of its activities in general, and in particular, its intervention in the aforementioned cases.

13. In the circumstances, it is submitted that the Trust is well-placed to assist the Court by making submissions on the issues raised in this matter, the outcome of which will have a significant impact on a particularly vulnerable class of women.

Compliance with Rule 16A

14. The Rule 16A Notice in this matter was filed on 26 August 2016.

15. On 30 August 2016 the WLC sent letters to all the parties to the proceedings requesting their consent to participate in the proceedings as *amicus curiae*, copies of which letters are attached hereto marked "SS4" to "SS7".

16. On 30 August 2016 the Trust received consent from the applicants' attorneys annexed hereto marked "SS8".

17. On 22 September 2016 the Trust received consent from the first respondent, annexed hereto as "SS9".

18. On 22 September 2016 the Trust received consent from the second respondent, annexed hereto as "SS10".

M.M
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19. On 21 September 2016 the Trust received a letter from the third respondent, dated 19 September 2016, indicating that they are not opposing the main application and as such have no view on this application, annexed hereto as "SS11".

Relevance of the submissions of the Trust to the proceedings, their difference from submissions of other parties and their assistance to the court

20. The Trust intends to adopt a position that will, in general, advance the case for the applicants, but its approach will be different and expand on those made by the parties. It is respectfully submitted that the submissions sought to be made by the Trust will assist the Court in fully considering all issues relevant to the matter. The Trust will make submissions that are aimed at considering the position of the broader class of women and girls affected by these proceedings and balancing the competing rights involved and the appropriate relief in relation to that broader class.

21. The submissions will deal holistically with a purposive and contextual interpretation of SORMA taking into account legislative history, the Constitution and international law.

22. The Trust intends to address the issues from a gendered perspective and will make submissions in relation to:

- i. The high levels of violence against women and (girl) children and the obligations of the state to protect, promote and respect women's rights outlined in the Constitution and relevant regional and international legal instruments
- ii. The approach taken in comparative jurisdictions regarding prescription of sexual offences
- iii. The impact of section 18 of the Criminal Procedure Act, read with SORMA, on victims of sexual offences, in particular women and girl children;

The high levels of violence against women and (girl) children and the obligations of the state to protect, promote and respect women's rights outlined in the Constitution and relevant regional and international legal instruments

Constitutional framework

23. The very high levels of sexual violence in South Africa are well documented and recognised by our courts. In *Carmichele*¹ the Court recognised that:

¹ *Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC).

“sexual violence and the threat of sexual violence goes to the core of women’s subordination in society. It is the single greatest threat to the self –determination of South African women².”

24. In *Masiya*³ Nkabinde J reiterated the widely accepted notion that:

“sexual violence and rape not only offends the privacy and dignity of women but also reflects the unequal power relations between men and women in our society”⁴

25. As recently as June 2016, the United Nations Special Rapporteur on Violence Against Women notes that South African violence inherited from apartheid still resonates in today’s society which remains dominated by deeply entrenched patriarchal norms and attitudes towards the role of women. This makes violence against women and children, especially in rural areas and in informal settlements, a way of life and an accepted social phenomenon⁵.

26. In the context of the high levels of violence, section 7(2) of the Constitution imposes a duty on the state to “*respect, protect, promote and fulfil*” the rights in the Bill of Rights, including equality, dignity and freedom from violence. It imposes three distinct duties on the state. The duty to “*respect*” is negative. It requires the state to refrain from infringing these rights. The duty to “*protect*” is

² Ibid at para 62

³ *Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies and Another, Amici Curiae)* 2007 (5) SA 30 (CC).

⁴ Ibid at para 29

⁵ ‘Report of the Special Rapporteur on Violence Against Women, its causes and consequences on her mission to South Africa’ UN A/HRC/32/42/Add.2 14 June 2016

positive. It obliges the state to protect these rights from infringement by third parties. The duty to “*promote and fulfil*” is also positive. It requires the state to use its power to advance these rights and assist individual right holders to realise them.

27. Section 7(2), read with sections 10, 11, 12(1)(c) and 12(2)(b) of the Constitution, impose a positive duty on the state to protect everyone against violent crime.⁶ There are several specific aspects of this duty that are now well-entrenched in the jurisprudence of the Supreme Court of Appeal (“SCA”) and the Constitutional Court (“CC”):

- The state is obliged “*directly to protect the right of everyone to be free from private or domestic violence*”;⁷
- The state is obliged to “*take appropriate steps to reduce violence in public and private life*”;⁸
- The state is obliged in certain circumstances “*to provide appropriate protection to everyone through laws and structures designed to afford such protection*” which may imply “*a positive obligation on the authorities to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual*”.⁹

⁶ *Baloyi* para [11]; *Christian Education SA v Minister of Education* 2000 (4) SA 757 (CC) para 47; *Carmichele v Minister of Safety and Security* 2001(4) SA 938 (CC) paras [44] to [45]; *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) para [20].

⁷ *Baloyi* 2000 para [11].

⁸ *Christian Education SA v Minister of Education* 2000 (4) SA 757 (CC) para [47].

⁹ *Carmichele v Minister of Safety and Security* 2001(4) SA 938 (CC) paras [44] to [45], citing with approval, *Osman v United Kingdom* 29 EHHR 245 at 305, para 115.

28. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties.¹⁰

29. The Constitutional Court has recognised South Africa's international law duty to prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and to take reasonable and appropriate measures to prevent a violation of those rights.¹¹

The international law

30. South Africa is a signatory to a number of international human rights instruments, the most notable of which is the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").

31. CEDAW has been described as the definitive international legal instrument requiring respect for and observance of the human rights of women.¹² It is said to be "*universal in reach, comprehensive in scope and legally binding in character*".¹³

¹⁰ *Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae) President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae)* 2004 (6) SA 40 (SCA) para [27].

¹¹ *Baloyi* para [13]; *Carmichele* at para [62]; *Van Eeden v Minister of Safety and Security* 2003 (1) SA 389 (SCA) para [15].

¹² Kathree F 'Convention on the Elimination of all forms of discrimination against women' *SAJHR* (1995) 421 at 421.

¹³ Cook R 'Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women' (1990) 30 *Virginia Journal of International Law* 643 at 643.

32. The South African Government ratified CEDAW on 15 December 1995 and is therefore bound by the obligations created by it.

33. CEDAW itself contains no less than six articles that indirectly relate to violence against women.¹⁴

34. General Recommendation No. 19¹⁵ explicitly states that the general prohibition of gender discrimination includes

"gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately".¹⁶

35. General Recommendation No. 19 further recommends that in order to fulfil their duties under the Convention, states must take all measures necessary to provide effective protection to women, including comprehensive legal, preventative and other measures.¹⁷

36. The principles underpinning CEDAW are also evident in the preamble to the Universal Declaration of Human Rights and article 4(d) of the Declaration on the Elimination of Violence Against Women.¹⁸

¹⁴ Articles 2,3,6,11,12 and 16.

¹⁵ U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994).

¹⁶ Para 6.

¹⁷ Para 24 (t).

¹⁸ U.N. GAOR, 48th Sess., art. 1 UN.doc. A/Res/ 48/104 (1994).

37. The South African Government ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("the African Charter on the Rights of Women") on 17 December 2004.

38. Article 3 of the African Charter on the Rights of Women guarantees that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights and requires state parties to

"adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."

39. Article 4 states that "[e]very woman shall be entitled to respect for her life and the integrity and security of her person" and article 4(2) obliges the state to

"enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public".¹⁹

40. In the event of violation of women's rights in this Protocol, Article 25 provides that parties:

"undertake to provide for appropriate remedies to any woman whose rights or freedoms, have been violated and ensure that such remedies are determined by competent judicial, administrative or legislative

¹⁹ Article 4 (a).

authorities, or by any other competent authority provided for by law.”

41. Part six of the SADC Protocol on Gender and Development²⁰ addresses gender based violence and it creates an obligation on state parties to enact and enforce legislation prohibiting all forms of gender based violence.²¹

42. The CC in *Baloyi*, after referring to South Africa's international and regional obligations stated as follows:

“These injunctions are directly relevant to the present matter: when interpreting the Act, the Court must prefer any reasonable interpretation that is consistent with international law over any alternative interpretation that is inconsistent with it.”

43. It is submitted that in terms of South Africa's international, regional and constitutional legal obligations, the government is obliged to ensure that victims of all sexual offences enjoy the full protection that the law can afford.

The approach taken in comparative jurisdictions regarding prescription of sexual offences

44. All jurisdictions, including South Africa as reflected in section 18 of the Criminal Procedure Act, have exceptions for some offences to prescription. The rationale for this seems to be based on the 'seriousness' of the offence. Most jurisdictions,

²⁰ South Africa has signed but not yet ratified the SADC Protocol on Gender and Development.
²¹ Article 1 of SADC Protocol on Gender and Development.

like South Africa, have differing prescription periods for different offences, again largely based on what could be called 'perceived seriousness'.

45. Jurisdictions with no prescription period for sexual offences:

- 45.1. Kenya: no prescription period applies other than to offences whose maximum penalty "*does not exceed imprisonment for six months, or a fine of one thousand shillings, or both*"²². The penalties for all sexual offences are above this threshold²³, meaning no sexual offences are subject to prescription in Kenyan law.
- 45.2. England & Wales: all sexual offences are either indictable offences or offences triable and accordingly, no prescription period applies to any sex offences, whether perpetrated against an adult or a child.
- 45.3. Canada: all sexual offences (with the exceptions of nudity & indecent exhibition) are classified as indictable or hybrid offences, meaning no prescription period applies.
- 45.4. Delaware: the Delaware Criminal Code, Title 11 imposes a general prescription period of five years in the case of all felonies²⁴. However, a specific exception applies to sexual offences, meaning no prescription period applies²⁵. The statute specifically provides that:

"This subsection applies to all causes of action arising before, on or after July 15, 1992, and to the extent consistent with this subsection, it shall revive causes of action that would otherwise be barred by this section."

²² Criminal Procedure Code, Chapter 75, section 219

²³ The Sexual Offences Act (Number 3 of 2006)

²⁴ Delaware Criminal Code, Title 11, Chapter 2, §205(b)

²⁵ *ibid*, §205(e)

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45.5. US Federal Law: since 2006 provision has been for the disapplication of prescription periods in sex offence cases:

"Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110...or 117, or section 1591."

The offences covered by this provision include:

- §1201: kidnapping;
- Chapter 109A: sexual abuse, aggravated sexual abuse, sexual abuse of a minor and abusive sexual contact;
- Chapter 110: sexual exploitation of children and child pornography offences;
- Chapter 117: transportation for illegal sexual activity; and,
- §1591: sex trafficking of children or by fraud, force or coercion.

Clearly, however, this applies only to offences subject to the jurisdiction of federal as opposed to state courts.

46. Jurisdictions with no prescription for child sexual offences:

46.1. US Federal law provides that:

"No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer."²⁶

²⁶ US Code, Title 18, Part II, Chapter 213, §3283

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46.2. Colorado: no statute of limitations applies to any sex offence committed against a child, or any attempt, conspiracy or solicitation to commit such an offence²⁷. As in the Delaware statute, the Colorado law provides that

*"It is the intent of the general assembly in enacting th[is provision]...to apply an unlimited statute of limitations to sex offenses against children committed on or after July 1, 1996, and to sex offenses against children committed before July 1, 1996, for which the applicable statute of limitations...has not yet run on July 1, 2006."*²⁸

46.3. Alabama: the Alabama Code imposes a general five-year prescription period for felonies, with certain exceptions. These include a provision that no prescription period applies to any sex offence committed against a person under the age of 16²⁹.

47. Jurisdictions with varying prescription periods according to severity:

47.1. New Zealand: section 25 of the Criminal Procedure Act 2011 created a graduated system of prescription periods, based upon the categorisation of the offence and the severity of the maximum sentence available. Whilst the majority of sex offences are categorised so as to be subject to no prescription period³⁰, certain less severe offences (including the commission of indecent acts and indecent communications with those

²⁷ C.R.S. §16-5-401(1)(a)

²⁸ Ibid, §16-5-401(1.5)(c)

²⁹ Alabama Code, Title 15, §15-3-5(a)(4)

³⁰ Crimes Act 1961

under 16) are subject to a prescription period of 5 years from the date of commission of the offence.

47.2. United States of America: the majority of US states adopt a graduated approach to prescription, whereby the perceived seriousness of the offence and/ or the severity of the potential sentence are used to place any given offence within one of several possible prescription periods. Sexual offences fall, for the most part, across several of these possible periods, with rape and the 'most serious' child sex offences having no prescription periods, and periods of between 3 and 30 years for other types of sexual offending.

48. As is indicated above, a number of jurisdictions have recognised that all sexual offences are serious enough not to prescribe at all. As with South Africa, some jurisdictions have 'graded' sexual offences, determining some serious enough for no prescription time period, while others fall within prescribed prescription time periods. Research in this area is ongoing and may be supplemented at a later stage in Heads of Argument.

South African case law on prescription and sexual offences

Criminal

49.1 No case law exists on the specific issue of criminal prosecutions of sexual offences which have prescribed in terms of section 18 of the Criminal Procedure Act. The question of prescription and need for an appreciation of the specific circumstances of child sexual abuse have, however, been considered in other contexts. In *Bothma v Els & others*

[2009] ZACC 27 the Constitutional Court held that a 37-year delay prior to the institution of a private prosecution for rape did not violate the accused's right to a fair trial. The case was argued on the basis of unreasonable delay, and did not directly concern prescription because the offence was one of rape and was therefore legally excluded from prescription. Strong policy reasons were cited for allowing the prosecution to continue, including the importance of encouraging reporting of child rape and supporting survivors who report their abuse³¹. At para [66] the court held:

*"there...exist strong public policy reasons for allowing the nature of the crime to weigh heavily in favour of allowing these charges to be aired in court. Adults who take advantage of their positions of authority over children to commit sexual depredations against them, should not be permitted to reinforce their sense of entitlement by overlaying it with a sense of impunity...the knowledge that one day the secret will out, acts as a major deterrent against sexual abuse of other similarly vulnerable children."*³²

A key issue in cases of this nature was identified at paragraph [78] of the court's judgment:

"the issue before us is not whether what [the complainant] says is the truth or an invention. The question is whether she should

³¹ *Bothma v Els & others* [2009] ZACC 27 [45-47]

³² *ibid* [66].

*be stopped from giving her account to enable a criminal court to decide.*³³

Sachs J went on to identify numerous safeguards available to the accused in cases brought to trial after many years, most notably the presumption of innocence³⁴. This case is useful in that it supports the principles of protection of victims of sexual violence irrespective of time frames. The reasoning of the court can be applied to all types of sexual offences and not just rape.

Civil

49.2 The issue of prescription in cases of sexual abuse has been addressed in civil matters. The impact of sexual abuse upon survivors' ability to bring an action has been expressly acknowledged, in particular by the Supreme Court of Appeal in *Van Zijl v Hoogenhout* 2005 (2) SA 93 (SCA); [2004] 4 All SA 427 (SCA). The court noted that

*"the prescription statutes in force in this country were drafted in ignorance of and without consideration for the special problems afflicting such survivors"*³⁵.

In addition, the court acknowledged that

*"[p]rescription penalizes unreasonable inaction not inability to act"*³⁶.

³³ *ibid* [78].

³⁴ *ibid* [81].

³⁵ *Van Zijl v Hoogenhout* (2005) (2) SA 93 (SCA) [7].

The court ruled that the usual civil prescription period of three years³⁷ would only begin to run in sexual abuse cases from the date when the survivor gained an appreciation of their abuser's responsibility for the harm they suffered. This is similar to civil statutes of limitations in several American states which also rely upon a delayed discovery or realisation rule.

The impact of section 18 of the Criminal Procedure Act, read with SORMA, on women and girl children in particular

50. Section 18 of the Criminal Procedure Act, as amended by SORMA in 2007 states:

Prescription of right to institute prosecution.—The right to institute a prosecution for any offence, other than the offences of—

(a) murder;

(b) treason committed when the Republic is in a state of war;

(c) robbery, if aggravating circumstances were present;

(d) kidnapping;

(e) child-stealing;

(f) rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

³⁶ *ibid* [19].

³⁷ Prescription Act 68 of 1969

(g) the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, or

(h) offences as provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013; or

(i) using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20 (1) and 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.

51. Therefore, post the 2007 amendment, all sexual offences, other than rape and compelled rape as contemplated in sections 3 or 4 of SORMA, offences as provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013, and using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20 (1) and 26 (1) of SORMA, prescribe after 20 years.

52. Prior to the SORMA amendment of 2007, section 18 of the Criminal Procedure Act stated:

Prescription of right to institute prosecution.—The right to institute a prosecution for any offence, other than the offences of—

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- (a) *murder;*
- (b) *treason committed when the Republic is in a state of war;*
- (c) *robbery, if aggravating circumstances were present;*
- (d) *kidnapping;*
- (e) *child-stealing;*
- (f) *rape*
- (g) *the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.*

53. Therefore, pre the 2007 amendment, all sexual offences, other than rape as defined by the common law, prescribed after 20 years.

54. The SORMA amendment to section 18 is not retrospective. This means that sexual offences committed before the SORMA amendment in 2007 fall under pre-SORMA section 18, and prescription of 20 years is applicable to all sexual offences other than the common law of rape.

55. SORMA expanded the offence of the common law of rape to include all forms of sexual penetration without consent. The offences in SORMA can broadly be divided into penetrative and non-penetrative offences. Rape includes the penetration by the genitals organs of one person into or beyond the genital organs, anus or mouth of another person; the penetration by any part of the

body of a person or object into or beyond the genital organs or anus of another person; the penetration of the genital organs of an animal into or beyond the mouth of another person. The remaining sexual offences in SORMA include, *inter alia*, sexual assault, sexual offences against children, and sexual offences against people who are mentally disabled.

56. Pre-SORMA, the one sexual offence that did not prescribe was the common law of rape which is a penetrative offence (vaginal penetration by a penis). Non-penetrative sexual offences (including indecent assault) prescribed after 20 years. This is mirrored post-SORMA as the statutory offence of rape does not prescribe (which is a penetrative offence as per definition in SORMA), and non-penetrative sexual offences (including sexual assault) prescribe after 20 years.

57. Therefore both pre- and post-SORMA, section 18 clearly differentiates between penetrative and non-penetrative sexual offences for the purposes of prescription.

58. South African law on prescription and the prosecution of sexual offences is thus as follows:

Pre-SORMA – all sexual offences committed before 16 December 2007 other than the common law of rape prescribe after 20 years

Post-SORMA – all sexual offences committed post 16 December 2007 other than the statutory offences of rape and compelled rape, offences relating to using a child or person who is mentally disabled for

pornographic purposes, and certain offences relating to the Prevention and Combating of Trafficking in Persons Act, 2013, prescribe after 20 years

Rationale for prescription

59. The rationale is premised upon a rights based argument, the ability to provide an accused with a fair trial³⁸. The concern exists that accurate and reliable evidence may diminish after time, and that it makes it more difficult for the accused to locate and obtain evidence to support their defence. The accused should be able to be certain, after a clearly prescribed time, that they can no longer be prosecuted for the crime. Jurisdictions where no criminal statute of limitations exist address these concerns by ensuring that the accused is protected, for example by providing the right to bring an 'abuse of process' application³⁹

60. The second rationale is considerations of efficiency⁴⁰ of the criminal justice system. Most systems are overworked and under-resourced and face a growing backlog of cases. Prescription periods provide for certain, predictable cut off time periods when the courts can refuse to hear certain cases.

³⁸ Suzette M Malveaux, 'Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation' (2005) 74 *George Washington Law Review* 68.

³⁹ *ibid*

⁴⁰ *ibid*

61. The third rationale is one of pragmatism in considering the feasibility of prosecuting a case after so many years has passed⁴¹

62. It is submitted that general rationales for prescription described above should not apply to the prescription of sexual offences. The right to a fair trial is guaranteed in section 35 of the Constitution; this right provides an adequate framework to ensure that the rights of an accused are protected in cases where the sexual offence has taken place more than 20 years ago. In the context of sexual offences, that a fair trial remains possible even after such a lapse of time was explicitly confirmed in *Bothma v Els*⁴². There is precedent in section 18 providing for an exclusion from prescription of some types of sexual offences (*inter alia* rape). If the argument that all sexual offences are equally serious is accepted, then placing an equal weighting on all sexual offences must result in an exclusion of prescription of all sexual offences. Our courts are overburdened, but it is submitted that, given the low levels of reporting of sexual offences, the likelihood of an influx of cases of this nature is low.

Rationale for exclusion of some offences from prescription

63. The South African law in section 18 clearly precludes some victims of sexual offences access to criminal legal recourse; it effectively protects some victims and discriminates against others. The basis of this exclusion is unclear other than the conventional perception, and therefore assumption, that some sexual

⁴¹ *ibid*

⁴² *Botha v Els & others* [2009] ZACC 27

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offences are more serious than others and thus deserve the higher status of not prescribing.

64. It is submitted that this reasoning is flawed, and that making a distinction based on the seriousness of various types of sexual offences is arbitrary. This is clearly reflected in the comparative law analysis which shows the wide variations between different jurisdictions. This distinction results in an unequal application of the law and discriminates against those victims who are sexually offended against but don't fall into the prescription exclusion categories of the perceived more serious offences.

65. It is submitted that the use of 'seriousness' as a determining factor for the categorisation of sexual offences which prescribe and which do not is flawed. It is too simple to differentiate between penetrative and non-penetrative offences, ascribe graded seriousness to each category, and then link prescription time periods to the categories. Seriousness is a subjective concept and cannot be linked necessarily to the type of sexual offence experienced by a victim. Some victims, experiencing both types of sexual offences (penetrative and non-penetrative), may describe a penetrative offence as not as serious as the non-penetrative offence committed against them and *vice versa*.

66. Seriousness also cannot be linked to a measure of trauma experienced by a victim. The assumption made that the more serious offences (those excluded from prescription in s18) result in higher levels of trauma is not supported in

the research. Higgins⁴³ says that attempts to classify a type of abuse as sexual or physical as associated with a particular consequences for the victims seems to be less useful than looking at the frequency and severity of child abuse.

67. In 1987 the National Institutes of Mental Health Intramural Research Programme⁴⁴ developed a conceptual framework which sought to integrate concepts of psychological adjustment to sexual abuse. Central to this model was the notion that characteristics of sexual abuse are complex and more than just the physical act. These characteristics include the duration of the abuse, the frequency of the abuse, the relationship to the abuser, the presence of physical and other forms of violence and the age of onset. It is these characteristics that play a major role in the degree of trauma experienced and the disclosure of abuse.

68. There is therefore no clear link between the type of sexual offence (rape, indecent ~~assault~~, sexual assault etc.) and the level and extent of trauma experienced. It is incorrect to assume some sexual offences are more serious than others, or that certain sexual offences result in more trauma. The use of these incorrect links and assumptions to formulate prescription time frames for various ~~sexual~~ offences has no basis in fact.

⁴³ Higgins, D. 2004. Differentiating between child maltreatment experiences. Family Matters, no 69, page 50-55

⁴⁴ Putnam FW, Trickett PK. The Psychobiological Effects of Child Sexual Abuse. New York; W.T. Grant Foundation 1987

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Delayed reporting and prescription

69. It is submitted that the issue of the period of time that has elapsed between the offence and when victim initiates criminal proceedings by reporting the matter is irrelevant in the context of prescription and should not play any role in the determination of when prescription starts to run. Memory and an understanding of the nature and extent of the offence by the victim does not become a factor if prescription time frames for all sexual offences do not apply. Legal provision must be made for delayed reporting in that it should not exclude the possibility for victims to lay charges and access the criminal justice system. Delayed reporting by victims of sexual offences is well documented⁴⁵, and reasons therefore are extensive and complex.

70. Delayed reporting is not exclusively as a result of victims of sexual abuse only gaining a full appreciation of the criminal acts against them after a long period of time. There are many other reasons why victims don't immediately report the offence: fear of perpetrator, fear of the criminal justice process, victimisation by family and community, trauma, stigma, not being believed, discouraged to report etc. The principle informing the test, as set out in *van Zyl*⁴⁶, regarding memory and establishing that civil prescription only begins to run once victim has gained an appreciation of their abuser's responsibility for the harm they suffered, should not be applied in the criminal prescription context to determine any length of time frame. The rationale behind not

⁴⁵ Muller, KD and Hollely, KA 2000 *Introducing the Child Witness*; Chapter 4 Disclosure: a process of truth p124

⁴⁶ *Van Zijl v Hoogenhout* (2005) (2) SA 93 (SCA)

imposing a prescription time limit on all sexual offences must be based on an understanding of the myriad of reasons for delayed reporting, not only delayed memory.

71. In sexual offences, the focus of the perpetrator is on getting the victim not to disclose the abuse⁴⁷. A myriad of strategies are used to achieve this, and the more 'successful' the perpetrator is in these strategies, the less likely the victim will be to disclose. The impact prescription effectively provides a form of protection for those perpetrators who are successful in getting their victims not to disclose for long periods of time.

72. It is further submitted that the challenge to s18 should not be restricted to victims of child sexual abuse; it must also apply to victims of adult sexual abuse. The reasons for delayed reporting apply equally to adults as they do to children.

73. Although not directly applicable to the issue of prescription, section 60 of SORMA recognises the phenomenon of delayed reporting and does not allow the court to draw a negative inference only from the length of any delay between the alleged commission of the crime and the reporting thereof. One could argue that the legislature allows for delayed reporting; s18 effectively hampers that recognition by placing a time frame on delayed reporting for all sexual offences other than those contained in the exclusion clauses.

⁴⁷ Muller, KD and Hollely, KA 2000 Introducing the Child Witness; Chapter 4 Disclosure: a process of truth p124

Submissions in relation to the facts of this case

74. The terminology used in the applicant's pleadings to describe the offences committed against them is confusing and inconsistent. 'Sexual act', 'sexual assault', and 'indecent assault' are used at times interchangeably, and at other times in a generic fashion to cover all types sexual abuse. 'Sexual act,' 'sexual violation', 'sexual assault', 'indecent assault' and 'rape' are all legally defined and are not generic terms to describe sexual abuse; they have specific legal meaning in terms of both common and statutory law.
75. The use of the terms 'sexual act', 'sexual assault', 'sexual penetration' and 'sexual violation' referring to the offences pre-SORMA is inaccurate in law; all these terms and offences are only applicable to acts committed post-SORMA. All offences committed against applicants 1-8 are common law of indecent assault offences as they were committed pre-SORMA. As such they have all prescribed after 20 years.
76. Most⁴⁸ of the offences committed against the applicants, were they committed post-SORMA, would fall under sexual assault and would therefore also prescribe in terms of section 18 (post-SORMA). Some of the offences (those which were penetrative in nature, where there was penetration of the genital area and anus of an applicant by the finger and / hand of the respondent),

⁴⁸ Other offences under SORMA may include, inter alia, sections 7, 17, 18 and 21

were they committed post-SORMA, would not prescribe as they would fall under the definition of rape and would be prosecutable under section 18 (post SORMA).

77. The averment made in para [61] of the second applicant's Founding affidavit states

"..if the First Respondent had committed his sexual assaults (sic) and violations (sic) against us after the commencement of the Criminal Law Amendment Act 2007, his crimes would have been classified as rape and would never prescribe".

It is submitted that this is not accurate as explained in the above paragraph.

78. It is for this reason that the relief sought must be that the section 18 prescription time frame of 20 years does not apply to any sexual offences (all sexual offences must be excluded from prescription), and not only to those which, when committed pre-SORMA were indecent assault, but would be rape if committed post-SORMA.

79. I shall not go into detail at this stage regarding all the offences committed against the applicants, and which offences would and would not prescribe were they to be committed post-SORMA. However, it is important to point out

that legislation now recognises that certain offences committed pre-SORMA which do prescribe, were they to be committed post 2007, would now be considered 'serious' enough not to prescribe (as a result of the broader definition of rape). This shift is a recognition and an indication of how legislation has begun to reflect the real experiences of victims. To further extend the exclusion of prescription to all sexual offences is even more reflective of those experiences.

Conclusion

80. To exclude victims who, for many reasons, may only feel ready to proceed criminally against an accused after the current 20 year prescription time period applicable in section 18, both pre- and post-SORMA is arbitrary and unfair. It is unjustifiable in a country with such high levels of sexual violence and amounts to discrimination against women and children, who are predominantly the victims of such offences.

81. Given the high levels of sexual violence in South Africa, the state must provide the best protection it can. It is submitted that one of the ways in which to further this is to exclude all sexual offences from any prescription time periods.


SEEHAAM SAMAAI

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Cape Town on 28/09/16, 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

Mandivavarira Mudarikwa
Commissioner of Oaths
Practising Attorney
Legal Resources Centre
54 Shortmarket Street
3rd Floor Greenmarket Place
Cape Town

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

("the Trustees")

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

Name: JENNIFER WILLIAMS
Practising Attorney
WOMEN'S LEGAL CENTRE
7th Floor, Constitution House
124 Adderly Street
Cape Town 8001

SERTIFIKAAT/CERTIFICATE
GESERTIFISEER AS 'N FOTOKOPIA/AFDRUK VAN 'N DOKUMENT
WAT IN DIE KANTOOR BEWAAR WORD.
CERTIFIED AS A PHOTOCOPY OF A DOCUMENT FILED IN
THIS OFFICE
[Signature]
MEESTER VAN DIE HOE HOF/MASTER OF THE HIGH COURT
MEESTER SE KANTOOR KAAPSTAD/MASTERS OFFICE CAPE TOWN

MASTER OF THE HIGH COURT
CAPE TOWN
2009-04-03
KAA PST/D
MEESTER VAN DIE HOE HOF



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[Handwritten initials: MS, YTC, HM, AT, etc.]

TABLE OF CONTENTS

1. INTERPRETATION.....	2
2. RECORDAL.....	4
3. CREATION OF TRUST.....	5
4. PURPOSE AND OBJECTS OF THE TRUST.....	5
5. GUIDING PRINCIPLES AND NATURE OF THE TRUST.....	7
6. TRUSTEES.....	7
7. APPLICATION OF TRUST FUNDS.....	9
8. SECURITY DISPENSED WITH.....	11
DECISIONS OF THE TRUSTEES AND PERFORMANCE OF THEIR DUTIES.....	11
10. POWERS OF TRUSTEES.....	13
11. DISPUTE RESOLUTION.....	18
12. BOOKS OF ACCOUNT.....	19
13. LOSSES.....	20
14. LEGAL PROCEEDINGS.....	21
15. TERMINATION OF TRUST.....	21
16. NOTICES AND GENERAL.....	21
17. AMENDMENT OF TRUST DEED.....	22
18. ACCEPTANCE.....	22

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

Name: Jennifer Williams
 Practising Attorney
 WOMEN'S LEGAL CENTRE
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 Cape Town 8001

1. 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 Coriaan De Villiers;
- 1.3.6 "initial trustees" means:

- 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 "trust assets" means all income and capital of the trust and shall include:-
 - 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, including without restricting the generality of the foregoing, any right of whatsoever nature in or to 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;

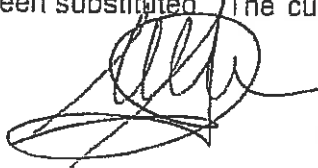

- 1.3.11 "WLC" means the Women's Legal Centre.

WLC  *K* *HM* *ATC* *mm*


- 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.
- 1.8 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.

2. 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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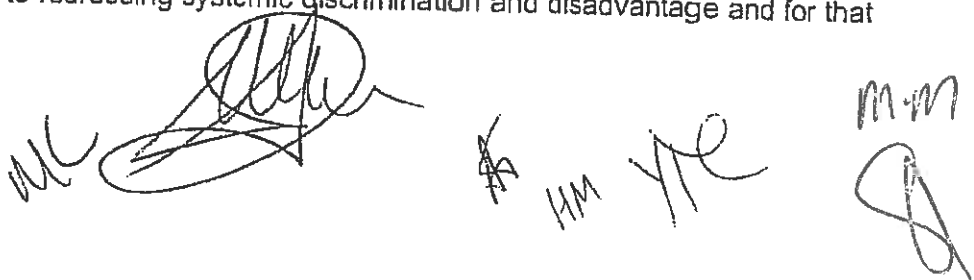
to make various amendments to the WLC Trust and accordingly have executed this amended WLC Trust without altering the philosophy, purpose and objects of the WLC Trust as established by the initial trustees.

3. CREATION OF TRUST

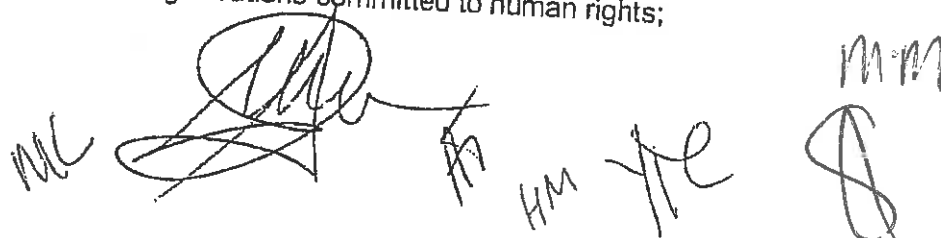
- 3.1 A trust is hereby constituted and shall be known as the "Women's Legal Centre Trust".
- 3.2 The initial capital of the trust consisted of R100.00 (one hundred Rand) which the Founder donated. The Trustees hereby accept such donation, subject to the terms and conditions of this trust deed.
- 3.3 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 Trustees 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:

The block contains four handwritten signatures in black ink. From left to right: a signature that appears to be 'WLC' with a large flourish; a signature that is mostly illegible but seems to start with 'M'; a signature that appears to be 'HM'; and a signature that appears to be 'M-M' with a large flourish.

- 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**

- 5.1 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.

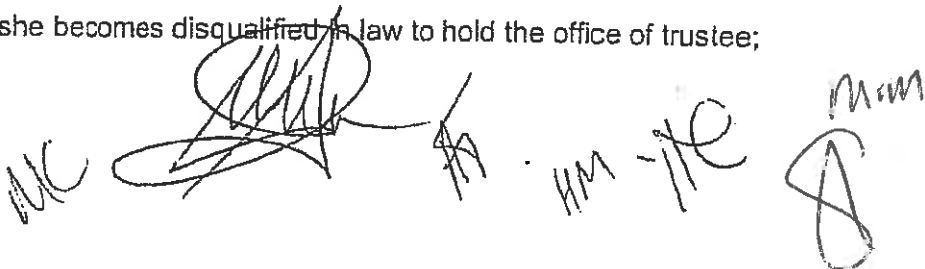
6.5 A trustee shall cease to hold office if:-

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 in law 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.
- 6.8 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.
- 6.9 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.

7. 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.

7.3 Subject to 7.2 above, the Trustees shall have the power, in their sole 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;

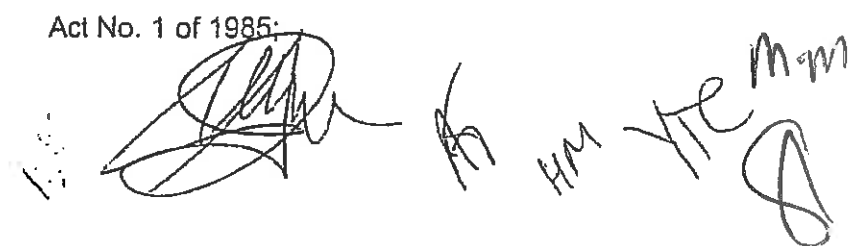
7.3.3 to determine when the trust capital or net income or any portion thereof shall be applied, expended, paid or used in any manner whatsoever towards the furtherance of the purposes and object of the trust;

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;



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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.

7.4 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.

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- 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 kept 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 trust and 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;

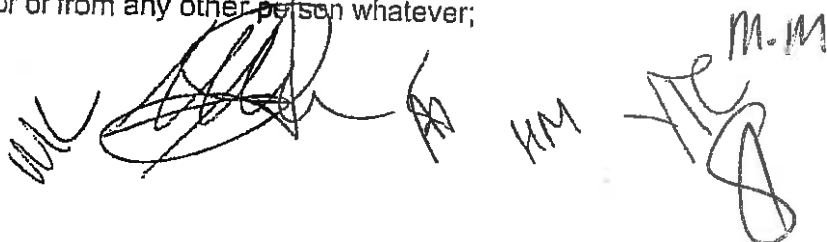
- 10.3.2 to enter into any contracts and execute any documents by or on behalf of the trust, for the purpose of giving effect to the objectives of the trust;
- 10.3.3 to buy or sell (by public auction, private treaty or otherwise) movable, immovable or incorporeal property of whatever nature, and to 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

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;
- 10.3.9 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;
- 10.3.19 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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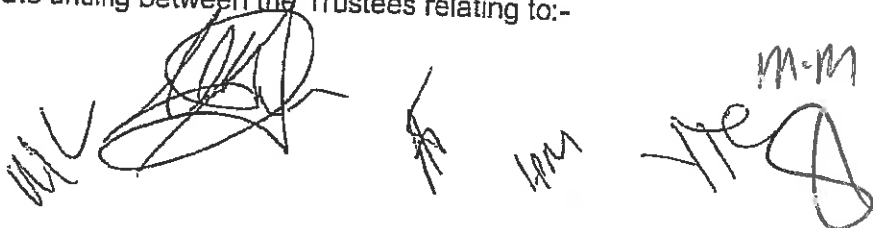
- 10.4.5 the Trustees may not cause the trust to acquire immovable property solely for letting purposes nor may the Trustees engage in any trading operations or speculative transactions, including inter alia, ordinary trading operations in the commercial sense, speculative transactions, dividend stripping activities as well as letting property on a systematic or regular basis. Notwithstanding the foregoing 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;
- 10.4.8 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:-

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- 12.1.1 the interpretation or application of this agreement;
- 12.1.2 the proper attainment of the purpose and objects of the trust;
- 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.
- 12.6 The mediator and the arbitrator in making their decisions shall have due regard to and shall be guided by the principles set out in clause 5 above.

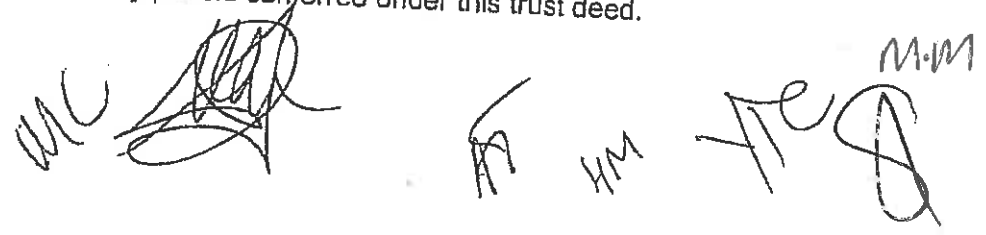
13. BOOKS OF ACCOUNT

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- 13.1 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.
- 13.2 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.
- 13.3 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.
- 16.2 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.
- 16.3 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

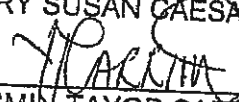
The first Trustees, by their signature hereto, undertake to discharge their duties in terms of this trust deed and to carry out the terms and conditions herein contained.

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 1 MARCH 2003 Place CAPE TOWN

Signature




MARY SUSAN CAESAR


YASMIN TAYOB CARRIM





LAM. M.M


[Handwritten signature]

LEBOGANG TEMPERANCE
MALEPE

[Handwritten signature]

HAPPY MASONDO

[Handwritten signature]

ALISON RACHELLE TILLEY

MC

[Handwritten initials]

m-m
[Handwritten signature]



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)

Nc: IT 3486/98

Hiermee word gesertifiseer dat /

This is to certify that

NASREEN RAJAB

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

MICHELLE ANN CRYSTAL

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

CAROL KHOLEKA ZAMA

(Identiteitsnommer / 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),

TEBOHO BASETSANA MOLEBATSI

(Identiteitsnommer / Identity Number: 760111 0404 08 2) en / and

SHEREEN MILLS

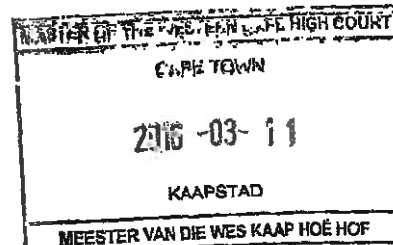
(Identiteitsnommer / Identity Number: 620305 0154 08 7)

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

dag van
day of



Signature

**ASSISTENT MEESTER
ASSISTANT MASTER**

T/E

Handwritten initials and signatures in the bottom right corner.

RESOLUTION OF THE WOMEN'S LEGAL CENTRE TRUST

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

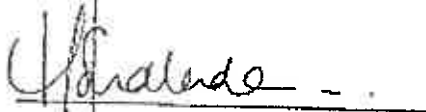
1. The Trustees on behalf of the Trust will bring an application to intervene as *amicus curiae* in the matter of **NICOLE LEVENSTEIN, PAUL DIAMOND, GEORGE ROSENBERG, KATHERINE ROSENBERG, DANIELA McNALLY, LISA WEGNER, SHANE ROTHQUEL AND MARINDA SMITH AND SIDNEY LEWIS FRANKEL & TWO OTHERS**, in the High Court of South Africa, Gauteng Local Division, Johannesburg, under case number 29573/16 where an application has been brought to the Court to challenge Section 18 of the Criminal Procedure Act 71 of 1977 ("CPA") as being unconstitutional because of the bar that Section 18 of the CPA imposes on the institution of criminal proceedings. The Applicants, now adults, who were victims of sexual offences, wish to institute criminal proceedings against the Respondent, but cannot do so because it occurred more than 20 years ago. The Trust will make submissions in relation to the high levels of violence against women and (girl) children in South Africa and the duties of the state in respect thereof, the impact of Section 18 of the Criminal Procedure Act, read with the Criminal Law, (Sexual Offences and Related Matters) Amendment Act 32 of 2007, on women and girl children in particular; and the obligations of the state as outlined in the relevant regional and international legal instruments.

2. The Trustees hereby delegate authority to Seehaam Samaai, who is the Director and an admitted attorney employed as such at the Women's Legal Centre, Cape Town:
 - a. 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

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- c. To take all necessary steps on behalf of the Trust to advance arguments in the application.

Dated at JOHANNESBURG this 28th day of SEPTEMBER 2016.



Nasreen Rajab-Budlender

(Chairperson of the Women's Legal Centre Trust)

M-M



SS4



WOMEN'S LEGAL CENTRE

CAPE TOWN: 7th Floor, Constitution House, 124 Adderley Street, Cape Town, 8001, P O Box 5356, Cape Town, 8000
Tel: +27 (0) 21 424 5660 Fax: +27 (0) 21 424 5206
JOHANNESBURG: 9th Floor, OPH, 112 Main Street, Johannesburg, 2000
Tel: +27 (0) 11 339 1099 Fax: +27 (0) 11 331 0132
www.wlce.co.za

Your Ref: I Levitt/A CharalAmbous/MAT1643
Our Ref: SS/PB/sc

30th August 2016

IAN LEVITT ATTORNEYS
19th Floor, Sandton City Office Towers
Cnr Rivonia & 5th Street
Sandton

Per Email: angellike@ianlevitt.co.za

Dear Sir/ Madam

**RE: NICOLE LEVENSTEIN; PAUL DIAMOND; GEORGE ROSENBERG; KATHERINE ROSENBERG; DANIELA McNALLY, LISA WEGNER; SHANE ROTHQUEL; MARINDA SMITH / SIDNEY LEWIS FRANKEL / MINISTER OF JUSTICE & CORRECTIONAL SERVICES; DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT CASE NO: 29573/16**

1. The above matter refers.
2. We address you on behalf of our client, the Women's Legal Centre Trust ("the Trust").
3. The Trust is a juristic person created in terms of a Trust Deed dated 3 August 1998. A core objective of the Trust, as set out in its Trust Deed, is to advance and protect the human rights of all women and girls in South Africa, with a focus on women who suffer many intersecting forms of disadvantage. In so doing, the Trust seeks to contribute to redressing the systematic discrimination and disadvantage that women face. The high levels of gender based violence in society render women particularly vulnerable.

Trustees: Nasreen Rajab-Budlender (Chairperson), Penelope Parenzee, Kholeka Zama, Nicole Fritz, Basetsana Molebatsi, Michelle Huber
Patrons: Yasmin Carrim, Lebogang Malepe
Director: Seehaam Samaai
Attorneys: Hoodah Abrahams-Fayker, Stacey-Leigh Manoek, Jody-Lee Fredericks, Mosima Kekana
Candidate Attorney: Mamelio Matthews

4. The Trust fulfils its main object by giving legal assistance to women litigants free of charge and by making *amicus curiae* submissions in order to assist Courts in matters that concern women's rights and gender equality. To this end the Trust established the Women's Legal Centre ("WLC") in order to conduct public interest litigation including constitutional litigation to advance the human rights of women.
5. In accordance with this mandate, the Trust represented Ms Van Zyl, who successfully challenged the law of prescription that prevented survivors of child sexual abuse from claiming civil damages (*Van Zijl v Hoogenhout* 2001 (2) SA 93 (SCA)). The Trust was also admitted as an *amicus* in the matter of *Director of Public Prosecutions, Western Cape v Prins* 2012 (2) SACR 183 (SCA), which dealt with whether the absence of a penalty clause rendered certain sexual offences contained in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 ("the Sexual Offences Act) ineffective.
6. In terms of Rule 16(A) of the Rules of the High Court "*any person interested in any matter before the Court may, with the written consent of all the parties in the matter before the Court, be admitted therein as an amicus curiae upon such terms and conditions and with such rights and privileges as may be agreed upon in writing with all the parties before the Court or as may be directed by the Chief Justice in terms of sub rule 3*".
7. Should the High Court grant the application for direct access, the Trust wishes to intervene in the matter as an *amicus curiae*. In doing so, the Trust will not repeat any matter set forth in the arguments of the other parties. Rather it will raise new contentions which may be useful to the Court in the determination of the issues before it. The Trust will make submissions in relation to:
 - a. The high levels of violence against women and (girl) children in South Africa and the duties of the state in respect thereof,
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 - c. The obligations of the state as outlined in the relevant regional and international legal instruments.

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8. We request your consent by no later than 5th September 2016 to the Trust intervening as *amicus curiae*, conditional upon the application for direct access being granted, in order to make written submissions and oral submissions, should the Court so direct.

Yours faithfully


Seeham Samaai
Women's Legal Centre

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WOMEN'S LEGAL CENTRE

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www.wlce.co.za

Your Ref: **B Gundelfinger/clhm**
Our Ref: **SS/BP/sc**

30th August 2016

Billy Gundelfinger Attorneys
Cor Grant Avenue
Norwood
Johannesburg
2192

billy@gundelfinger.com

Dear Sirs

**RE: NICOLE LEVENSTEIN; PAUL DIAMOND; GEORGE ROSENBERG; KATHERINE ROSENBERG; DANIELA McNALLY, LISA WEGNER; SHANE ROTHQUEL; MARINDA SMITH / SIDNEY LEWIS FRANKEL / MINISTER OF JUSTICE & CORRECTIONAL SERVICES; DIRECTOR OF PUBLIC PROSECUTIONS
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Attorneys: Hoodah Abrahams-Fayker, Stacey-Leigh Manoek, Jody-Lee Fredericks, Moslima Kekana
Candidate Attorney: Mamello Matthews

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Yours faithfully
Seehaan Samaal


Women's Legal Centre

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Your Ref:
 Our Ref: **SS/BP/sc**

30th August 2016

Minister of Justice and Correctional Services
 c/o Office of the State Attorney
 12th Floor, North State Building
 95 Albertina Sisulu Street
 Johannesburg

Per Email: Ministry@justice.gov.za

Dear Sir/ Madam

**RE: NICOLE LEVENSTEIN; PAUL DIAMOND; GEORGE ROSENBERG; KATHERINE ROSENBERG; DANIELA McNALLY, LISA WEGNER; SHANE ROTHQUEL; MARINDA SMITH / SIDNEY LEWIS FRANKEL / MINISTER OF JUSTICE & CORRECTIONAL SERVICES; DIRECTOR OF PUBLIC PROSECUTIONS
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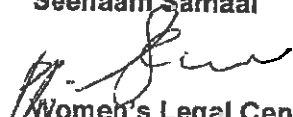
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Yours faithfully
Seehaam Samaai



Women's Legal Centre



SS7



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Your Ref:
Our Ref: **SS/BP/sc**

30th August 2016

**Director of Public Prosecutions
Innes Chambers
Cnr Pritchard & Kruis Street
Johannesburg**

Per Email: achauke@npa.gov.za

Dear Sir/ Madam

**RE: NICOLE LEVENSTEIN; PAUL DIAMOND; GEORGE ROSENBERG; KATHERINE ROSENBERG; DANIELA McNALLY, LISA WEGNER; SHANE ROTHQUEL; MARINDA SMITH / SIDNEY LEWIS FRANKEL / MINISTER OF JUSTICE & CORRECTIONAL SERVICES; DIRECTOR OF PUBLIC PROSECUTIONS
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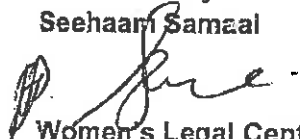
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Yours faithfully
Seehaan Samraal



Women's Legal Centre



Sakeena Corner

From: Kamal Natha <kamal@gundelfinger.com>
Sent: 20 September 2016 03:31 PM
To: Sakeena Corner
Cc: Billy Gundelfinger; cheryl@gundelfinger.com; kazeem@law.co.za
Subject: LEVENSTEIN AND 7 OTHERS v FRANKEL

Billy Gundelfinger

ATTORNEY-AT-LAW

E-MAIL TRANSMISSION

DATE: 20 SEPTEMBER 2016

TO: THE WLCE

ATTENTION: SAKEENA CORNER

Dear Madam

1. Your e-mail letter dated the 30th August 2016 refers.
2. Your request as set out therein is noted.
3. We require you to advise precisely what evidence you intend placing before the Court relating to the Constitutionality of Section 18 of the Criminal Procedure Act, in order for our client to consider your request.

Yours faithfully
Kamal Natha
Senior Associate

The information in this E-Mail is confidential and may be legally privileged. The contents may not be disclosed or used by anyone other than the addressee. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. Billy Gundelfinger cannot accept responsibility for the accuracy or completeness of this E-Mail as it has been transmitted over a public network. If you suspect that the E-Mail may have been intercepted or amended, please call the sender. When addressed to our clients, any opinion or advice contained in this E-Mail is subject to our terms of business.

BILLY GUNDELFINGER
91 Iris Road, Norwood, 2192 Johannesburg, South Africa
P.O. Box 95165, Grant Park 2051
Tel: 011-728-7571 (International: 2711-728-7571)
Fax: 011-728-7597 (International: 2711-728-7597)

SS10

Sakeena Corner

From: Van Schalkwyk Johannes <JohVanSchalkwyk@justice.gov.za>
Sent: 23 September 2016 10:30 AM
To: Sakeena Corner
Cc: Sikunyana Zizipho
Subject: RE: NICOLE LEVENSTEIN & 7 OTHERS // SIDNEY LEWIS FRANKEL & 2 OTHERS
Importance: High

Consent granted.

Kind regards



the doj & cd
Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Johan van Schalkwyk

B.JURIS(NWU);L.L.B(UP)
Senior Assistant State Attorney (P45)
State Attorney: Johannesburg
Tel: (011) 330 7655
Cell: 071 401 6235
Fax: 086 642 0970
JohVanSchalkwyk@justice.gov.za

From: Sakeena Corner [<mailto:Sakeena@wlce.co.za>]
Sent: 21 September 2016 02:45 PM
To: Motsoko Matome; Van Schalkwyk Johannes
Cc: Bronwyn Pithey
Subject: RE: NICOLE LEVENSTEIN & 7 OTHERS // SIDNEY LEWIS FRANKEL & 2 OTHERS

Dear Sir

We refer to your email of the 20th instant, and wish to advise that we are still awaiting a response from Mr. Van Schalkwyk herein.

Regards
Sakeena

From: Motsoko Matome [<mailto:MMotsoko@justice.gov.za>]
Sent: 20 September 2016 09:51 AM
To: Sakeena Corner; Van Schalkwyk Johannes
Cc: Bronwyn Pithey
Subject: RE: NICOLE LEVENSTEIN & 7 OTHERS // SIDNEY LEWIS FRANKEL & 2 OTHERS

MM

Good morning