

/

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: **CCT 13/20**

In application for admission as *amicus curiae*:

NASREEN RAJAB-BUDLENDER

NOZIZWE SILINDILE VUNDLA

CAROL KHOLEKA ZAMA

PENELOPE JOY PARENZEE

NICOLE LOUISE FRITZ

Acting in their capacity as

**THE TRUSTEES FOR THE TIME BEING OF THE WOMEN'S
LEGAL CENTRE TRUST**

Applicant

In the matter between:

JONATHAN DUBULA QWELANE

Applicant

and

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

**NOTICE OF APPLICATION FOR ADMISSION AS *AMICUS CURIAE* IN TERMS OF
RULE 10(4)**

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

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

PLEASE TAKE NOTICE FURTHER that the affidavit of **SEHAAM SAMAAI** and the annexures thereto will be used in support of this application.

PLEASE NOTICE FURTHER that the applicant has appointed the offices of the Women's Legal Centre care of Cliff Dekker Hofmeyer 1 Protea Place corner of Fredman and Protea Place Sandton Johannesburg as the address at which the applicant will accept notice and service of all process and documents in these proceedings.

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

- a. Notify the Women's Legal Centre Trust on or before **31 March 2020** that you intend to do so;
- b. Appoint an address within 25 kilometres of the office of the Registrar at which you will accept notice and service of all documents in the proceedings; and
- c. Within 15 days of notifying the Women's Legal Centre Trust of your intention to oppose the application, lodge your answering affidavit, if any, together with any relevant documents, which may include supporting affidavits.

TAKE NOTICE FURTHER that if no notice of intention to oppose is given, the Registrar will be requested to place the matter before the Chief Justice to be dealt with in terms of Rule 11(4).

DATED at Cape Town on this the 25th day of March 2020.



WOMEN'S LEGAL CENTRE

Attorneys for the application for admission
as *amicus curiae*

Tel: 021 424 5660

Ref: C May / B Pithey

Email: Charlene@wlce.co.za /

Bronwyn@wlce.co.za

CLIFF DEKKER HOFMEYER

Correspondent attorneys for the Applicant
1 Protea Place Corner Fredman and Protea
Place Sandton Johannesburg

Tel: 011 562 1177

Email: Imraan.abdullah@cdhlegal.com

Ref: I Abdullah

TO: The REGISTRAR OF THE CONSTITUTIONAL COURT
Mr Kgwadi Makgakga
Makgakga@concourt.org.za

TO: JURGENS BEKKER ATTORNEYS

Attorneys for the Applicant
22 Plantation Road
Oriel
JOHANNESBURG
Tel: 011 622 5472 / 011 622 5545 / 011 622 5524 / 011 622 5523
Fax: 011 622 5482
Email: jurgens@jurgensbekker.co.za / megan@jurgensbekker.co.za /
louis@jurgensbekker.co.za / Andrew@jurgensbekker.co.za
Ref: ACE Boemer/Q4/AB165

Service by e-mail

AND TO: BOWMAN GILFILLAN

Attorneys for the First Respondent
11 Alice Lane
Sandton
JOHANNESBURG
Tel: 011 669 9352 / 011 669 9395 / 011 669 9000
Fax: 011 669 9001
Email: robert.legh@bowmanslaw.com / info-jhb@bowmanslaw.com /
tholinhlanhla.gcabashe@bowmanslaw.com / mandisi.rusa@bowman.co.za
Ref: M Rusa/2000647

Service by e-mail

AND TO: STATE ATTORNEY, PRETORIA

Attorneys for the Second Respondent
SALU Building
316 Thabo Sehume Street
PRETORIA
Tel: 012 309 1500 / 012 309 1502
Fax: 012 309 1649
Email: stateattorneypretoria@justice.gov.za / RSebelemetsa@justice.gov.za
Ref: R Sebelemetsa

Service by e-mail

AND TO:

WEBBER WENTZEL

Attorneys for the Psychological Society of South Africa

90 Rivonia Road
Sandton
Tel: 011 530 5875
Fax: 011 530 6875
Email: asmita.thakor@webberwentzel.com
Ref: A Takor / 2295344

Service by e-mail

**AND TO:
ENS AFRICA**

Attorneys for the South African Holocaust and Genocide Foundation
129 Rivonia Road
Sandton, Johannesburg, 2196
Email: amosajee@ens.com
Ref: A Moosajee

Service by e-mail

**AND TO:
FREEDOM OF EXPRESSION INSTITUTE**

18 Cedar Avenue
Auckland Park
Johannesburg
2092
Email: fxi@fxi.org.za

Service by e-mail

**AND TO:
LAWYERS FOR HUMAN RIGHTS**

Attorneys for the Southern Africa Litigation Centre
4th Floor Heerengracht Building
87 De Korte Street (Cnr Melle)
Brammfontein
Tel: 011 339 1960
Fax: 011 339 2665
Email: Wayne@lhr.org.za / Sanja@lhr.org.za

Service by e-mail

**AND TO:
RUPERT CANDY ATTORNEYS INC**

Attorneys for the Nelson Mandela Foundation trust

6

Block 4 Rivonia Office Park
150 Rivonia Road
Sandton
Tel: 010 035 0867
Email: Rupert@rupertcandy.co.za

Service by e-mail

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**MINISTER OF JUSTICE AND CORRECTIONAL
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Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

^E
SEHAAM SAMAAI
_A



do hereby make oath and say:

1. I am the Director of the Women's Legal Centre Trust ("**WLC Trust**"), situated at 7th floor Constitution House, 124 Adderley Street, Cape Town.
2. The WLC Trust is a registered non-profit organisation with registration number 032-685-NPO and a registered public benefit organisation with tax exemption number 930-00-242. The Trust Deed, as amended, is attached as Annexure "**SS1**". A copy of the Master's Certificate authorising the present Trustees to act on behalf of the Trust is annexed as "**SS2**".
3. I am duly authorised to institute these proceedings and to depose to this affidavit on behalf of the WLC Trust. I attach a resolution adopted by the WLC Trust Board of Trustees on 17 March 2020 marked as annexure '**SS3**'.
4. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise indicated by statement or context, fall within my personal knowledge.



INTRODUCTION

5. The WLC Trust applies for leave to be admitted as an *amicus curiae* in terms of Rule 10 of the Rules of this Court.
6. On 12 February 2020, the South African Human Rights Commission (“SAHRC”) lodged a notice of appeal in terms of rule 16(2) appealing the order and judgment of the Supreme Court of Appeal handed down on 29 November 2019 in the matter of *Qwelane v South African Human Rights Commission and another*. The Psychological Society of South Africa (*amicus curiae* in the courts *a quo*) applies for conditional leave to appeal (to the extent that it may be necessary) against the part of the Supreme Court of Appeal order that dismissed the complaint by the SAHRC in the Equality Court.
7. If admitted as an *amicus curiae* in the proceedings before this Court, the WLC Trust requests the leave of this Court to file written submissions, and to advance brief oral argument at the hearing on 7 May 2020.
8. In this affidavit, I deal firstly with WLC Trust’s work, its interest in the matter and why it should be admitted as an *amicus curiae*. I then provide a broad outline of the nature of the legal submissions WLC Trust intends to advance and explain why these submissions will be useful to the Court and different from the submissions of the parties and *amici curiae*.

THE WLC TRUST’S INTEREST IN THIS MATTER

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

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

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

supports, the particular needs of women who are survivors of violence, and which provides optimal services and protection.

- 13.2. Its core objectives include ensuring that there is a legislative framework to address violence against women which is compliant with international and constitutional obligations; ensuring that the state has implementation plans in place to action legal frameworks and policies; and holding the state and private entities accountable in the implementation of laws and policies, and in the development of due diligence standards relating to violence against women.

14. The WLC Trust did not participate in the proceedings in the courts *a quo*. It became apparent, however, upon consideration of the order and judgment of the Supreme Court of Appeal, that the WLC Trust's perspective and focus would be an important and novel contribution to the matter.

15. The prevention and redress of violence against women through the law and the pursuit of equality for women is central to the WLC Trust's mandate and daily work through the WLC. I therefore submit that the WLC Trust has a clear and substantial interest in these proceedings and is well-placed to assist the Court in its consideration of the matter before it.

16. The WLC Trust is conscious of its role as *amicus curie*. It will not repeat the issues raised by the other parties or *amici* but rather intends to raise new contentions relevant to the issues before the Court.

CONSENT OF THE PARTIES

17. On 9 March 2020 the WLC Trust addressed letters to the applicant and respondents' attorneys requesting the parties' consent to the WLC's admission as an *amicus curiae*. This letter is Annexure "SS4".
18. On 19 March 2020 both respondents, the South African Human Rights Commission and the Minister of Justice and Correctional Services, sent correspondence indicating their consent to the Trust's admission as *amicus curiae*. I attach copies of these letters marked "SS5" and "SS6".
19. On 19 March 2020, the WLC addressed further correspondence to the applicant requesting a response to our request for consent to be admitted. We requested that the applicant respond by 25 March 2020 failing which we would consider his silence to be acquiesce to our admission as *amicus curiae*. This letter is Annexure "SS7."
20. We have not received a response from the applicant to date save for an acknowledgment of receipt. In light of the correspondence, we consider his silence to indicate that he has no objection to the WLC Trust's admission as an *amicus* in the matter.

THE WLC'S POSITION AND INTENDED SUBMISSIONS

21. Women are one of the many groups whose structural disadvantage and vulnerability to violence is embedded in and sustained by the use of harmful, hurtful or hateful speech. The WLC seeks to draw into focus the impact of speech on women as a vulnerable group in South African society.

22. Women in South Africa are subjected to misogynistic, sexist or gendered speech daily at different intervals and different forms from school, to the home, the community, the workplace, public places as well as online.
23. Speech of this nature is an instrument of oppression, inequality and a driver of violence against women:
 - 23.1. It fosters and entrenches the attitudes, cultures, institutions and systems that sustain inequality and legitimise violence against women.
 - 23.2. It seeks to reinforce patriarchal control over women by instilling fear and insecurity, and by humiliating and degrading.
 - 23.3. It is a violent tool used to enforce and reinforce discrimination and hate.
24. Domestic legislation and case law, as well as regional and international instruments, recognise that misogynistic language and gendered speech form part of the continuum of violence against women and that misogynistic speech violates women's rights to equality, dignity and freedom and security of the person.
25. As a starting point, the WLC Trust's policy position is that in the context of South Africa, misogynistic speech constitutes hate speech as envisaged by section 16(2)(b) and (c) of the Constitution because this kind of speech directed at one or many women necessarily advocates hatred towards women and incites harm against women, or incites imminent violence against women.
26. The WLC Trust understands, however, that this case is about the constitutionality of section 10 of the Promotion of Equality and Prevention of Unlawful

Discrimination Act 4 of 2000 (“PEPUDA”). In respect of this debate, the WLC Trust will argue that:

- 26.1. PEPUDA is the constitutionally mandated legislation to give effect to the right to equality in section 9 of the Constitution. Its preamble specifically refers to the legacy of patriarchy and the need to progressively realise the value of non-sexism. It accepts that systemic inequality undermines our constitutional democracy.
- 26.2. PEPUDA’s overarching aim is to ensure a society in which women fully enjoy all rights and freedoms, experience *de facto* equality and also equality in terms of outcomes.
- 26.3. Section 10 of PEPUDA regulates the use of speech that undermines these objectives. It prohibits speech that can reasonably be construed to demonstrate a clear intention to be hurtful, harmful, incite harm to women, or promote hatred against women.
- 26.4. Misogynistic speech by its very nature undermines women’s right to equality. It does so in respect of the specific words addressed to an individual, but also by contributing to the culture of disrespect, violence and oppression of women as a group.
- 26.5. The State has a constitutional duty to address systemic inequality against women and protect women from violence in all its forms. This duty must include regulating gendered or misogynistic speech that is hurtful, harmful, hateful or violent.

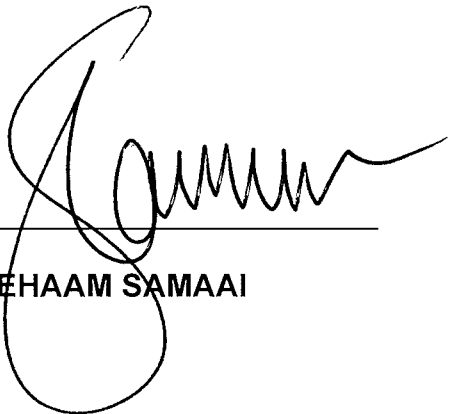
- 26.6. The WLC will argue that the regulation of misogynistic speech in order to promote equality is constitutionally permissible and appropriate in the context of South Africa.
- 26.7. If this Court finds that the provision is not justifiable under the limitations clause, and that section 10(1) must be declared unconstitutional and struck down, the WLC will urge this Court to reject the narrow reading-in included in the order of the Supreme Court of Appeal.
- 26.8. The SCA order, in effect, prevents the regulation of speech that undermines equality outside the specific categories in section 16(2) of the Constitution. This approach ignores the objectives of PEPUDA, but also has the potential to erode protections for women under other legislation that prohibits or regulates speech. For example, the Domestic Violence Act offers protection from a wide range of types of domestic violence, including physical, sexual, emotional, verbal, psychological, and economical abuse.
- 26.9. Any order, should make clear that, in principle, it is both legitimate and appropriate for the state to regulate speech that undermines equality or threatens the rights of women.
27. The WLC considers that these submissions highlighting the impact of misogynistic speech on women are important to the determination of the issues and that its submissions will assist the Court. None of the other parties or *amici* have advanced arguments on the impact of harmful speech on women's right to equality as individuals and a group. The WLC's submissions will be different to those already submitted to the Court by the parties.

28. The WLC has not had an opportunity to view the record of proceedings, and requests this Court's indulgence should it wish to make additional submissions in respect of issues arising from the record.

CONCLUSION

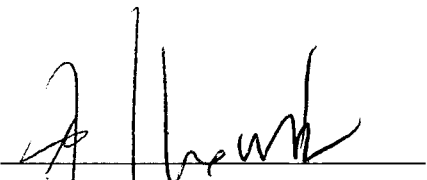
29. In the circumstances, the WLC submits that it has an interest in the issues and that it is able to assist the Court in submissions that are important to the Court's assessment and novel in relation to the parties.

30. We pray that the Court grant the relief in the notice of motion.



SEEHAAM SAMAAI

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at *CAPE TOWN* on this the *25th* day of *MARCH* 2020, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Chandré Brown
PRACTISING ADVOCATE
COMMISSIONER OF OATHS
5TH FLOOR HUGUENOT CHAMBERS
40 QUEEN VICTORIA STREET
CAPE TOWN

AMENDED DEED OF TRUST

in respect of

THE WOMEN'S LEGAL CENTRE TRUST

entered into by

MARY SUSAN CAESAR

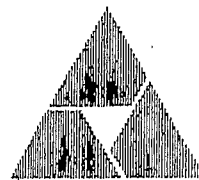
YASMIN TAYOB CARRIM

LEBOGANG TEMPERANCE MALEPE

HAPPY MASONDO

ALISON RACHELLE TILLEY

("the Trustees")



MALLINICKS
ATTORNEYS

Telephone +27 21 410 2200
Fax +27 21 410 9000

3rd Floor Granger Bay Court
Beach Road, V&A Waterfront
Cape Town 8001

Handwritten initials and marks: "K" (top left), "AM" (middle left), "JL" (bottom left), "AT" (bottom center), "K" (bottom right), and "S" (bottom right).

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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:

Handwritten signatures of the initial trustees, including initials 'MC', a large signature, 'HS', 'HMA', 'VTC', and a signature with a circled 'S'.

- 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.

MC  *AM* *ME* 

- 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

MAC [Signature] HM ME 8

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

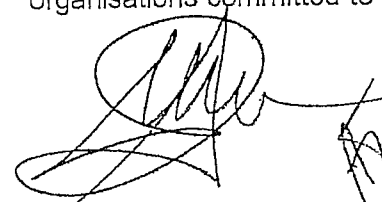
- 3.1 A trust is hereby constituted and shall be known as the "Women's Legal Centre Trust".
- 3.2 The initial capital of the trust consisted of R100.00 (one hundred Rand) which the Founder donated. The Trustees hereby accept such donation, subject to the terms and conditions of this trust deed.
- 3.3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

Handwritten signatures and initials are present at the bottom of the page, including a large signature in the center, initials 'MM' to the right, and other scribbles on the far right.

- 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;

MAL  HM JLE b 8

- 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

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;

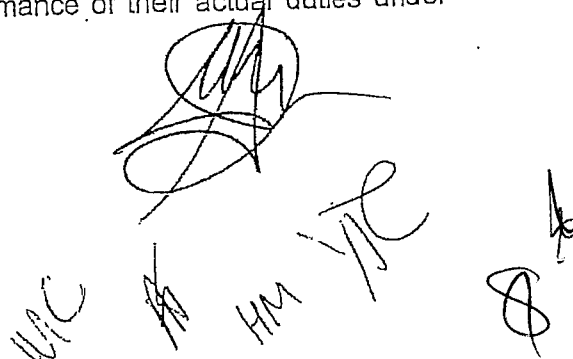
6.5.4 he or she becomes disqualified in law to hold the office of trustee;

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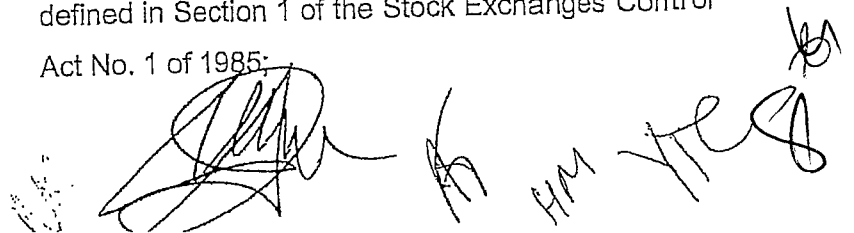
- 6.5.5 he or she is replaced as a trustee in accordance with the provisions of this trust deed
- 6.5.6 he or she is removed as a trustee by a resolution of two-thirds of the Trustees duly passed.
- 6.6 If a trustee wishes to apply for a position of employment at the Centre, she must resign prior to 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

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

10.3.7 to vary any investment made in terms hereof by realising the same and/or by substituting therefor any other investment which the Trustees are empowered in terms hereof to make;

10.3.8 to borrow money on such terms and conditions and at such interest and from such persons as the Trustees may determine, and either without security or upon such security over movable or immovable property as the Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any requisite instrument of debt and of any such security;

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;

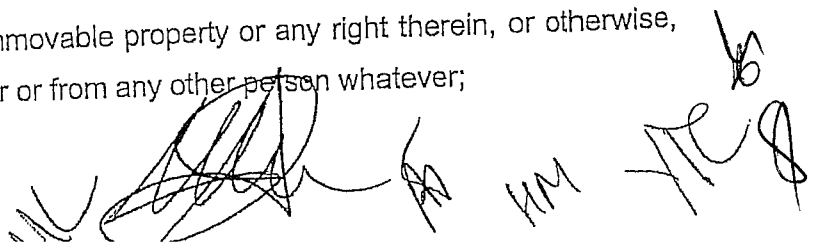
10.3.11 any asset acquired by way of donation, inheritance or bequest, may be retained or continued, in the form so acquired;

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.

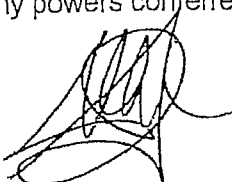
13.2 The Trustees shall cause the trust's books of account to be audited by the auditors and an annual income statement and balance sheet drawn within 6 (six) months after the year end reflecting the affairs of the trust for the year end and its assets and liabilities at the last day of the month of 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

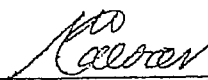
The provisions of this trust deed may from time to time be amended, altered, varied, added to and/or deleted at a meeting of the Trustees, by resolution signed in favour thereof by 75% (seventy five percent) of the Trustees then in office, and provided that 21 (twenty one) days notice of such meeting 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.

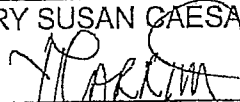
19. ACCEPTANCE

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.

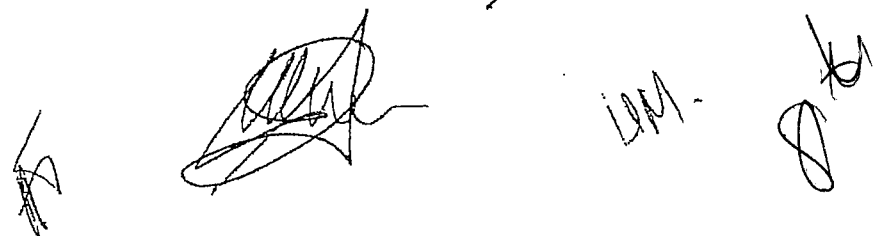
SIGNED BY THE PARTIES ON THE DATE AND AT THE PLACE AS INDICATED ALONGSIDE THEIR RESPECTIVE SIGNATURES, THE SIGNATORY WARRANTING HIS/HER AUTHORITY TO DO SO.

Date 1 MARCH 2003 Place CAPE TOWN Signature



MARY SUSAN CAESAR


YASMIN TAYOB CARRIM



[Handwritten Signature] 41

LEBOGANG TEMPERANCE
MALEPE

[Handwritten Signature]
HAPPY MASONDO

[Handwritten Signature]
ALISON RACHELLE TILLEY

[Handwritten initials: MC and #E]

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REPUBLIC OF SOUTH AFRICA

MAGTIGINGSBRIEF**LETTERS OF AUTHORITY**

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

No: IT 3486/98

"CGO2"
 42
 J246

Hiermee word gesertifiseer dat /

This is to certify that

NOZIZWE SILINDILE VUNDLA*(Identiteitsnommer / Identity Number: 760314 0300 08 2),***NASREEN RAJAB-BUDLENDER***(Identiteitsnommer / Identity Number: 761209 0199 08 9),***CAROL KHOLEKA ZAMA***(Identiteitsnommer / Identity Number: 771217 0284 08 0),***PENELOPE JOY PARENZEE***(Identiteitsnommer / Identity Number: 711221 0345 08 4) en / and***NICOLE LOUISE FRITZ***(Identiteitsnommer / Identity Number: 750111 0036 08 4)*

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

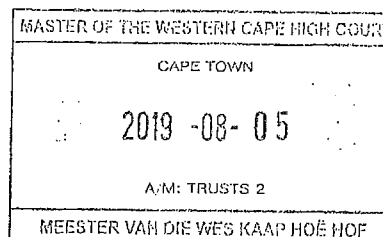
GEGEE onder my hand te KAAPSTAD op hede die 05 dag van Augustus 2019

GIVEN under my hand at CAPE TOWN this 05 day of August 2019

Signature

ASSISTENT MEESTER
ASSISTANT MASTER

T/E
 DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT




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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 **JONATHAN DUBULA QWELANE** and **THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION AND ANOTHER** under **case number CCT 13/2020** regarding the constitutionality of Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, and the impact of hate speech on women, especially in relation to violence against women.
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
 - c. To take all necessary steps on behalf of the Trust to advance arguments in the application

Dated at CAPE TOWN on this 17 day of MARCH 2020

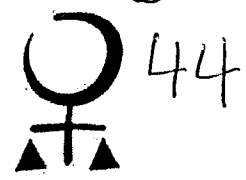


Penelope Parenzee

(Acting Chairperson of the Women's Legal Centre Trust)



113349



WOMEN'S LEGAL CENTRE

7th Floor Constitution House
124 Adderley Street
Cape Town
8001

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

Jurgens Bekker Attorneys
Attention: Andrew Boerner
jurgens@jurgensbekker.co.za

Bowmans
Attention Mandisi Rusa
Mandisi.rusa@bowmans.com

The State Attorney
stateattorneypretoria@justice.gov.za
vdhulam@justice.gov.za
rsebelemetsa@justice.gov.za

PER EMAIL

9 March 2020

Dear colleagues

QWELANE / SOUTH AFRICAN HUMAN RIGHTS COMMISSION (CCT13/2020)
WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AMICUS CURIAE

1. The above matter finds reference.
2. We act on behalf of the Women's Legal Centre Trust ("the Trust"), a non-profit public interest law centre that conducts public interest litigation and advocacy on matters concerning the protection and promotion of gender equality in South Africa. One of the core objectives 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, particularly women who suffer multiple intersecting forms of disadvantage.
3. The Trust intends to make application to the Constitutional Court to intervene in the above matter as *amicus curiae*. In compliance with Rule 10 of the Constitutional Court

Rules, the Women's Legal Centre writes to seek your consent to the said application. The Trust will not repeat the issues addressed in the arguments by the parties in the court *a quo*. Rather, the Trust will raise new arguments that may be useful to the Court in the determination of the matter.

4. The Trust was established over twenty years and has played an active role in advancing and litigating women's rights, and in particular on the issue of violence against women.
5. The Trust seeks to provide the Court with a feminist analysis of the issues before it as it relates to the nature and effect of violence on women in South Africa, the discrimination women face, and the impact of the hate speech on the lived realities of women. In understanding the complexities of violence against women in South Africa, and the vulnerable position that women occupy in a deeply unequal society, we submit that the issue of hate speech, and the constitutionality of section 10 of the Promotion of Equality and Prevention of Discrimination Act ("the Equality Act"), as it is currently before the Court, cannot be determined without evaluating the impact of discrimination and hate speech on women.
6. Our submissions will address:
 - 6.1 The nature, extent and impact of violence against women in South Africa, including an analysis of intersectionality, discrimination and violence. Violence against women implicates a number of women's constitutional rights, *inter alia*, equality, dignity, and the right to be free from all forms of violence. Discrimination and violence take multiple forms which constitutes a continuum of harm, and begins with language which is hurtful, harmful and/or advocates and perpetuates hatred. While we will argue that this type of language in and of itself constitutes hate speech, these verbal expressions may very often escalate into physically harmful behaviour. This continuum of harm from hurt to physical violence needs to be addressed in efforts to ensure the protection of women from violence. By the Equality Act recognising that continuum, we argue that section 10 constitutionally and appropriately seeks to address the prohibition of hurtful and harmful language before its manifestation into physical harm.
 - 6.2 The use of hate speech against women which serves to undermine, degrade, hurt and harm women, and which results in women being silenced, and effectively removed from substantive participation in both public and private spaces. We live



in a substantively unequal society; to adopt an objective approach, assuming equality between role players, perpetuates discrimination against women, effectively closing down safe spaces in their homes, community and society at large.

6.3 The constitutionality of section 10 of the Equality Act. We argue that section 16(2) of the Constitution includes speech that is hurtful to women on the basis of their gender, including emotional and psychological hurt and harm. A number of statutes recognise the role of discriminatory language and hate speech in the perpetration of violence and provide protection from language and behaviour that is hurtful and harmful. We are concerned that should the Supreme Court of Appeal decision be certified as correct by the Constitutional Court that the recognition of and the protection against hate speech and abuse in these statutes would no longer be available to protect and advance women's rights.

6.4 An analysis of the Objects of the Equality Act, the remedies available in the Equality Act, and alternate remedies available as they pertain to gendered hate speech

7. We therefore request your client furnish us with written consent for the Women's Legal Centre Trust to intervene as *amicus curiae* in the matter.
8. In the interest of avoiding any delays in the matter, we request that written consent be provided by email by close of business on Friday 13 March 2020.

We look forward to receiving your positive response.

Yours sincerely,



B Rithey and C May

PER: THE WOMEN'S LEGAL CENTRE



"SS5"
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Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

Docex: 298

316 Salu Building
Cnr Francis Baard & Thabo Sehume Str
Ground Floor
Entrance Thabo Sehume Street
Pretoria

Tel: (Switchboard): 012 309 1500
(Direct Line): 012 309 1623
(Cellphone): 071 870 2442
(Secretary): 012 309 1539

Fax (General) 012 309 1649/50
(Personal) 086 507 1910

19 MARCH 2020

Enquires: Mr R.J. SEBELEMETSA
Email: rsebelemetsa@justice.gov.za

My Ref: 0543/2020/Z64/jb
Your Ref:

WOMEN'S LEGAL CENTRE
07TH FLOOR CONSTITUTION HOUSE
124 ADDERLEY STREET
CAPE TOWN

Dear Madam

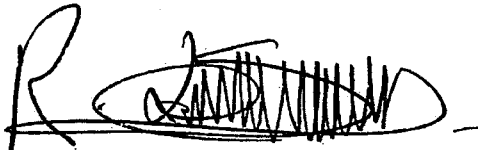
**RE: QWELANE & SOUTH AFRICAN HUMAN RIGHTS COMMISSION AND ANOTHER
(CCT 13/2020) WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AN
AMICUS CURIAE**

1. We refer to the above matter and your letter of the 09th March 2020.
2. We confirm acting on behalf of the Minister of Justice and Correctional Services ("the Second Respondent").

3. The Second Respondent doesn't object to your client been admitted as amicus curiae.

4. Trust you find the above in order.

Yours faithfully



**R J (JOSEPH) SEBELEMETSA
FOR THE STATE ATTORNEY (PRETORIA)**

CC: The Registrar of Concourt
Att: Mr Kgwadi Makgakga
Email: Makgakga@concourt.org.za /
mathiba@concourt.org.za

CC: Jurgens Bekker Attorneys
Att: Andrew Boerner
Email: Andrew@jurgensbekker.co.za

CC: Bowman Gilfillan Inc
Att: Mr Mandisi Rusa
Email: mandisi.rusa@bowmanslaw.com

CC: Rupert Candy Inc
Att: Mr Rupert Candy
Email: rupert@rupertcandy.co.za

CC: ENS Africa for South African Holocaust & Genocide Foundation
Att: Aslam Moosajee
Email: a.moosajee@ensafrika.com

CC: Freedom of Expression Institute
Att: Samkelo Mokhine
Email: Samkelom@fxi.org.za

CC: Lawyers For Human Rights
Att: Wayne Ncube
Email: Wayne@lhr.org.za





BOWMANS

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BOWMAN GILFILLAN

11 Alice Lane, Sandton, Johannesburg
PO Box 785812, Sandton, 2146, South Africa
T +27 11 669 9000 | F +27 11 669 9001
Docex 6 Johannesburg
E info-sa@bowmanslaw.com

www.bowmanslaw.com

Our Reference: M Rusa / 2000647
Direct Line: 011 669 9590
Email Address: mandisi.rusa@bowmanslaw.com
perusha.pillay@bowmanslaw.com

Your Reference:
Date: 19/03/2020

BY EMAIL

Women's Legal Centre

Attention: B Pithey / C May
Email address: bronwyn@wcle.co.za / charlene@wcle.co.za

CC: **Constitutional Court of South Africa**
Attention: Registrar of the Constitutional Court of South Africa
Email address: generaloffice@concourt.org.za

Cc: **Attorneys of Applicant**
Attention: Andrew Boerner
Email: Andrew@jurgensbekker.co.za

Cc: **Attorneys of Second Respondent**
Attention: Sebelemetsa Ramathiti
Email: rsebelemetsa@justice.gov.za

Cc: **Attorneys of First Amicus Curiae (South African Holocaust and Genocide Foundation)**
Attention: Aslam Moosajee
Email: amoosajee@ensafrika.com

Cc: **Attorneys of Second Amicus Curiae (Nelson Mandela Foundation)**
Attention: Rupert Candy
Email: rupert@rupertcandy.co.za

Cc: **Attorneys of Third Amicus Curiae (Freedom of Expression Institute)**
Attention: Samkelo Mokhine
Email: Samkelom@fxi.org.za

Cc: **Attorneys of Fourth Amicus Curiae (Psychological Society of South Africa)**
Attention: Asmita Thakor
Email: asmita.thakor@webberwentzel.com

Cc: **Attorneys of Fifth Amicus Curiae (Southern African Litigation Centre)**
Attention: Wayne Ncube
Email: Wayne@lhr.org.za

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors: RA Lesh (Chairman) | PM Modira (Deputy Chairman) | AJ Keop (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | JS Andropoulos | M Argusuthoo | J Augustyn | L Avivi | AM Barnes-Walsh | TL Beira | JM Bilew | CM Bowler | IL Brink | RM Carr | PM Carter | CN Cunningham | GH Damant | RA Davay | MEC Davids | JM de Hutton | D da Klerk | TC Dini | CR Douglas | HD Duffy | L Dyer | S Ebery | L Fleker | CS Franklin | KA Fulton | BJ Garven | TM Gcabeshe | DJ Geral | TJ Gordon-Grant | CB Green | S Greenwood-Norley | A Hele | AS Haris | P Hart-Devies | WJ Herold | PA Hirsch | JRM Irvine | JR Jarvis | JR Keapu | M Keop | CP Kennedy | KM Kem | ID Kikomen | JG Kruger | JP Kruger | R Ja Grange | R Labuschagne | T Laubscher | DA Lotter | L Ludick | J Lurie | LT Mabitikane | KS Makagane | M Makole | HW Mandlana | HL Manson | A McAlester | TP McDougall | JM McOmnel | MC Mofa | PI Modiga | TL Mongae | L Mongie | K Naicker | UEBU Naumann | X Nyali | MAJ Oppenreim | DM Phillips | AJ Pike | P Pillay | JD Prain | DM Pretorius | JL Power | MA Purchase | Y Ram | LV Raphulu | CL Reky | JS Ripley-Evans | COS Rodrigues | MS Rusa | GI Rushton | S Saffy | JW Sehl | U Sileasa - Khun | MY Sasi | CG Schefer | RZ Sheeh | BT Sibya | CEC Smith | EC Steyn | NL Swerdland | H Taylor | L Thahane | CFN Todd | CE Tucker | CL van Heerden | A van Niekerk | MR van Velden | RJ van Vooce | MG Vermeek | L Verster | OS Webb | DCJ Wessels | RS Wessels | JWL Westgate | EP Williams | HJ Wisenach | SG Wilson | SA Wood | KS Wright | DD Yvff
Senior Consultants: REW Burman | RA Cohen | JH Schlosberg | CL Valkin | PE Whelan
Group COO: RJ Smith | Group CFO: J Pöhl | Company Secretary: NL van Vuuren

KENYA MAURITIUS SOUTH AFRICA TANZANIA UGANDA ALLIANCE FIRM: ETHIOPIA



Dear Sirs

JONATHAN DUBULA QWELANE V SOUTH AFRICA HUMAN RIGHTS COMMISSION & ANOTHER (CASE NO: 13/20)

1. We refer to your letter dated 9 March 2020.
2. We have been instructed to unconditionally consent, in accordance with Rule 10(1) of the Constitutional Court Rules, to the Women's Legal Centre being admitted as an *amicus curiae* in the above matter.

Yours faithfully

P.P. Chubri

Bowman Giffilan
per: M. Rusa / P. Pillay-Shaik

A handwritten signature in black ink, appearing to be the initials "P.P." followed by a stylized flourish.

“(557)”

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WOMEN'S LEGAL CENTRE

7th Floor Constitution House
124 Adderley Street
Cape Town
8001

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

Jurgens Bekker Attorneys
Attention: Andrew Boerner
jurgens@jurgensbekker.co.za

PER EMAIL

19 March 2020

Dear Sir

QWELANE / SOUTH AFRICAN HUMAN RIGHTS COMMISSION (CCT13/2020)

WOMEN'S LEGAL CENTRE APPLICATION TO INTERVENE AS AMICUS CURIAE

1. We refer to the above matter and to our previous correspondence dated 9 March 2020.
2. We note that we have not received an acknowledgement of receipt of said correspondence nor a reply to our request in terms of Rule 10 of the Constitutional Court Rules.
3. Should we not receive a response from you by Wednesday 25 March 2020, we shall assume your consent to the WLC applying to be admitted as *amicus curiae* in the matter.
4. Given the current circumstances of social distancing we request that we serve our application on you electronically.


Yours sincerely,

B Pithey and C May

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

NPO Number: 032-685 NPO

PBO and Section 18A: 930 00 242

Vat Number: 419 025 3296 

Aretha

From: Aretha
Sent: 24 March 2020 11:17 AM
To: Andrew Boerner
Cc: Bronwyn; Charlene
Subject: RE: Qwelane / South African Human Rights Commission / Amicus Curiae request (CCT13/2020)

Dear Mr Boerner

We refer to our conversations below.

We await your further instructions.

Kind regards
 Aretha Louw

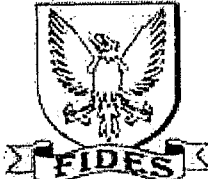
From: Andrew Boerner [mailto:Andrew@jurgensbekker.co.za]
Sent: 20 March 2020 03:47 PM
To: Aretha
Cc: Bronwyn; Charlene
Subject: RE: Qwelane / South African Human Rights Commission / Amicus Curiae request (CCT13/2020)

Dear Aretha,

Mr. Jurgens Bekker does not handle this matter.

I have dealt exclusively with this matter since 2009.

We shall take instructions and revert.

<p>Kind regards, Andrew Boerner Senior Associate</p> 	<p>JURGENS BEKKER ATTORNEYS</p> <p>22 Plantation Road Oriel Bedfordview</p>	<p>P.O. Box 2181 Johannesburg 2000</p>	<p>Tel: 011 622 5472/45 Fax: 011 622 5482 http://www.jurgensbekkerattorneys.co.za andrew@jurgensbekker.co.za</p>
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From: Aretha <aretha@wlce.co.za>
Sent: Friday, 20 March 2020 3:44 PM
To: Jurgens Bekker <Jurgens@jurgensbekker.co.za>; Andrew Boerner <Andrew@jurgensbekker.co.za>
Cc: Bronwyn <bronwyn@wlce.co.za>; Charlene <charlene@wlce.co.za>
Subject: RE: Qwelane / South African Human Rights Commission / Amicus Curiae request (CCT13/2020)

Dear Mr Boerner

Thank you for your email below.

