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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: 20382/15

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES	Applicant for Admission as Amicus Curiae

In the matter between:

THE LAW SOCIETY OF SOUTH AFRICA	First Applicant
LUKE MUNYANDU TEMBANI	Second Applicant
BENJAMIN JOHN FREETH	Third Applicant
RICHARD THOMAS ETHERREDGE	Fourth Applicant
CHRISTOPHER MELLISH JARRET	Fifth Applicant
TENGWE ESTATE (PVT) LTD	Sixth Applicant
FRANCE FARM (PVT) LTD	Seventh Applicant
And	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
THE MINISTER OF INTERNATIONAL RELATIONS AND CO-OPERATION	Third Respondent
And	
SOUTHERN AFRICAN LITIGATION CENTRE	Amicus Curiae

APPLICATION TO BE ADMITTED AS AN AMICUS CURIAE
AND TO ADDUCE EVIDENCE

PLEASE TAKE NOTICE that the Centre for Applied Legal Studies ("**CALS**") hereby makes application to the above Honourable Court for an order in the following terms:

1. The late filing of this application for admission as an *amicus curiae* is condoned;

2. CALS is admitted as an *amicus curiae* in the above proceedings in terms of rule 16A of the Uniform Rules of Court;

3. CALS is granted leave to:

   3.1. Submit written argument in the above matter;

   3.2. Present oral argument at the hearing of the above matter; and

   3.3. Adduce the evidence attached to the founding affidavit as annexures "**CALS1**" to "**CALS4**";

4. If any party wishes to introduce evidence in response to the evidence contained in annexures "CALS1" to "CALS4", it shall file its evidence within fifteen (15) days hereof;

5. Costs against any party that opposes this application;

6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **NOMONDE NYEMBE**, together with the annexures thereto, are filed together with this notice and will be used in support of this application.

TAKE NOTICE FURTHER that CALS has appointed the Legal Resources Centre as their legal representatives, care of Gilfillan du Plessis Inc., at the address set out hereunder as the address at which it will accept notice and service of all process in these proceedings. CALS will also accept electronic service through their legal representatives at the following email addresses: avani@lrc.org.za and michael@lrc.org.za.

TAKE NOTICE FURTHER that any party intending to oppose this application is required to give notice thereof within five (5) days of receipt of service of this application.

Dated at [illegible] on this 28th day of JUNE 2016.

LEGAL RESOURCES CENTRE
Attorneys for CALS
c/o Gilfillan Du Plessis Inc.
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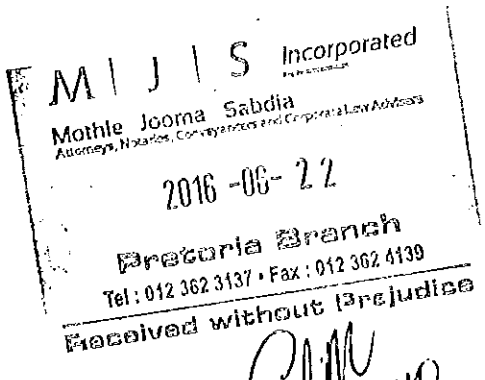
Email: avani@lrc.org.za / michael@lrc.org.za
Ref: A Singh / M Power / 1110115L

To:

THE REGISTRAR OF THE
ABOVE HONOURABLE COURT

And to:

MOTHLE JUMA SABDIA INC
Attorneys for the first applicant
Duncan Manor
Cnr Jan Shoba and Brooks Streets
Pretoria
Ref: T Mothle / TAM3499



And to:

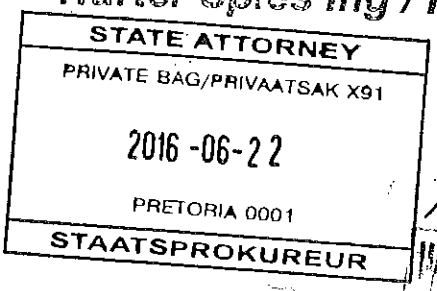
HURTER SPIES INC
Attorneys for second to seventh applicants
First floor, AfriForum Building
Cnr DF Malan and Union Avenues
Centurion
Ref: W Spies / AF007

Ontvang Sonder Benadeling
Received Without Prejudice
22.6.16

Hurter Spies Ing / Inc

And to:

STATE ATTORNEY; PRETORIA
Attorneys for the respondents
316 SALU Building
Cnr Francis Baard and Thabo Sehume Streets
Pretoria
Ref: N Qongqo / 1832 / 2015 / Z22 / js



And to:

LAWYERS FOR HUMAN RIGHTS
Attorneys for the Southern African Litigation Centre
Fourth floor, Heerengracht Building
84 De Korte Street
Braamfontein
Ref: David Cote

LAWYERS FOR HUMAN RIGHTS
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Braamfontein, 2017
Tel: 011 339 1960 Fax: 011 339 2909

10:10
22/06/16

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: 20382/15

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES	Applicant for Admission as Amicus Curiae

In the matter between:

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And

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
THE MINISTER OF INTERNATIONAL RELATIONS AND CO-OPERATION	Third Respondent

And

SOUTHERN AFRICAN LITIGATION CENTRE	Amicus Curiae

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FOUNDING AFFIDAVIT

I, the undersigned,

NOMONDE NYEMBE

do hereby state under oath that:

I INTRODUCTION

1. I am an attorney at the Centre for Applied Legal Studies ("**CALS**"), situated at 1 Jan Smuts Avenue, Braamfontein. I am duly authorised to depose to this affidavit on behalf of CALS, the applicant for admission as an *amicus curiae* in the present matter:

   1.1. CALS is a university centre housed within the School of Law at the University of the Witwatersrand. The University of the Witwatersrand is a juristic person and tertiary education institution registered in terms of the Higher Education Act 101 of 1997, as amended.

   1.2. CALS' functions have been approved by the Vice Chancellor of the University of the Witwatersrand in terms of its rules, policies and procedures.

2. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge.

3. This is an application in terms of rule 16A of the Uniform Rules of Court for the admission of CALS as an *amicus curiae* in the matter instituted by the Law Society of South Africa ("**Law Society**" or "**the applicant**"). The case concerns the validity of the decision taken by the President of the Republic of South Africa ("**President**"), together with the Minister of Justice and Correctional Services and the Minister of International

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Relations and Co-operation (together, "**the Ministers**") to sign the Protocol on the SADC Tribunal (2014) ("**the 2014 Protocol**").

4. The case raises important questions about how the Executive is entitled to act when it signs international agreements with other states. CALS intends to make submissions about the process that the Constitution requires the Executive to follow before it can lawfully enter into international agreements.

5. In sum, the purpose of CALS' application for admission as an *amicus curiae* is three-fold:

   5.1. To advance legal submissions regarding the Executive's obligation to facilitate public consultation in its decision-making process;

   5.2. To adduce relevant, publicly-available evidence relating to South Africa's history of consultation regarding other agreements of the Southern African Development Community ("**SADC**") that have been signed or ratified by South Africa; and

   5.3. To advance legal submissions on the meaning, significance and binding nature of a signature to an international agreement.

6. This affidavit is made in support of CALS' application to be admitted as an *amicus curiae* and to adduce evidence. In what follows, I deal with the following issues:

   6.1. **Part II** describes CALS and its interest in these proceedings;

   6.2. **Part III** concerns the legal submissions that CALS seeks to advance;

   6.3. **Part IV** addresses the application to introduce evidence; and

   6.4. **Part V** deals with the requirements for admission as an *amicus curiae*.

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7. I note at the outset that the Law Society and the Respondents have consented to CALS' admission as an *amicus curiae* in these proceedings. The Respondents, however, do so subject to the proviso that CALS will only make legal submissions, and will not be entitled to adduce evidence. The parties have not, therefore, reached agreement on the terms of CALS' admission. This renders it necessary for CALS to make formal application to this Honourable Court to be admitted as an *amicus curiae* in order to make legal submissions, and to adduce evidence.

II THE INTEREST OF CALS IN THESE PROCEEDINGS

8. CALS is a civil society organisation and registered law clinic based at the School of Law at the University of Witwatersrand. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS engages with human rights and social justice through five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law.

9. The purpose and vision of CALS' Rule of Law Programme is to protect systems of a constitutional democracy, safeguard civil and political rights as a precursor to the achievement of social, economic and environmental justice, and work towards eradicating discrimination against people living in poverty.

10. CALS has been a party to a number of court proceedings in the past, including having been admitted as an *amicus curiae* in, among others:

    10.1. *Carmichele v Minister of Safety and Security and Another* [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC);

    10.2. *Volks NO v Robinson and Others* [2005] ZACC 2; 2005 (5) BCLR 446 (CC);

10.3. *S v Engelbrecht* 2004 (2) SACR 391 (W);

10.4. *Masiya v Director of Public Prosecutions, Pretoria and Another* [2007] ZACC 9; 2007 (5) SA 30 (CC); 2007 (8) BCLR 827;

10.5. *Lee v Minister of Correctional Services* [2012] ZACC 30; 2013 (2) SA 144 (CC); 2013 (2) BCLR 129 (CC);

10.6. *Agri South Africa v Minister for Minerals and Energy* [2013] ZACC 9; 2013 (4) SA 1 (CC); 2013 (7) BCLR 727 (CC);

10.7. *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* [2014] ZACC 30; 2015 (1) SA 315 (CC); 2014 (12) BCLR 1428 (CC); and

10.8. *City of Johannesburg v Dladla and Others* [2016] ZASCA 66.

11. I note that the *National Commissioner of the South African Police Service* matter resulted in a landmark judgment from the Constitutional Court regarding South Africa's obligations under international law and the Rome Statute of the International Criminal Court.

12. The main application raises important questions about the interplay between domestic and international law, the proper interpretation of section 231 of the Constitution, and the Executive's duties when entering into international agreements. The relief in the main application seeks to impugn the conduct of the President on the basis that his participation in the suspension of the SADC Tribunal and his decision to enter into the 2014 Protocol was unconstitutional.

13. CALS seeks to intervene in this matter in the public interest and in pursuit of its objectives to highlight the importance of public consultation by the state when entering into international agreements - which it deems a constitutional imperative in protecting

and upholding the rule of law. The subject-area of the present matter falls squarely within the work that CALS undertakes, particularly through its Rule of Law Programme. I therefore submit that CALS is well-placed to make legal submissions and adduce evidence in this matter, and to be of assistance to this Honourable Court in the determination of the important constitutional and public interest issues that are to be considered.

III CALS' LEGAL SUBMISSIONS

14. CALS intends to make legal submissions on the following issues:

14.1. The effect of signing international agreements generally, and the 2014 Protocol in particular; and

14.2. The need for public consultation prior to negotiating and signing an international agreement.

The effect of signature

15. The act of signing an international agreement has consequences for South Africa on the international plane. The signing of an international agreement indicates an intention by that state to be bound by its contents. Article 18(a) of the Vienna Convention on the Law of Treaties (1969) which governs treaties between countries, provides that "*[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: it has signed the treaty . . . until it shall have made its intention clear not to become a party to the treaty.*" This creates the legitimate expectation of other parties to the treaty, as well as citizens of the member state, that the state which has expressed agreement with the treaty will not work against its objectives.

16. Article 22 of the SADC Treaty (1992) provides as follows:

16.1. In terms of article 22(9), as amended, "*[e]ach Protocol shall be binding only on the Member States that are party to the Protocol in question*".

16.2. In terms of article 22(14), it is not permissible to make any reservations to any Protocol, thereby forcing South Africa to be bound to the Protocol in its entirety, or not at all.

16.3. Once the text of a Protocol has been signed and ratified by two-thirds of the member states, the Protocol cannot be amended without the proper procedure for an amendment being followed. Article 22(11)-(13) of the SADC Treaty, as amended, stipulate:

> "*11. An amendment to any Protocol that has entered into force shall be adopted by a decision of three-quarters of the Member States that are parties to the Protocol.*
>
> *12. A proposal for the amendment of the Protocol shall be submitted to the Executive Secretary by any Member State that is party to the Protocol.*
>
> *13. The Executive Secretary shall submit a proposal for amendment to the Protocol to Council after:*
>
> *(a) all Member States that are parties to the Protocol have been notified of the proposal; and*
>
> *(b) thirty days have elapsed since notification to the Member States that are parties to the Protocol.*"

16.4. No provision is made for the amendment of the Protocol between signature and ratification.

17. The combined effect of the prohibition on reservations, and the procedure for amendment, is that it is not possible for a state to alter its obligations under a Protocol after signature. The consequence of signature is that Parliament is bound to either accept or reject the entire Protocol.

Public consultation

18. Public consultation and participation is integral to the proper functioning of South Africa's constitutional democracy, which is representative, participatory, and deliberative. If admitted as an *amicus curiae*, CALS will submit that the Executive has an obligation to solicit public consultation prior to signing international agreements.

19. Section 231(1) of the Constitution vests the negotiating and signing of all international treaties in the Executive. It does not expressly require public consultation prior to taking any decision about whether or not to sign a treaty. However, CALS will argue that the obligation to engage in reasonable consultation flows from three fundamental constitutional sources.

Sources of the obligation

20. First, the principle of legality. All organs of state are required to act rationally whenever they perform a public function. That includes decisions to sign international agreements. Rational action requires there to be a substantive connection between means and ends, and for every step in the process of reaching the decision to be rationally related to the outcome. In certain circumstances, it will be irrational not to consult with persons who will be affected by a decision before it is taken. That is true both because the decision-maker requires information held by others, and because participation in the decision-making process is a necessary part of the power.

21. CALS will submit that, ordinarily, the principle of rationality will require public consultation before negotiating and signing a treaty. There may be exceptions – for example when confidentiality is vital for effective negotiation. And the nature and extent of consultation required will vary depending on the potential impact of the international agreement. A very specific international agreement may only require consultation with participants in a particular industry. But as a default position, it will

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be irrational not to ask those who will be affected by an international agreement for their views before it is signed.

22. Second, the participatory nature of our democracy. Our democracy is representative; but it is also participatory and deliberative. It places a high value on public participation in the law-making process. This is given effect to by the specific obligation on Parliament and the Provincial Legislatures to "*facilitate public involvement in [their] legislative processes*" (sections 59, 72 and 118 of the Constitution).

23. There is no comparable obligation on the Executive. But CALS will submit that the Executive is nonetheless bound to facilitate public participation when it engages in law-making processes. Signing an international agreement, particularly the 2014 Protocol, is a form of law-making:

23.1. As I expand on below, it limits what Parliament is able to do in exercising its ratification powers because it is not possible to amend the 2014 Protocol at the ratification stage - public participation at that stage alone is virtually meaningless; and

23.2. An international agreement "*of a technical, administrative or executive nature or an agreement which does not require either ratification or accession*" binds South Africa without ratification (section 231(3) of the Constitution).

24. Third, all organs of state have an obligation in terms of section 7(2) of the Constitution to "*respect, protect, promote and fulfil the rights in the Bill of Rights*". That requires the Executive to take positive steps to promote the rights of people living in South Africa when it acts on the international plane, including in the signing of international agreements.

25. Many, if not most, international agreements will, in some way, affect the constitutional rights of people living in South Africa. Where that is the case, section 7(2) imposes an

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obligation on the Executive to consult with those whose rights will be affected. The Executive can only determine how to act to protect people's rights if it has informed them about the potential impact of an international agreement and sought their input.

The obligation is practical

26. The Respondents submit that public engagement takes place when Parliament considers the ratification of an international agreement. This is inadequate because at the stage at which an international agreement such as the 2014 Protocol is presented to Parliament to be ratified, the terms of that agreement have already been finalised. All that any public consultation process may, at that stage, influence is whether or not the agreement is ratified. Parliament, and members of the South African public, can no longer convince the Executive to negotiate for amendments to what is provided for in the agreement because the opportunity for negotiation has passed. Such engagement is therefore not meaningful.

27. In effect, the current process as envisaged by the Respondents entails the public being provided with an agreement presented as a *fait accompli* once it has been sent to Parliament. In such circumstances, even if there is a process of public consultation that takes place after signature and prior to ratification, the importance and impact of any public consultation process that is undertaken is so significantly diminished that it may in certain cases be rendered meaningless as the views of the public cannot lead to any material outcome. CALS submits that the present matter is such an example, where the vested rights of persons who would otherwise have had recourse to the SADC Tribunal to have a dispute adjudicated are effectively revoked by the President's signing of the 2014 Protocol, without any process of public participation preceding this decision.

28. It is for this reason that it is of constitutional importance that there is an opportunity for persons, especially those who stand to be affected by the international agreement, to

be provided with the opportunity to make submissions on the terms of the agreement before: (a) the Executive commits South Africa to the spirit of the international agreement on the international plane; and (b) the terms of the international agreement to be presented to Parliament are set.

29. This is not an impractical proposition. If admitted, CALS will make five submissions:

29.1. Based on the evidence it seeks to introduce (dealt with in Part IV), it is apparent that the Executive regularly engages in public consultation prior to signing an international agreement.

29.2. In the present matter there was sufficient time for public participation prior to the signing of the 2014 Protocol:

29.2.1. The Respondents would have been aware from as early as August 2010 that there would be a review of the role, functions and terms of reference of the SADC Tribunal, and that no appointments or re-appointments to the SADC Tribunal would be made (thereby preventing a quorum and prohibiting the SADC Tribunal from receiving any new cases). The minutes of an August 2010 meeting is annexed to the founding affidavit to the main application as annexure "FA4A".

29.2.2. From as early as May 2011, the SADC Summit mandated the Ministers of Justice and Attorneys General to "*initiate the process aimed at amending the relevant SADC legal instruments and submit a progress report at the Summit in August 2011 and the final report to Summit in August 2012*". The SADC Summit further extended the moratorium on the SADC Tribunal receiving new cases or hearing pending cases. This is addressed in paragraph 39 of the founding

affidavit to the main application. A copy of the communiqué of the 2011 SADC Summit is annexed to the founding affidavit to the main application as annexure "FA13".

29.2.3. Importantly, on 18 August 2012, the SADC Summit resolved that "*a new protocol on the Tribunal should be negotiated and that its mandate should be confined to the interpretation of the SADC Treaty and Protocols relating to disputes between Member States*". It is then only in August 2014 that the 2014 Protocol was signed. A copy of the communiqué of the 2014 SADC Summit is annexed to the founding affidavit to the main application as annexure "FA1".

29.2.4. As is apparent from annexure "FA3" of the founding affidavit to the main application, a draft of the revised protocol was in circulation from at least 21 February 2014, approximately six months before the 2014 Protocol was signed. Although annexure "FA3" does not indicate whether there were other drafts before or after it, it does contain tracked changes showing insertions and deletions.

29.2.5. There was therefore a two year intervening period between the decision to negotiate a new protocol and the decision to sign the 2014 Protocol. A period during which amendments to the draft were being considered. During this period there was ample opportunity, prior to the signing of the 2014 Protocol, for the Executive to undertake a public consultation process.

29.3. In any event, any argument that there is insufficient time or that it is impracticable to provide for public participation prior to the signing of an international agreement, undermines and negates the very power of the Executive on the international plane to elect whether or not to bind South Africa

to an international agreement. If the Executive has the power to enter into international agreements, it must also have the power to determine what process to follow in negotiating international agreements -- including the power to consult the public.

29.4. Where there are good reasons not to consult -- such as sensitive, and possibly urgent, trade negotiations -- consultation will not be necessary. And the extent of consultation required will be sensitive to the nature of the international agreement. CALS argues for a default position, not an absolute rule.

29.5. Lastly, CALS will refer this Court to foreign statutes, case law and practice that has been developed in relevant comparative jurisdictions, setting out the law and practice relating to public consultation. This will be dealt with fully in CALS' written submissions.

30. In this case, it is common cause that there was no public consultation at all.

31. The public consultation would not necessarily have required public hearings. There would be some measure of discretion for the state to undertake the public consultation, for instance by soliciting comment from those persons who would be particularly affected by, and were particularly interested in, the 2014 Protocol. Through the process of consultation, the submissions received could have informed the President's decision when deciding whether or not to enter into the 2014 Protocol on its current terms at a stage in the process where he could still have influenced the text thereof. But what the President could not do is negotiate and sign in complete isolation from any public participation process.

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IV INTRODUCTION OF NEW EVIDENCE

32. In addition to making the legal submissions described above, CALS seeks to adduce as evidence:

32.1. The table annexed to this affidavit marked "**CALS 1**";

32.2. Minutes of certain Parliamentary committee meetings marked "**CALS2(a)-(c)**";

32.3. A table of consultations for the recent Paris Agreement marked "**CALS3**"; and

32.4. The stakeholder participation document for the recent Paris Agreement marked "**CALS4**".

33. The table marked "**CALS1**" reflects the manner and extent of public consultation that was undertaken prior to the signing or ratification of each previous SADC Protocol by South Africa. It relies entirely on publicly-available information. To avoid overburdening this Court, the source material referred to in this table is, with a few exceptions, not filed, but can be provided to the Court should it be so requested. Where I mention extracts from parliamentary meetings, the relevant minutes are attached marked "**CALS2**".

34. The information contained in this table highlights the inconsistent manner in which public consultation has been treated, and is also relevant to the argument advanced by the Respondents that public participation facilitated by the Executive is only relevant prior to the ratification of international agreements. CALS submits that this evidence supports the legal submissions that have been set out above, in particular in relation to the rationality of the President's conduct.

35. The High Court is empowered to allow *amici curiae* to introduce new evidence when it is in the interests of justice to do so. It is in the interests of justice to allow the evidence for the following reasons:

35.1. It is relevant to the issues before the Court; and

35.2. It is incontestable as it is based on publicly available records of Parliamentary proceedings.

Content of the evidence

36. South Africa has, to date, ratified more than twenty SADC Protocols. The table annexed to this affidavit marked "**CALS1**" summarises the process of public participation that was, or was not, followed with regard to each protocol. It addresses -- to the extent possible -- what was done both before signature, and between signature and ratification. The table draws from publicly available information, primarily reports of the relevant Parliamentary Committee.

37. I do not intend to traverse all the contents of the table. Instead, I highlight the following relevant matters that are apparent from the table:

37.1. The table evinces the erratic manner in which the state has treated public consultation in relation to international agreements. Just from the sample of agreements that have been selected for the purpose of the table -- those SADC agreements that have been ratified by South Africa -- it is apparent that there is no consistent practice in relation to public consultation either prior to signature or ratification.

37.2. It is my understanding from the table that in relation to the majority of the Protocols in question, there has been no public consultation either preceding the signature or ratification of the agreements. In a number of instances, the Protocols are adopted by the National Assembly without debate; this has included, for example, the Protocol on Wildlife Conservation and Law Enforcement (1999), the Protocol on Politics, Defence and Security

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Cooperation (2001), the Protocol against Corruption (2001), the Protocol on Forestry (2002), and the Protocol on Finance and Investment (2006).

37.3. Importantly, there have however been instances in which the state has engaged in processes of public consultation before signature:

37.3.1. The Protocol on Health (1999) was shared with stakeholders in draft form before it was accepted by the SADC Summit, thereby allowing a process of public consultation to take place in South Africa before the final text was agreed to.

37.3.2. The Protocol on Fisheries (2001) was drafted through consultation with stakeholders in all the SADC member states.

37.3.3. Similarly, the Protocol on Gender and Development (2008) was developed through consultation with civil society organisations in all member states, followed by regional consultations.

37.4. Some Protocols have been the subject of public consultation before Parliament:

37.4.1. For the Protocol on Health (1999), there was a further process of public consultations after it was signed but before it was ratified by Parliament.

37.4.2. The Protocol on Trade (1996) was subject to a process of public consultation with stakeholders before the report of the committee was tabled before Parliament.

37.5. It is also apparent from the table that members of the relevant parliamentary bodies have expressed frustration at the manner in which international instruments are foisted upon Parliament without there being an opportunity to engage in the substance and content of the agreements. For instance:

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37.5.1. At a meeting considering the Protocol on the Control of Firearms, Ammunition and Other Related Materials in SADC (2001), Mr P Maloyi, a member of the Select Committee on Security and Constitutional Affairs, expressed his disapproval at Parliament's limited role in ratifying international agreements. He rightly contended that having Parliament review the instrument after it had been signed by the heads of state left Parliament with no powers to change the agreement. The minutes of this meetings are marked "**CALS2(a)**".

37.5.2. At a meeting of the Select Committee of the National Council of Provinces in relation to the Protocol against Corruption (2001), the Committee expressed its frustration at the pointlessness of their approving Protocols if there was no mechanism to suggest changes. In response, the Chairperson explained that "*the State President was the only person who could propose amendments to other signatories of the international treaties or protocols*", and that such amendments were unlikely to happen. This is precisely the reason that public consultation must necessarily take place prior to the signing of international agreements: to ensure that the views of the public and the relevant state officials are properly taken into account and incorporated into the agreement itself at a time when those views can still be meaningful. While Parliament will still have a limited ability to force the re-negotiation of international agreements, at least the public views will have informed the content of the international agreement it considers. The minutes of this meeting are marked "**CALS2(b)**".

38. In addition to the history of consultation on SADC agreements, CALS would further like to draw this Court's attention to the state's recent conduct relating to certain

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environmental agreements for which the state has engaged in a process of public consultation.

38.1. I note in this regard that principle 10 of the Rio Declaration on Environment and Development states that:

> *"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available."*

38.2. Notably, during approximately the same period that the 2014 Protocol was being negotiated and signed, South Africa was undertaking public consultations regarding the Doha Amendment to the Kyoto Protocol. On 26 August 2014, the Portfolio Committee on Environmental Affairs was briefed by the Minister on Sustainable Development. The Chairperson reported that:

> *"[P]reparations were advanced for the Committee's public hearings with stakeholders beginning Friday and Saturday in KZN, next Friday and Saturday in Mpumalanga and the following Friday and Saturday in North West. He was happy to report that the stakeholders involved in the public hearings included traditional leaders, rangers from the Parks, industry in the relevant provinces, members of the provincial legislatures and municipal councillors. This was a good cross section of participants. NGOs were also expected and Members were free to invite whom they wished to participate. Furthermore, the logistics for the hearings were well afoot. The emphasis was on the Committee interacting with the people – the real people that mattered. He thanked the Department for their help over the weekend especially with linkages with stakeholders and relevant officials from the provincial DEA."*

I attach a copy of the relevant minute as annexure "**CALS2(c)**".

38.3. The states parties to the Kyoto Protocol recently committed to create a new international climate agreement by the conclusion of the United Nations

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Framework Convention on Climate Change Conference of the Parties in Paris in December 2015. In preparation for this, states are required to outline what climate actions they intend to take under a new agreement. States are required to engage in stakeholder consultation to identify a strong negotiating position throughout the new treaty drafting process. In South Africa, public consultation dates were set for each province during the course of August and September 2015. I attach a schedule of the consultations in each province as annexure "**CALS3**". In preparation for this, the Department of Environmental Affairs released a document including the history and process of the new international agreement, as well as South Africa's draft negotiating position, and invited any interested member of the public to attend the draft stakeholder consultations and comment on the state's position. I attach a copy of this document as annexure "**CALS4**". Following that process, the Paris Agreement was adopted by consensus and was opened for signature in April 2016.

39. While in these cases public consultation is mandated by the treaty bodies themselves, this serves to illustrate that public consultation is considered both necessary and possible where there is the requisite will to do so. CALS submits that the Constitution makes public consultation prior to signature the default position for <u>all</u> international agreements.

<u>Admission of the evidence</u>

40. The evidence CALS seeks to introduce is relevant to the following questions before this Court:

40.1. Is it advantageous to have public consultation prior to signature? The evidence demonstrates that, in the view of both the Executive and the Legislative branches, it is.

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40.2. Is it practical to have public consultation prior to signature? The evidence demonstrates that in a wide variety of circumstances, it is.

40.3. Is public consultation prior to signature routine? The evidence demonstrates that, at least with regard to SADC Protocols, it is not. This highlights the need for clear judicial guidance on the obligation to facilitate public involvement.

41. In addition, CALS anticipates that the content of the evidence sought to be adduced will be largely uncontroversial as it is of a limited scope, is principally of a contextual nature, and comprises publicly-available information. Moreover, CALS does not contemplate the need for any oral evidence to be introduced. However, CALS will have no objection if any of the parties wish to adduce evidence to contradict the evidence it seeks to introduce.

42. Lastly, CALS has made provision in the order it seeks for any party that wishes to file further evidence in response to "**CALS1**" to "**CALS4**" be granted an opportunity to do so.

43. The interests of justice therefore favours permitting CALS to adduce the evidence contained in annexures "**CALS1**" to "**CALS4**".

V COMPLIANCE WITH REQUIREMENTS FOR ADMISSION

44. Rule 16A establishes the following requirements for admission as an *amicus curiae*:

44.1. An interest in the application;

44.2. The consent of the parties for admission;

44.3. Alternatively an application that demonstrates:

44.3.1. The applicant will make submissions that are relevant and different from those of the parties; and

44.3.2. Compliance with the timelines set in Rule 16A, or condonation for non-compliance.

Consent

45. As I explain in more detail below, CALS has received consent from the Law Society for admission. At the date of filing this application, no response had been received from the second to seventh applicants as yet. The Respondents have consented to CALS' application, subject to the proviso regarding the admission of evidence.

46. CALS has therefore been advised that it is necessary to apply for admission, including the right to introduce evidence.

Submissions that are relevant and different

47. One of the grounds on which the Law Society challenges the conclusion of the 2014 Protocol is the lack of public consultation. CALS' submissions address that ground in ways that are distinct from the arguments advanced by the parties:

47.1. It relies on specific jurisprudential grounds to support the need for public consultation;

47.2. It presents a model for default public consultation, subject to deviation in cases of urgency or where confidential negotiations are necessary;

47.3. It grounds the argument in an understanding of the effect of signature on both the international and domestic planes; and

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47.4. It supports the demand for public consultation -- and the need for judicial endorsement of that demand -- with evidence demonstrating that public consultation prior to signature is both possible and advantageous.

48. I submit that for these reasons CALS' submissions will assist the Court in coming to its determination, and are different from those of the other parties.

Timeline and condonation for late filing

49. I am not aware of when the rule 16A notice was placed on the notice board by the Registrar of this Honourable Court in this matter, and I have not personally had sight of any such notice. It is my understanding, however, that this application for admission as an *amicus curiae* is filed outside of the time period provided for in rule 16A of the Uniform Rules of Court. In light of this, I set out below the steps that have been taken by CALS since learning about this matter to bring this application as expeditiously as possible. To the extent necessary, CALS seeks condonation from this Honourable Court for the late filing of this application.

50. On 23 June 2015, representatives from CALS consulted with attorneys at the Legal Resources Centre regarding the main application. It was resolved that the representatives from CALS would take the matter to its internal structures to take a decision on whether to intervene. It was further decided that CALS should wait until the Respondents' answering affidavit was filed, which at that stage was due to be filed on 30 June 2015 by agreement with the Law Society. The agreed date for filing was subsequently extended to 6 July 2015, though it was ultimately only filed more than ten days thereafter on 17 July 2015.

51. On or around 3 July 2015, CALS took an internal decision to apply to intervene as an *amicus curiae* in this matter, subject to having sight of the Respondents' answering affidavit which, depending on its contents, may have altered CALS' decision in this

regard. Due to representatives from both CALS and the Legal Resources Centre travelling for work during the early part of July, the earliest opportunity to schedule a further consultation to discuss this matter and the possible scope of CALS' submissions was 13 July 2015, whereafter CALS formally instructed the Legal Resources Centre as its attorneys of record.

52. On 17 July 2015, CALS' attorneys wrote to the parties indicating CALS' interest in the matter, and stating that:

> *"However, CALS considers it prudent to first have regard to the respondents' answering papers before applying to be admitted. Depending on the attitude adopted by the state, it may be necessary for CALS to alter its submissions, or it may be unnecessary for CALS to intervene."*

53. A copy of this letter is annexed marked "**CALS5**". The letter concluded by asking for an indication of when the Respondents expected to file the answering affidavit, and to be provided with a copy of the answering affidavit once it had been filed.

54. On 20 July 2015, CALS' attorneys were provided with a copy of the answering affidavit by the Law Society. Having had regard to the answering affidavit, CALS consulted with its attorneys and counsel on 22 July 2015 to discuss the import of the answering affidavit. It was then deemed still necessary for CALS to intervene to make legal submissions and adduce evidence on these pertinent issues, and that the information that CALS intended to place before this Honourable Court would be both novel and relevant to the proceedings.

55. On 30 July 2015, CALS' attorneys wrote to the parties seeking consent for CALS to be admitted as an *amicus curiae* to advance written and oral submissions, and to adduce publicly-available evidence, on the following issues:

55.1. The impact and consequences of the decision of the first respondent to enter into the 2014 Protocol on the SADC Tribunal at both the domestic and international levels;

55.2. The need for public consultation when entering into international agreements, the appropriate stage(s) at which this ought to take place;

55.3. The irrationality of the President's failure to consult with the public, being those whose rights and interests would be affected by signing the treaty;

55.4. The impact and consequences of the failure to undertake such processes of public consultation prior to entering into international agreements;

55.5. The public consultation, or lack thereof, that has preceded the signing and/or ratification of instruments akin to the 2014 Protocol on the SADC Tribunal.

56. A copy of this letter is annexed marked "**CALS6**".

57. On 30 July 2015, the Law Society granted CALS its consent to be admitted as an *amicus curiae*. A copy of this letter is annexed marked "**CALS7**".

58. On 14 August 2015 CALS' attorneys received a letter from the Respondents' attorney dated 12 August 2015 advising that "*the respondents consent to CALS' admission as amicus curiae in the matter, subject to the proviso that CALS will only be entitled to make legal submissions and will not be entitled to adduce any evidence in the application.*" A copy of this correspondence is annexed marked "**CALS8**".

59. The Respondents' stance with regard to CALS adducing evidence before this Court, has rendered it necessary for CALS to make a formal application for admission.

60. On 26 July 2015, CALS was made aware that six parties had applied to intervene in the main application. The application for intervention was set down on the unopposed

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roll for 8 September 2015. CALS has since been informed that the application for intervention has been moved to the opposed roll. Answering papers have been filed and the matter is set down for hearing on 30 May 2016.

61. On 23 September 2015, CALS wrote to the intervening parties to ascertain their attitude to its admission as an *amicus curiae*. The intervening parties responded on that same date stating that, as they were not yet a party, they did not believe their consent was relevant in terms of Rule 16A. I attach a copy of this correspondence as annexure **CALS9**.

62. Following this, we were informed that the intervention application had been filed, and was opposed by the Respondents. We considered it prudent to allow that process to run its course in order to properly seek consent from the interveners as well, and to ensure that the submissions that CALS sought to advance would still be novel and relevant to the proceedings. During this time, CALS' attorneys followed up on a number of occasions to establish whether the intervention application has been finalised. The intervention application, however, took far longer than anticipated to reach finalisation.

63. CALS' attorneys were informed on or about 19 February 2016 that the intervention application would only be heard on 30 May 2016. Following discussions with the legal team on 1 March 2016, it was decided that it would be advisable for CALS to seek to have the *amicus curiae* application heard together with the intervention application on that date, in order to save time and costs for both the Court and the parties. A copy of the letter setting out this proposal to the parties is annexed marked **CALS10**.

64. On 28 April 2016, we were informed by the interveners' attorneys that the matter had been removed from the roll, and that Deputy Judge President Ledwaba would be approached for a special allocation. On Tuesday, 31 May 2016, the parties attended a meeting called by Deputy Judge President Ledwaba. Shortly before the meeting,

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the Respondents and the interveners reached an agreement that would obviate the need for a separate hearing. The interveners and the Respondents reached agreement on the terms of the order on Wednesday, 8 June 2016, and it is our understanding that the attorneys for the interveners proceeded to have this made an order of court on or about 10 June 2016, whereby the interveners were joined as co-applicants to the proceedings.

65. It was thereafter appropriate for CALS to seek consent from the second to seventh applicants. A letter was addressed to their attorneys on 13 June 2016, and is annexed as **CALS11**. At the date of filing this application, no response had been received as yet.

66. In addition to the concern around how to time the application with the application for intervention, CALS has experienced difficulties locating all the information in annexure **CALS1**. That process began in June 2015, and a first draft was completed in August 2015. However, information for some of the SADC Protocols remained outstanding. CALS and the Legal Resources Centre have sought to complete the gathering of all information to avoid having to supplement the table at a later stage. That process was only completed early in March 2016.

67. In the result, CALS seeks condonation for non-compliance with the time periods set out in rule 16A. Condonation is justified for the following reasons:

67.1. CALS demonstrated its interest in intervening as an *amicus curiae* early in the process, in June 2015;

67.2. The parties have already consented to CALS' intervention – the only issue of disagreement was the introduction of evidence;

67.3. While there has been a significant delay from the time that CALS first wrote seeking admission, that delay will not cause any prejudice to the parties as it

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has not delayed the hearing of the matter and has not prejudiced the parties in any way. This application is filed within two weeks of the intervention application being resolved. The Respondents are still to file their answering affidavit to the founding affidavit of the interveners (now the second to seventh applicants), and the Law Society is still to file its replying affidavit. There is therefore still adequate time for the parties to respond to CALS' submissions, well in advance of the hearing.

67.4. CALS has explained its delay in making this application. It has been caused by a combination of uncertainty about how to time the application given the pending application for intervention, and difficulty in completing the research that CALS seeks to introduce.

68. I respectfully submit that CALS has shown good cause for the late filing of its application, and that no party will be prejudiced should condonation be granted. This is undoubtedly a matter of public importance, and I submit that the submissions and evidence sought to be presented by CALS are relevant and will be of assistance to this Court. I therefore request that this Court grant condonation to CALS for the late filing of this application.

VI CONCLUSION

69. In light of the above, CALS submits that its submissions are both relevant and novel, and that it would be in the interests of justice for CALS to be admitted as an *amicus curiae* in order to advance legal argument and to adduce evidence. Accordingly, CALS prays for an order in terms of the notice of motion to which this affidavit is attached.

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NOMONDE NYEMBE

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 BRAAMFONTEIN on this the 20th day of JUNE 2016, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full Names:

Capacity:

Designation:

Address:

Keamogetswe Thobakgale
Commissioner of Oaths
Practising Attorney (RSA)
54 De Korte Street
Braamfontein, Johannesburg

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
1.	Protocols on Shared Watercourses, 1995	26 November 1997	*No evidence of public participation.*
2.	Revised Protocol on Shared Watercourses, 2000		*No evidence of public participation.*
3.	Protocol on Combating Illicit Drug Trafficking, 1996	July 22, 1998	Hansard records could not be retrieved.
4.	Protocol on Energy, 1996	April 29, 1999	Hansard records could not be retrieved.
5.	Protocol on Mining, 1997	April 29, 1999	Hansard records could not be retrieved.
6.	Protocol on Transport, Communications and Meteorology, 1996	December 24, 1997	Hansard records could not be retrieved.
7.	Protocol on Health, 1999	July 4, 2000	1. **NCOP Social Services: Protocol On Health In South African Development Community: Briefing:** *"A Member of the Department of Health and representative of the South African Development Community (SADC) briefed the Select Committee on the origin, timeframe, status and content of the Protocol on Health. .Consultation is scheduled for February 2000 with the Protocol to be tabled in March/April 2000. It is hoped that it will be ratified in July 2000...Dr Thuthula Balfour, Director of the SADC health sector unit, confirmed that the Protocol has already been signed by the Minister on behalf of South Africa but it is only effective in any country once it has gone through the constitutional requirements of that country (resolution by both chambers of Parliament in South Africa). The Protocol must then be approved by two thirds of all Member*

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
			States before it will come into effect...The National Health Consultation Forum has consulted with provinces, universities, NGOs and relevant private sector organisations. Further consultation is scheduled in March 2000."[1]
8.	Protocol on Education and Training, 1997	May 14, 1999	*No evidence of public participation.*
9.	Protocol on Trade, 1996	December 24, 1999	1. **Portfolio Committee on Trade and Industry:** *"On September 17 1999, the Committee, together with the Portfolio Committee on Agriculture and Land Affairs, the Portfolio Committee on Foreign Affairs and the Select Committee on Economic Affairs, were briefed by the Department of Trade and Industry (DTI) on the TDCA. At that meeting, we were invited to submit any comments before the official signing, scheduled for 11 October 1999. The Committee appreciates this opportunity to offer some initial observations. At the same time, we need to reiterate our commitment, once the Agreement is formally referred to us for ratification, to hold public hearings and to report to Parliament on any further pertinent points that may arise from therefrom"*[2] 2. **Portfolio Committee on Agriculture and Land Affairs, Portfolio Committee on Foreign Affairs, Portfolio Committee on Trade and Industry and the Select Committee on Economic Affairs: SADC Trade Tribunal: Hearings:** *"Hearing of Evidence on SADC Trade Protocol- Cosatu And Flamco: FLAMCO Submission in response to the "Have your Say" advertisement in The National Newspapers - we at Flamco welcome this opportunity to voice*

[1] PMG, "Protocol on Health in South African Development Community: briefing" 27 October 1999, online: https://pmg.org.za/committee-meeting/4412/ .
[2] PMG, "Briefing by Minister on World Trade Organisation" 10 November 1999, online: https://pmg.org.za/committee-meeting/4427/ .

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
			opinion on the situation with imported charcoal products from SADC members and in particular Namibia."[3] 3. **Trade And Industry: European-South Africa Trade Development & Co-Operation Agreement: Hearings:** *"The Chairperson, Dr R Davies, noted that the business for the day was not to decide on the ratification of an enabling document, as was the case the previous day with the hearings on the SADC Agreement, but the ratification of the product of an agreement - the European Union-South Africa Trade, Development and Co-Operation Agreement. The hearings began with the Submission by the South African Chamber of Business (SACOB)."*[4]
10.	Trade Amendment Protocol		*No evidence of public participation.*
11.	Protocol on the Development of Tourism, 1998	October 25, 2002	*No evidence of public participation.*
12.	Protocol on Wildlife Conservation and Law Enforcement, 1999	October 31, 2003	*No evidence of public participation.*
13.	Protocol on Politics, Defence and Security	August 6, 2003	*No evidence of public participation.*

[3] PMH, "SADC Trade Tribunal: Hearing" 25 October 1999, online: https://pmg.org.za/committee-meeting/4424 / .
[4] PMG, "European-South Africa Trade Development & Co-operation Agreement: hearings" 26 October 1999, online: https://pmg.org.za/committee-meeting/4426./ .

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
	Cooperation, 2001		
14.	Protocol on the Control of Firearms, Ammunition and other Related Materials in SADC, 2001	January 27, 2003	*No evidence of public participation.*
15.	Protocol on Fisheries, 2001	July 24, 2003	*1.* **Consideration Of Report Of Select Committee On Land And Environmental Affairs - SADC Protocol On Fisheries:** *"The Southern African Development Community Protocol on Fisheries was initiated at the workshop for inland and marine fisheries held in Windhoek in February 1997. Based on this work, three consultants visited all the Southern African Development Community member states to hold discussions with relevant stakeholders and to formulate the draft protocol. This was issued in December 1999 and immediately forwarded to the member states for amendments and their comments. These were presented to be discussed by national stakeholders in a regional workshop which was held in Lusaka in April 2000. The final version of this protocol was approved by all the fisheries Ministers in Maputo in May 2001... The Select Committee on Land and Environmental Affairs recommends to the Council that, in terms of section 231(2) of the Constitution, we approve this protocol. Debate concluded."*[5]
16.	Protocol on Culture, Information and Sport, 2001	March 30, 2004	*No evidence of public participation.*
17.	Protocol Against Corruption, 2001	October 25, 2002	*No evidence of public participation.*

[5] National Council of Provinces, Hansard, 13 June 2003 at pg 124.

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
18.	Protocol on Extradition, 2002	October 31, 2003	*No evidence of public participation.*
19.	Protocol on Forestry, 2002	August 6, 2003	1. **Land And Environmental Affairs Select Committee:** *"Stakeholders consulted included Forestry SA, the National Forest Advisory Council (this included stakeholders from industry and previously disadvantaged communities), traditional leaders, traditional healers, communities engaged in participatory management forums; the Departments of Trade and Industry, Agriculture, Land Affairs, Foreign Affairs and Justice; Trade Unions and environmental groups... The Committee adopted a report recommending that the NCOP approve the Protocol..."*[6]
20.	Protocol on Mutual Legal Assistance in Criminal Matters, 2002	January 27, 2003	*No evidence of public participation.*
21.	Protocol on Finance and Investment, 2006	July 24, 2003	1. **Finance Portfolio Committee:** *"Business Unity briefed the Committee on its concerns around the Southern African Development Community Finance and Investment Protocol. ..Members resolved to approve the Protocol."*[7]
22.	Protocol on Legal Affairs, 2000	March 30, 2004	*No evidence of public participation.*
23.	Protocol on Gender and Development, 2008	October 25, 2002	1. **Improvement of Quality of Life and Status of Women Joint Monitoring Committee:** *"Minister Essop Pahad, Minister in the Presidency, addressed the Committee*

[6] PMG, "Ratification of the SADC Protocol on Forestry" 12 August 2003, online: https://pmg.org.za/committee-meeting/2941/.
[7] PMG, "SADC Finance and Investment Protocol: Briefing by Business Unity & Approval; Government employee Pension Fund Annual Report 2006/7: Briefing" 20 November 2007, online: https://pmg.org.za/committee-meeting/8654/.

ITEM	SADC PROTOCOL	DATE OF RATIFICATION OR SIGNATURE BY SOUTH AFRICA	HISTORY OF PUBLIC PARTICIPATION
			on the Draft Southern African Development Community (SADC) Protocol on Gender and Development (the Draft Protocol) and the Draft SADC Gender Policy (Draft Policy).... The Draft Protocol was reviewed in November 2006, and national consultations with civil society organisations were held in March 2007, followed by regional consultations in Botswana in April 2007, with representation from government, civil society, international cooperating partners and the media. South Africa had participated extensively in the development of the Draft Protocol and was looked to by other States as an example of progression on the implementation of the SADC Declaration on Gender and Development of 1997."[8]
23.	Protocol on the Facilitation and Movement of Persons, 2005	October 31, 2003	*No evidence of public participation.*
24.	Protocol on Science, Technology and Innovation, 2008	August 6, 2003	*No evidence of public participation.*
25.	Protocol on Trade in Service	January 27, 2003	*No evidence of public participation.*
26.	Protocol on Tribunal and Rules Thereof, 2000 and	August 7, 2000	*No evidence of public participation.*
27.	Agreement Amending the Protocol on Tribunal	October 3, 2002	*No evidence of public participation.*

[8] PMG, "SADC Draft protocol on Gender Development: Minister's Address" 23 October 2007, online: https://pmg.org.za/committee-meeting/8464/ .

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"CALS 2(a)"

NCOP Security and Justice

Promotion of Equality, Administrative Justice & Access to Information Amendment Bills: adoption; International Conventions for S

Date of Meeting: 05 November 2002

Summary

No summary available for this committee meeting.

Minutes[1]

SECURITY AND CONSTITUTIONAL AFFAIRS SELECT COMMITTEE
5 November 2002
PROMOTION OF EQUALITY, ADMINISTRATIVE JUSTICE & ACCESS TO INFORMATION AMENDMENT BILLS: ADOPTION; INTERNATIONAL CONVENTIONS FOR SUPPRESSION OF TERRORIST BOMBINGS & FINANCING OF TERRORISM; SADC PROTOCOL ON CONTROL OF FIREARMS

Chairperson: Mr KL Mokoena

Documents handed out:
Promotion of Equality and Prevention of Unfair Discrimination Bill [B41B-2002]
Promotion of Administrative Justice Bill [B46B-2002]
Promotion of Access to Information Amendment Bill [B60-2002]
International Convention for the Suppression of Terrorist Bombings
International Convention for the Suppression of the Financing of Terrorism
Explanatory Memorandum: International Convention for Suppression of Terrorist Bombing
Protocol on Control of Firearms, Ammunition & Other Related Materials in SADC Region

SUMMARY

[1] https://pmg.org.za/committee-meeting/1965/

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The Committee unanimously adopted all the Bills without further amendment. The Committee unanimously agreed that Parliament be requested to ratify the two Conventions and the Protocol. The part of the Conventions relating to extra-territorial measures, would be addressed by the Anti-Terrorism Bill which is in its final stages of drafting.

MINUTES

Adoption of Bills

The Committee adopted the Promotion of Equality and Prevention of Unfair Discrimination Bill, Promotion of Administrative Justice Bill and the Promotion of Access to Information Amendment Bill.

International Conventions for Suppression of Terrorist Bombing & Financing of Terrorism

Commissioner P Jacobs (Head: Legal Support: Crime Operations in SAPS) noted that there are two UN Conventions submitted to the Parliament which are both aimed at combating acts of terrorism. He noted that the Convention received from the AU, also relating to acts of terrorism, had already been ratified by the Parliament and therefore only these two Conventions are still outstanding. South Africa condemns acts of terrorism and therefore fully supports any effort which is directed against terrorism.

He noted that some of the issues raised in these Conventions, especially those relating to intra-territorial measures to combat terrorism, are catered for in the Explosives Bill, which is now before the Parliament. The remaining part of the Conventions relating to extra-territorial measures, would be addressed once the Anti-Terrorism Bill has been passed by Parliament - and this Bill is in the final stages of its drafting. Thus the ratification of these Conventions by Parliament would be in line with South Africa's obligations both in the region as well as internationally.

Discussion

Mr L Lever (North-West, DP) asked how South Africa intends to comply with its obligations in terms of these Conventions.

Mr Jacobs responded that the Explosives Bill which has been submitted to Parliament tries to address some of the concerns raised in the Conventions, especially those relating to internal acts of terrorism. He added that feedback would have to be submitted to the UN detailing all efforts that SA has taken in ensuring compliance with its international obligation.

The Chairperson asked who would be responsible for financing these activities.

Mr Jacobs replied that it would be the responsibility of each Department to ensure the implementation and enforcement of these activities. This would be done in the normal line of function responsibilities for which the Departments are budgeted for. He also noted that the Financial Intelligence Centre, which is going to be established in terms of the Financial Intelligence Centre Act [No 38 of 2001], would also play a very important role in this regard.

The Committee unanimously agreed that Parliament would be requested to ratify these Conventions.

Protocol on Control of Firearms, Ammunition & Other Related Materials in the SADC Region

Commissioner Jacobs noted that this Protocol has been signed by all SADC countries including South Africa, except Angola. Amongst its objects is the prevention, combating and eradicating of illicit

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manufacturing of firearms, ammunitions and other related materials. For these objectives to be achieved, police co-operation, exchange of information and experience need to be encouraged throughout the region.

Article 5 of the Protocol requires all member states to bring in line their national legislation within the ambit of the Protocol. The Protocol does not only regulate the control over possession of firearms by civilians but also State-owned firearms, including those which were used in the peacekeeping processes.

In order to enhance transparency in the dispossession and accumulation of firearms a small committee has been established. This committee would supervise the implementation of this Protocol by the Member States and whether they adhere to their principles.

Commissioner Jacobs requested that Parliament ratify this Protocol as soon as possible since that would place South Africa as an example to other countries to follow suit. He said this would not present any problems since South Africa had always been the driving force through out the preparation this Protocol.

Discussion

Ms E Lubidla (Northern Cape, ANC) noted that SAPS Commissioner J Selebi had in the past spoken of the problems encountered by his Department regarding the voluntary surrender of firearms. He said that people are reluctant to hand in their firearms, including those which were used during the old regime. She asked what mechanism will be put in place to ensure that there is transparency regarding the disposal of the firearms handed in.

Commissioner Jacobs responded that the Protocol clearly expresses that the handing in of firearms would be voluntary. There are awareness programmes which aim at educating the public about the importance of handing in their firearms.

Mr P Maloyi (North West, ANC) expressed disapproval regarding the act of ratification by Parliament. He held that this left Parliament with no powers to change the instrument since the Heads of State had already signed the document. He asked why the Honorable President of Angola, Mr E Dos Santos, had refused to signed the Protocol.

Mr Jacobs noted that the Honorable Mr Dos Santos did not refuse to sign the Protocol, however he was not present in the meeting at which the Protocol had been signed in by other Heads of States. Mr Dos Santos had later affixed his signature to the Protocol since his country had always been involved throughout the preparations of the Protocol.

Ms Lubidla asked where the cross border operations would be monitored.

Mr Jacobs replied that the importance of co-operation between the regional countries would enhance police co-operation at the borders, where the cross border operations would be monitored.

The Chairperson asked the intentions underlying Article 12(a) of the Protocol.

Mr Jacobs responded that Article 12 is not a mandatory but a discretionary provision. It was inserted after other regions insisted on its inclusion in the Protocol - based on their experiences. The decision to compensate anyone based on the provisions of Article 12 depended entirely on the policy of each Member State.

Ms Lubidla asked if the owners of hand-made guns would also be compensated in terms of Article 12.

Mr Jacobs replied that it is not South Africa's policy to pay its citizens for voluntary surrender of their firearms. However, whether to follow the provisions of Article 12 or not would depend on the decision of the Director General on whose discretion the decision lies.

The Chairperson noted that the incorporation of this provision "opens a back window to a major crisis which could be fatal for the country". He asked the implications of the word "may" in Article 12(b) and whether it denoted that immunity can be refused in certain circumstances.

Mr Jacobs replied that it is not possible to create a general immunity provision and as such the decision to grant or refuse immunity lies squarely within the Director General's discretion.

Mr Maloyi noted that the experience which South Africa has gained from its TRC processes would be useful in assisting other SADC countries in the disposal of firearms. This would enable SA to play an important role in the dispossession of firearms throughout the region.

Ms Lubidla said that there are instances when someone may loses a legal firearm and then someone else used it in an illegal activity. She asked what would happen in such circumstances - after the firearm had been recovered by the police.

Mr Jacobs responded that this is a criminal matter which would be dealt with in terms of the criminal law procedures. However, before a firearm can be handed back to its rightful owner, it would first have to be determined whether the owner was not negligent in losing it. If the person was, such a person would be criminally prosecuted. If not, the firearm would be returned. If the rightful owner of the firearm, which was used in the criminal activity, could not be traced then the firearm would be destroyed.

Mr B Mkhalipi (Mpumalanga, ANC) what is the status of the Protocol.

Mr Jacobs responded that Protocol is a simple way to ensure that all parties involved reach consensus and unanimously co-operate with each other. He noted that nowadays the majority of States are more willing to sign a Protocol than to sign a Convention.

Mr Maloyi asked what would happen if a country signed a Protocol but failed to adhere to it principles.

Mr Jacobs responded that Article 15 expressly laid down the procedures to be followed to ensure the enforcement of this Protocol.

The Committee unanimously agreed that Parliament be requested to ratify the Protocol.

The meeting was adjourned.

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"CALS 2(b)"

NCOP Security and Justice

Institution of Legal Proceedings against Organs of State Bill; Extradition & Corruption Protocols; North West Maintenance Courts

Date of Meeting: 21 August 2002

Summary

No summary available for this committee meeting.

Minutes[1]

SECURITY AND CONSTITUTIONAL AFFAIRS SELECT COMMITTEE
21 August 2002
INSTITUTION OF LEGAL PROCEEDINGS AGAINST ORGANS OF STATE BILL; EUROPEAN CONVENTION PROTOCOL ON EXTRADITION; SADC PROTOCOL AGAINST CORRUPTION; COMMITTEE REPORT: NORTH WEST MAINTENANCE COURT VISITS

Chairperson: Kgoshi LM Mokoena

Documents handed out:
Proposed amendments: Institution of Legal Proceedings Against Organs of State Bill (see Appendix 1)
European Convention Protocol on Extradition
Additional European Convention Protocol on Extradition
Second Additional European Convention Protocol on Extradition
SADC Protocol Against Corruption
Committee Report on North West Maintenance Court Visits (email info@pmg.org.za for document)

Department of Justice officials present: Mr Labuschagne and Mr Allers

[1] https://pmg.org.za/committee-meeting/1742/

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SUMMARY
The Institution of Legal Proceedings against Organs of State Bill with amendments was finalised. The protocols were adopted after a lengthy discussion on the powers and functions of the NCOP with regard to international protocols ratified by Parliament. A workshop on this issue was suggested.

MINUTES

Finalisation of Institution of Legal Proceedings Against Organs of State Bill

The Chair read the motion of desirability and the Committee accepted the Bill with the proposed amendments. [These NCOP proposed amendments were compiled by the Justice Portfolio Committee]. The Bill will be debated on 17 September 2002.

SADC Protocol Against Corruption

The Chairperson opened the floor to any queries or clarification regarding the procedures to adopt the protocol and the content of the protocol.

In reply to Ms Kgoali (ANC) wanting to know if the Committee had any power to amend the protocols, the Chairperson explained that the State President was the only person who could propose amendments to other signatories of the international treaties or protocols. He added that such amendments were unlikely to happen. Mr Allers advised that Parliament could make a declaration to amend protocols, but Mr Lever (DP) was not convinced about the declaration because he believed there was no such provision.

Mr. Matthee (NNP) commented that he saw no point of endorsing treaties if it could not amend them. Mr Lever (DP) reminded Mr Matthee that it was a constitutional requirement that both houses of Parliament should endorse international protocols.

Mr. Mkhalipi (ANC) suggested that the Committee should be given a chance to have submissions before the State President could sign protocols and treaties. Ms Kgoali (ANC) agreed with Mr. Mkhalipi. She added that the Committee needed to review all protocols that it had agreed to so that it could evaluate if they were still serving the interests of South Africa. Mr. Lever (DP) agreed too and added that the problem with adopting protocols was that there was no engagement with provinces.

Mr. Mkhalipi (ANC) moved that the Committee adopt the protocols and deal with the issue of amendment powers at a separate meeting with the Portfolio Committee on Foreign Affairs. Mr. Maloyi (ANC) agreed with Mr Mkhalipi.

Mr. Matthee (NNP) disagreed with Mr Mkhalipi and suggested that the committee needed to delay the process (if the protocols were not urgent) while it determined the correct procedure for adopting protocols. He was not sure whether committee members moved for the adoption of protocols as party representatives or as provincial representatives. Ms Lubidla (ANC) agreed with Mr. Matthee's suggestion. Mr. Mkhalipi reiterated his position to clarify his argument.

The Chairperson asked the Department of Justice representatives what they thought about the matter. Mr. Allers suggested that the two House of Parliament should decide. He added that it was imperative though that the protocols be adopted by the Committee. Mr. Labuschagne said that he could not give substantive advice because he had no knowledge of dealing with protocols and no

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knowledge of the rules governing the NCOP. However, he agreed that the Committee needed to hold a workshop on the issue.

The Chairperson moved that the protocols be adopted because the delay would make no difference to the contents of the protocols. Mr Lever agreed and added that protocols were a presidential prerogative and he suggested that the issue should be raised with the Rules Committee. Finally the Committee recommended that the NCOP approve the protocol.

European Convention Protocol on Extradition
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Additional European Convention Protocol on Extradition
The Committee recommended that the NCOP approve the protocol.

Second Additional European Convention Protocol on Extradition
The Committee recommended that the NCOP approve the protocol.

Consideration of Committee Report on North West Maintenance Court Visits
The Chairperson moved that the report be adopted as read if there were no issues that committee member wanted to raise.

- Mr. Lever suggested that the report should have a recommendation regarding the problems that it reflected.
- Mr. Maloyi (ANC) suggested that because the problems were administrative, it would be wise to meet and discuss these with the Department of Justice officials and then only to discuss them with the Minister of Justice. Prince Zulu (ANC) agreed.
- Ms. Kgoali (ANC) was not in favour of inviting the Department officials. She wanted the issues to be debated in the NCOP Chamber.

Eventually Mr Maloyi's suggestion was agreed to by the Committee. The committee report was adopted and will be discussed further with the Department officials.

The meeting was adjourned.

Appendix:
SELECT COMMITTEE REPORT

DRAFT 1

(30/05/2002)

Report of the Select Committee on Security and Constitutional Affairs on the **Institution of Legal Proceedings against Organs of State Bill** [B 65Bâ€"99] (National Assemblyâ€"sec 75), dated 2002:

The Select Committee on Security and Constitutional Affairs, having considered the subject of the **Institution of Legal Proceedings against Organs of State Bill** [B 65Bâ€"99] (National Assemblyâ€"sec 75), referred to it, reports the Bill with proposed amendments, as follows:

NEW PREAMBLE

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1. On page 2, after the fourth line, to insert the following new Preamble:

PREAMBLE

RECOGNISING THAT certain provisions of existing laws provide forâ€"

* different notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of a debt;

* different prescription periods in respect of such debts;

AND RECOGNISING THATâ€"

* the Prescription Act, 1969 (Act No. 68 of 1969), consolidated and amended the laws relating to prescription and that that Act is the cornerstone of the laws regulating the extinction of debts by prescription;

* some of the provisions of existing laws which provide for different prescription periods in respect of certain debts are inconsistent with the periods of prescription prescribed by the Prescription Act, 1969;

AND BEARING IN MIND THATâ€"

* South Africa has moved from a parliamentary sovereign state to a democratic constitutional sovereign state;

* the Bill of Rights is the cornerstone of democracy in South Africa and that the State must respect, protect, promote and fulfil the rights in the Bill of Rights;

* section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;

* the right of access to courts may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;

AND RECOGNISING the need to harmonize and create uniformity in respect of the provisions of existing laws which provide forâ€"

* different notice periods for the institution of legal proceedings against certain organs of state for the recovery of a debt, by substituting them with a uniform notice period which will apply in respect of the institution of legal proceedings against certain organs of state for the recovery of a debt;

* different prescription periods, by making the provisions of Chapter III of the Prescription Act, 1969, applicable to all debts;

AND RECOGNISING the need to provide for transitional arrangements to ensure a smooth transition between the various existing statutory provisions regulating notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of a debt and the prescription periods of such debt, and the provisions of this Act;

AND BEARING IN MIND the limited need, for legal or practical purposes, to retain certain provisions of existing laws which provide forâ€"

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* notice periods that differ from the envisaged uniform notice period;

* prescription periods that differ from the periods of prescription prescribed by Chapter III of the Prescription Act, 1969,

ENACTING CLAUSE

1. On page 2, in line 1, after "IT" to insert "**THEREFORE**".

CLAUSE 1

1. On page 2, from line 11, to omit paragraph (iii) and to substitute:

(iii) "debt" means any debt arising from any cause of actionâ€"

(a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from anyâ€"

(i) act performed under or in terms of any law; or

(ii) omission to do anything which should have been done under or in terms of any law; and

(b) for which an organ of state is liable for payment of damages,

whether such debt became due before or after the fixed date;

2. On page 2, from line 29, to omit paragraph *(d)*.

3. On page 3, in line 3, to omit "*(e)*" and to substitute "*(d)*".

4. On page 3, in line 6, to omit "*(f)*" and to substitute "*(e)*".

5. On page 3, in line 9, to omit "*(g)*" and to substitute "*(f)*".

6. On page 3, in line 10, to omit "*(f)*" and to substitute "*(e)*".

7. On page 3, after line 15, to insert the following subclauses:

(2) This Act does not apply to any debtâ€"

(a) which has been extinguished by prescription before the fixed date; or

(b) which has not been extinguished by prescription before the fixed date and in respect of which any legal proceedings were instituted before the fixed date.

(3) Any legal proceedings referred to in subsection (2)*(b)* must be continued and concluded as if this Act had not been passed.

8. On page 3, in line 16, to omit "(2)" and to substitute "(4)".

NEW HEADING

1. On page 3, after line 17, to insert the following new heading:

Part 1

CLAUSE 2

1. Clause rejected

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NEW CLAUSE

1. That the following be a new Clause:

Prescription of debts, and amendment or repeal of laws and transitional arrangements relating to prescription of debts

2. (1) The laws referred to in the Schedule are, as from the fixed date, amended or repealed to the extent set out in the third column of the Schedule.

(2) Subject to section 3 and subsections (3) and (4), a debt which became dueâ€"

(a) before the fixed date, which has not been extinguished by prescription and in respect of which legal proceedings were not instituted before that date; or

(b) after the fixed date,

will be extinguished by prescription as contemplated in Chapter III of the Prescription Act, 1969 (Act No. 68 of 1969), read with the provisions of that Act relating thereto.

(3) Subject to subsection (4), any period of prescription which was applicable to any debt referred to in subsection (2)*(a)*, before the fixed date, will no longer be applicable to such debt after the fixed date.

(4) *(a)* The expired portion of any period of prescription applicable to a debt referred to in subsection (2)*(a)*, must be deducted from the said period of prescription contemplated in Chapter III of the Prescription Act, 1969, read with the provisions of that Act relating thereto, and the balance of the period of prescription so arrived at will constitute the new unexpired portion of prescription for such debt, applicable as from the fixed date.

(b) If the unexpired portion of the period of prescription of a debt referred to in paragraph *(a)* will be completed within 12 months after the fixed date, that period of prescription must only be regarded as having been completed 12 months after the fixed date.

NEW HEADING

1. On page 3, after line 38, to insert the following new heading:

Part 2

CLAUSE 3

1. On page 3, from line 44, to omit paragraph *(b)* and to substitute:

(b) the organ of state in question has consented in writing to the institution of that legal proceedingsâ€"

(i) without such notice; or

(ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).

2. On page 3, from line 59, to omit paragraph *(b)* and to substitute:

(b) a debt referred to in section 2(2)*(a)*, must be regarded as having become due on the fixed date.

CLAUSE 4

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1. On page 4, from line 31, to omit paragraph *(d)*.

2. On page 4, in line 34, to omit "*(e)*" and to substitute "*(d)*".

3. On page 4, in line 37, to omit "*(f)*" and to substitute "*(e)*".

4. On page 4, in line 41, to omit the first "*(g)*" and to substitute "*(f)*".

5. On page 4, in line 41, to omit the second "*(g)*" and to substitute "*(f)*".

CLAUSE 5

1. On page 5, in line 2, to omit "in terms of" and to substitute "by".

2. On page 5, in line 4, to omit "in respect of" and to substitute "for".

3. On page 5, in line 5, to omit "in terms of" and to substitute "by".

4. On page 5, from line 7, to omit "Deputy President, in respect of anything done pursuant to the Intelligence Services Act, 1994 (Act No. 38 of 1994), or the".

5. On page 5, in line 12, to omit "of" and to substitute "for".

6. On page 5, in line 22, to omit "appointed under section 3(3)" and to substitute" as defined in section 1".

7. On page 5, in line 24, after "Commissioner" to insert "of Correctional Services".

CLAUSE 6

1. On page 5, in line 34, after "against" to insert "certain".

2. On page 5, in line 34, to omit "2000" and to substitute "2002".

SCHEDULE

1. On page 6, to omit the item relating to "Act No. 91 of 1964".

2. On page 6, in the third column of the item relating to "Act No. 68 of 1995" to omit "The repeal of section 57." and to substitute:

1. The repeal of section 57.

2. The amendment of section 64Iâ€"

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any legal proceedings against a municipal police service or member of a municipal police service **[in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law]** for the recovery of a debt as defined in the Institution of Legal Proceedings against certain Organs of State Act, 2002, shall be instituted against the municipal council in question."; and

(b) by the deletion of subsection (2).

3. On page 7, after the item relating to "Act No. 111 of 1998" to insert the following item: Act No. 32 of 2000 Local Government: Municipal Systems Act, 2000 The amendment of section 109 by the deletion of subsection (1).

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LONG TITLE

1. On page 2, in the first line, after "**prescription**" to insert "**and to harmonise the prescription periods**".

2. On page 2, in the first line, to omit the first "**certain**".

3. On page 2, in the third line, to omit "**certain debts**" and to substitute "**the recovery of debt**".

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Environmental Affairs

Minister on Sustainable Development Goals post 2015; Doha Amendment to Kyoto Protocol on Climate Change;

Chairperson: Mr J Mthembu (ANC)

Date of Meeting: 26 August 2014

Summary[1]

The Committee was briefed by the Minister of Environmental Affairs on the importance of ratifying the Doha Amendment to the Kyoto Protocol. The briefing covered why the Amendment should be ratified, SA's national interest, background to the Amendment, an explanation of the proposed amendment, advantages of accepting it. The Committee approved its ratification by the National Assembly.

The Minister Molewa explained the year 2015 marked the end, not the death, of the term of implementation of the Millennium Development Goals (MDGs). The question then was to come up with a plan for post-2015. Under the Office of the UN General Secretary, preparations had begun on the Sustainable Development Goals (SDGs) which presented a new regime or set of development goals. The development of the SDGs was explained starting with the Zero Draft document at Rio+20 in 2012. The list of proposed goals were outlined after which the key principles drawn from the Millennium Development Goals (MDGs) were discussed. The recommendation to the Committee was for it to note the SDGs and for it to engage on the draft working document on the SDGs. The Committee agreed to this recommendation after Members engaged on the progress made by SA in achieving MDG goals and the monitoring and measurement of goals.

Minutes

[1] https://pmg.org.za/committee-meeting/17421/

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Public Hearings preparation

With the Minister and Deputy Minister in attendance, the Chairperson said the Committee would be looking at the Doha Amendment of the Kyoto Protocol and the Sustainable Development Goals (SDGs. The Chairperson, over the weekend, accompanied the Department to KZN, Mpumalanga and North West and reported to Members that preparations were advanced for the Committee's public hearings with stakeholders beginning Friday and Saturday in KZN, next Friday and Saturday in Mpumalanga and the following Friday and Saturday in North West. He was happy to report that the stakeholders involved in the public hearings included traditional leaders, rangers from the Parks, industry in the relevant provinces, members of the provincial legislatures and municipal councillors. This was a good cross section of participants. NGOs were also expected and Members were free to invite whom they wished to participate. Furthermore, the logistics for the hearings were well afoot. The emphasis was on the Committee interacting with the people – the real people that mattered. He thanked the Department for their help over the weekend especially with linkages with stakeholders and relevant officials from the provincial DEA. He was happy with the level of commitment the Department illustrated with regard to these public hearings, working late and over a weekend. He was honestly touched by the level of commitment shown by these public servants.

Ms T Stander (DA) thanked the Department and Chairperson for their organisation of the public hearings. The hearings would cover several matters but she was concerned there was not enough general publicity about the hearings. This could perhaps be done through general press statements to the media.

Mr P Mabilo (ANC) welcomed the level of preparations for public hearings that had been organised in a short space of time. He was encouraged and heartened by the cooperation between the Chairperson and Department and while the Committee had an oversight role to play, credit needed to be given where it was due.

The Chairperson indicated there would be a press briefing the next day at 10h00 where a statement would be issued. There was also a plan for printed adverts in provincial and national newspapers. Posters and pamphlets would be sent to provinces and made available to Members. There did have to be engagement with the media but there was an administrative team in parliament to deal with such matters.

Deputy Minister Barbara Thomson stressed, where possible, there needed to be engagement in a language people best understood.

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The Chairperson noted all public hearings would have translation relevant to the community so the matter was being attended to logistically. It would be pointless to make presentations in English when it was not the first language. He thanked Deputy Minister for raising this.

Doha Amendment to Kyoto Protocol to UN Framework Convention on Climate Change (UNFCC)

Minister Edna Molewa spoke briefly to the political importance of this Amendment both for SA and the world noting the second commitment period was agreed to here in SA after non-agreement at COP16 in Cancun. The Doha Amendment was important as it enabled a move away from the two-track model of negotiations and ensured an increase in ambition for carbon emission reductions. A certain number of parties at the United Nations Framework on Convention Climate Change (UNFCCC) were required for the second commitment period to be enforced. SA was one of the first few countries to accede to this second commitment period. This second commitment period would turn into a resolution at COP18 in Qatar. The President would make an announcement when SA ratified the Doha Amendment of the Kyoto Protocol.

Mr Alf Wills, DEA DDG: Environmental Advisory Services, took the Committee through a presentation outlining why the Doha Amendment of the Kyoto Protocol should be ratified. Looking at SA's national interest, the country needed to be part of a global climate change regime which minimised the impact of climate change because SA was extremely vulnerable to its impacts. Such a regime should not impose a mitigation burden on SA which would compromise the country's ability to meet its development challenges. To achieve this, there needed to be acceptance of the Doha Amendment to the Kyoto Protocol to the UNFCCC by SA and the international community.

The Doha Amendment came out of an agreed work-plan for negotiation of the new legal agreement, in Doha, to be concluded by 2015. The agreement reached on entry into force provisions for the eight-year long second commitment period under the Kyoto Protocol that was already agreed to in Durban to come into effect on 1 January 2013. This required ratification/accession/acceptance (depending on what applied to individual parties as per national laws) by those countries party to the Kyoto Protocol. Parties intending to provisionally apply the amendment pending its entry into force may provide notification to the Depository of their intention to provisionally apply the amendment.

Mr Wills explained the proposed amendment meant the Doha Amendment effected major changes to Annex B, Annex A and Article Three of the Kyoto Protocol to the UNFCCC. Annex B contained two columns, one listing the names of the parties and another containing the

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quantified emission limitation or reduction commitment, or what was referred to as Quantified Emissions Limitation and Reduction Commitment (QELRC). Annex A contained the Greenhouse Gases (GHG) that parties will need to report on. Parties will now have to include Nitrogen trifluoride to the other six GHGs for reporting thus bringing the number of GHGs for reporting for six to seven under the Kyoto Protocol. Article Three, paragraph 12 in particular, also prevented Annex 1 parties from carrying over new hot air into the third or subsequent agreement. There was monetary value in carrying over hot air from the first to the second commitment period.

The advantage of accepting the Doha Amendment included a legal commitment to Annex1 parties to contribute to a global effort to mitigate GHG emissions. Under Article Three of the Protocol, Annex 1 parties were obliged to achieve their quantified emission limitations and reduction commitments. There was a financial benefit through the continuation of capitalisation of the Adaptation Fund through the 2% share of proceeds from the sale of assigned amount units, as well as a 2% levy on certified emission reduction units from projects under the Clean Development Mechanism and assistance to mitigate and adapt to impacts of climate change, technology, capacity building and networking with other nations. There was an advantage in the continuation of a clean development mechanism by providing opportunities for sustainable development, promoting job opportunities, improving air quality and transferring technologies.

The recommendation then was for the Portfolio Committee to recommend to the National Assembly acceptance of the Doha Amendment to the Kyoto Protocol of the UNFCCC.

Discussion

The Chairperson noted the clear recommendation and the obligations which came with ratifying the second commitment period.

Mr Mabilo wanted to know if DEA thought the recommendation was clear. He wanted to know if the rest of Africa and SADC was on board with ratifying the Doha Amendment.

Minister Molewa indicated that ratifying the Doha Amendment was one of the biggest aspects Africa was pushing at the COP17 and 18 negotiations due to the importance of a rule based system. Adaptation was important for Africa as opposed to just concentrating on mitigation which amounted to chasing a moving target. Africa was one of the groups of the world that negotiated at all times with one voice so there was no doubt there would be support. She was not sure how far the African group was with ratifying the Second Amendment as this involved public and executive consultation and because of this, countries

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were moving at different speeds.

Ms Stander asked for confirmation that there were 198 signatories in total to the UNFCCC and the USA was the only country that did not want to sign. She asked why SA did not appear on Annex B? – did this mean SA's carbon emissions had not yet been quantified or did we not have a specific emission commitment? She did not otherwise see any problem with the Doha Amendment.

The Chairperson noted there had always been a political issue vis-a-vis the USA not ratifying the first agreement under the Kyoto Protocol. This could be because of economic or political considerations or simply a means to hold onto power by hook or crook. The developing world was not happy with the USA as one of the serious emitters and it was unthinkable for it not to deal with this world problem. The solution would be to bring everyone on board so that the matter was dealt with as a united world.

Mr Wills elaborated that all African countries had started the process of ratification but at this stage only China had ratified. This was because of the country's fast legal system with processes different to other countries. The USA had a theoretical commitment under the Kyoto Protocol but this was not legally binding because the country did not ratify the Kyoto Protocol. In actual real terms, the USA had increased, by 16%, in its emissions. SA and other developing countries were not under Annex B because the Kyoto Protocol was set up in a way so that those countries with the capability and historical responsibility, would take on the legally binding, quantifiable targets. Flexibility mechanisms were set up whereby developed countries could invest in developing ones to achieve global reductions. Because the USA did not join Kyoto, this system and balance was upset. The negotiations beyond 2020 were to set a system which was applicable to all but one needed to be careful when negotiating what kind of commitments to take on. SA did have commitments under the UNFCCC (34% deviation by 2020 and 42% by 2025) but did not have commitments under the Kyoto Protocol. In other words, SA had a relative not an absolute commitment while developed countries had an absolute, legally binding commitment It was however a misnomer to say SA's commitment under the UNFCC was voluntary because it was binding. Article 4.1 of the Convention said "all parties *shall*".

Minister Molewa added this was still a two-track system which was being negotiated into a single, fair, ambitious, legally-binding and enforceable regime for all. It was heard the US Congress would, at the time, not allow ratification. While at COP 17 in SA, the USA had agreed to negotiation for agreement by 2015 to apply to everyone fairly through an instrument with legal force. It was hoped the USA would stick to its word. She referred to the

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explanatory memo which she felt important to highlight the role played by SA in amending in 2012, to provide for the second commitment period by the adoption of the Doha Amendment to the Kyoto Protocol.

The Chairperson agreed that this was factually correct.

Mr Mabilo formally moved that the Committee recommend to the National Assembly to ratify the Doha Amendment of the Kyoto Protocol.

Mr M Shelembe (NFP) seconded this move.

Mr T Hadebe (DA) felt the citizens participating must be informed about what SA's emission reduction would be. Other than this, he did not have any issues with ratifying the Doha Amendment.

The Chairperson explained the Committee was now ready for when the Amendment came before them from the National Assembly. It could simply be referenced from the minutes of this meeting.

Mr Wills highlighted the minor difference between acceding to or ratifying the Amendment. The Amendment would be ratified if it was still open for signature in New York otherwise SA would accede. This was a matter of legal terminology.

The Chairperson said either way, the Committee had given the Doha Amendment its nod.

Sustainable Development Goals

Minister Molewa explained the year 2015 marked the end, not the death, of the term of implementation of the Millennium Development Goals (MDGs). The question then was to come up with a plan for post-2015. Under the Office of the UN General Secretary, preparations began on the Sustainable Development Goals (SDGs) which presented a new regime or set of development goals. The history of the MDGs showed it came introduced as a package by the UN General Secretary to which the world agreed. The SDGs were being agreed to in a more participatory manner as featured in the Zero Draft of the Rio+20 Outcome Document of 2012 which has continued to be discussed in greater detail at subsequent informal negotiations convened to finalise this document. The SDGs were a continuation of goals outlined under the MDGs, for example, goals on poverty as this was not completely eradicated. There had been consultation on the SDGs with the UN Secretary General setting up a panel which included SA and co-chaired by President Zuma and the

Prime Minister of Finland. For the Committee, it was important to link up with other Portfolio Committees, when it came to specific development goals such as education, agriculture and health. It was expected for these SDGs to be discussed at the UN General Secretary's Climate Summit in September 2014, where adoption of SDGs would be done and it would begin discussion on a Zero Draft leading into 2015 before implementation.

DEA Chief Policy Advisor: Sustainable Development, Mr Tlou Ramaru's briefing to the Committee looked at the Rio+20 outcomes on the SDGs, prepossessed SDGs, key principles underpinning these SDGs, the preparatory process and recommendations.

With the global sustainable regime, the 1972 UN Conference on the Human Environment had come to an agreement that both development and the environment could be managed in a mutually beneficial way. In 1992, the UN summit on environment and development presented a blueprint for sustainable development and birthed the three key conventions on sustainable development – the UN Convention on Biodiversity, UN Convention to Combat Degradation and the UNFCCC. Following this, in 2000, the UN Millennium Summit adopted the MDGs. In SA in 2002, the World Summit on Sustainable Development was hosted which produced the Johannesburg Plan of Implementation (JPOI) which was viewed as plan to implement Agenda 21. In 2012, in Rio, "The Future We Want" was adopted which looked at the Green Economy for Sustainable Development and an institutional framework for the attainment of sustainable development.

Looking at the Rio+20 outcomes, where the "The Future We Want" policy was adopted, paragraph 245-251 focused on the development of the SDGs. Member states agreed that the SDGs must be anchored on certain building blocks, including, Agenda 21 and the JPOI, full respect of all Rio principles with a key one being common but differentiated responsibility, contribution to the full implementation of the outcomes of all major summits in economic, social and environmental fields as a cross-cutting measure, consistency with international law and to build on the commitments already made. This stemmed from an outcry by the developing world not to start at the bottom but on commitments already made.

Mr Ramaru explained that Rio+20 was the UN Conference on Sustainable Development, hosted in Rio de Janeiro in 2012, which marked the 20 year anniversary of the first UN conference also hosted in Rio and out of which came Agenda 21 or the blueprint for the world to start moving toward the attainment of a sustainable development agenda.

The other Rio+20 outcomes were to address and incorporate in a balanced way, all three dimensions of sustainable development and their inter-linkages, to be coherent with and

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integrated into the UN development agenda beyond 2015. This was not to divert focus or effort from the achievement of the MDGs, include active involvement of all relevant stakeholders in the process for a participatory process, the goalshad to be action-orientated, concise, easy to communicate, limited in number, aspirational and global in nature. Following this, a 30-member Open Working Group (OWG) of the General Assembly was established to prepare a proposal on the SDGs.

The organisational work of the OWG on SDGs was structured on two phases – the first phase was focused on deliberations on main themes encapsulated in the Rio+20's Framework for Action. This took on experts' perspectives, inputs and views from member states and a range of stakeholders through a stock-taking exercise from March 2013 – February 2014. The second phase, from March 2014-September 2014, will entail the preparation of a report to be tabled at the 69th session of the UN's General Assembly with a proposal of SDGs in September 2014. The number of goals proposed as per the current Zero Draft text were 17 goals in total with 169 targets.

Mr Ramaru then took the Committee through a large list of proposed goals. These included to end poverty in all its forms everywhere, end hunger, achieve food security and improve nutrition and promote sustainable agriculture, ensure healthy lives and promote well-being for all at all ages with a focus on HIV/AIDS and tuberculosis, ensure inclusive and equitable quality education and promote life-long learning opportunities for all, achieve gender quality, empower women and girls, ensure availability and sustainable management of water and sanitation for all, ensure access to affordable, reliable, sustainable and modern energy for all with an emphasis on renewable energy, promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Other proposed goals included to build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation, reduce inequality within and amongst countries including through financial investment, make cities and human settlements inclusive, safe, resilient and sustainable, ensure globally sustainable consumption and production patterns through capacity building, conserve and sustainably use the oceans, seas and marine resources for sustainable development, protect, restore and promote sustainable use of terrestrial ecosystems and take urgent action to combat climate change and its impacts with the caveat that this goal was part of ongoing engagement in the UNFCCC so this was more of a generic goal.

The remaining proposed goals were to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and

inclusive institutions at all levels, to strengthen the means of implementation and revitalise the - global partnership for sustainable development, finance, technology, capacity building, trade and systemic issues, particularly, policy and institutional coherence, multi-stakeholder partnerships and data monitoring and accountability.

Mr Ramaru explained the key principles drew on lessons learnt from the MDGs, were specific on the actions required to attain the goals (which was one of the structural kisses of the MDGs), the means of implementation should accompany targets and commitments, the policy space should be afforded to countries as required and poverty eradication should be an overarching objectives of the SDGs along with social dimension, including, inequality, health, nutrition and education, as it deserved a special focus that extended through the faming of the post 2015 development agenda.

In preparation, there was work through inter-governmental engagements on the working draft with the Department of International Relations and Cooperation (DIRCO), multi-stakeholder engagements on the working draft, participation in the 69th session of the UN General Assembly, formulation of the SA position on al proposed goals, approval of the SA position on the SDGs and participation in the formal negotiations on SDGs.

The recommendation to the Committee then was for it to note the SDGs and for the Committee to engage with the draft working document on the SDGs.

Discussion

Minister Molewa noted there had been changes in some of the coordinating mechanisms.

Mr Ramaru said there used to be a UN Commission on Sustainable Development which used to coordinate monitoring and reporting of the implementation on agreed targets under the JPOI. Going to Rio, there was a view this structure was no longer relevant and it was bringing in political participation which was not good for the global agenda of sustainable development. A High Level Political Forum on Sustainable Development was then constituted to draw on various ministries to ensure there was coherence and political participation at a high level through ministerial meetings to be convened every year with a meeting of the heads of state in the third year. There was ongoing work in terms of the alignment and restructuring of the Economic and Social Council (ECOSOC) under the UN to be integrated into the High-Level Political Forum for convention back-to-back with UN General Assembly to draw on the participation of heads of state. In essence, the aim was to elevate the thinking of global sustainable development to the highest political leadership from Rio+20.

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The Chairperson said this was important detail to be noted and included. Such high level participation showed the world was taking sustainable development seriously.

Ms Stander congratulated the Department on the document receiving such welcomed input. She asked if the SDGs were based on or aligned to the National Development Plan (NDP) because she saw a lot of referral to 2030. If SA was to test itself on the attainment of MDGs today, what percentage would it achieve out of 100? This was important to understand how far we had to go. The presentation spoke of a monitoring tool and measurement – had that been finalised? Did the goals have any steps on how to reach it given that the specifics would be different for each country? The "how" to achieve goals and targets were vital.

Mr Shelembe saw the Department was involving many other stakeholders but how was it going to see the goal to be achieved was clearly explained especially to local municipalities where there were mayors. His experience with the Integrated Development Plans (IDPs) was that there was no monitoring if local departments were attaining service delivery targets set out in the IDPs. The emphasis was on making delivery tangible to the people.

Mr Ramaru said the SDGs were largely informed by the NDP and this demonstrated the strength of SA's planning system and tools.

With monitoring and evaluation, the MDG reports were used to monitor progress. When the target changed, the existing system simply needed to be aligned to the new targets. To determine percentage of achievement would differ from one goal to the next. On some goals SA was doing well while with others, achievement would be achieved by the deadline of 2015. The goals would be internalised and be aligned to the Department's own strategies to look at what was needed to achieve each target.

Deputy Minister Thomson added what with local government, this was, simply put, the need for plans to talk to all spheres of government and this was precisely the role of the NCOP as this was the House which dealt with provinces. It was simple and understandable that plans should talk to all spheres of government.

Ms Lize McCourt, DEA, COO, was overseeing work on sustainable development even though did not fall under the branch she managed. It was not an accident that the NDP informed the SDGs as the NDP itself was informed by the national strategy for sustainable development. The Future We Want document outlined the need for an annual sustainable development report to look at indicators for these targets. The baseline measurement for the SDGs would come from progress made with the MDGs. Many of the new goals came out of

the state of environment reporting or the sustainable development strategy and framework which would be used as an indicating baseline. Achievement of goals was linked to the national strategy for sustainable development. It was also important to look at the local and global state of environment reporting to look at what was measured, how frequently it was measured and the commonalities. The common but differentiated approach was key, based on where each country was in terms of its development path. With the IDPs, there was now the Spatial Planning and Land Use Management Act which allowed for upfront protection and allowed for alignment and a lack of delay in the intergovernmental forums.

Ms Stander's first question was not answered which was where SA was now if were to be graded in the progress made toward achieving the SDGs. She understood that with some areas SA was more advanced than in others.

Minister Molewa explained it was a little difficult to put a percentage mark. SA's progress on the MDGs was reported to the UN last year and it would have to be consulted to answer the question definitively. There were some goals SA had surpassed by far. An example was access to water where the country was currently on 92% access with the challenges of a lack or non-functional infrastructure. This was way above the MDG of 50% by 2015. Universal access was now being targeted. With health, child mortality figures had surpassed the 50% target. Targets had also been achieved in the areas of energy and education. SA also had a role to play in assisting other African countries in achieving MDGs.

She heard a subtle call to discuss the impact of Environmental Impact Assessments (EIAs) on development. This was an area to be unpacked as there needed to be a harmony between development and environmental protection.

The Chairperson heard this but as the Committee interacted with the Department through various programmes, one of these programmes was enforcement so the matter would be discussed then. The Committee would also be grappling with how DEA fared with the Auditor-General, areas for improvement and intended action moving forward.

When the MDGs were put before the UN General Assembly, it was given a term of operation of 15 years since starting in 2000. The timeline put on NDP coincided with the SDGs operational timeline ending in 2030 after starting in 2015. This was a wonderful coincidence for SA and came in handy. SA was thus better placed and it would be foolhardy not to accept these SDGs because of the coincidence with the country's broad internal developmental framework in the form of the NDP. The Committee had a full sense of what the SDGs were and the thinking within the corridors of the UN. There were basically no

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contradictions between the SDGs and NDP so there should be no qualms. The Committee was not the final decider as Parliament was obligated to involve South Africans on whatever matters directly affected them – one such matter was the SDGs. It was not foolhardy to take these matters to the people for their endorsement. This meant the Department, when they went to the UN, not only had Cabinet endorsement but the endorsement of the ordinary people of SA. The Department would then be emboldened and strengthened by the knowledge of endorsement by ordinary South Africans. He was happy the matter was up for discussion at the public hearings. It was important to explain to people how far the country had come in achieving the MDGs because this question might be asked.

Ms Stander said this was all very well but she felt progress needed to be communicated in a way that showed where the country started and what the target had achieved.

Ms McCourt said this would be done. She mentioned an important difference between the SDGs and MDGs were that the latter had an end date while the former did not, as yet. Very few of the dates were exactly 2030.

Mr Shelembe proposed the Committee agree with the recommendation as proposed.

The Chairperson noted the briefing helped the Committee in facilitating the public hearings.

The meeting was adjourned.

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Schedule and proposed dates per province[1]

No	Province and centre	Date and venue	Contact person
1.	Eastern Cape – Port Elizabeth	10 Sept '15	Lyndon Mardon
		Eastern Cape Training Centre	Tel: 043 605 7128 E-mail: lydon.mardon@dedeat.gov.za
2.	Free State - Bloemfontein	19 Aug '15	Monde Walaza
	Department of Economic Development, Tourism and Environmental Affairs		Tel: 051 400 9417 / 051 400 4813 E-mail: walazam@deteafs.gov.za
3.	Gauteng	28 Aug '15	Gerson Nethavhani
	Department of Agriculture and Rural Development		Tel: 011 240 3196 Cell: 082 680 6416 Email: Gerson.Nethavhani@gauteng.gov.za
4.	KwaZulu-Natal – Durban	6 Aug '2015	Timothy Fasheun
	Department of Economic Development, Tourism and Environmental Affairs		Tel: 033 555 9621 Cell: 082 446 7112 E-mail: timothyfasheun@kzndae.gov.za
5.	Limpopo - Polokwane	25 Aug '15	Trevor Mphahlele
	Department of Economic Development, Environment and Tourism		Tel:015 290 7079 Cell: 083 443 5744 E-mail: mphahlele@ledet.gov.za
6.	Mpumalanga - Nelspruit	24 Aug '15	Dudu Sibiya
	Department of Agriculture, Rural, Land and Environmental Affairs		Tel: 013 759 4085 Cell: 084 587 9053 E-mail: dasibiya@mpg.gov.za
7.	Northern Cape - Kimberly	18 Aug '15	Bryan Fisher
	Department of Environment and Nature Conservation		Tel: 053 807 7745 E-mail: bfisher@ncpg.gov.za
8.	North West - Rusternburg	7 Sept '15	Tharina Boshoff
	Department of Rural, Environmental and Agricultural Development	Kedar Country Hotel, Rustenburg	Tel: 018 389 5656 E-mail: tboshoff@nwpg.gov.za

[1] https://www.environment.gov.za/event/deptactivity/cop21_indc_stakeholderconsultations

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9.	**Western Cape – Stellenbosch**	31 Aug '15	Gooisan Issacs
	Department of Environmental Affairs and Development Planning		Tel: 021 483 2775 E-mail: **gooisan.isaacs@westerncape.gov.za**

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"CALS 4"

environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

STAKEHOLDER CONSULTATION ON SOUTH AFRICA'S POSITION TOWARDS COP21, IN PARIS, FRANCE

Discussion Document

DISCUSSION DOCUMENT FOR THE 21ST SESSION OF THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) CONFERENCE OF THE PARTIES (COP21) AND THE 11TH SESSION OF THE COP SERVING AS THE MEETING OF THE PARTIES TO THE KYOTO PROTOCOL (CMP 11) TO BE HELD FROM 30TH NOVEMBER TO 11TH DECEMBER 2015 IN PARIS, FRANCE.

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Contents

1. CONTEXT

The year 2015 is crucial in the Climate Change policy discourse, as the international negotiations of a new legal agreement under the United Nations Framework Convention on Climate Change (UNFCCC) that is applicable to all for the period from 2020 onwards, is scheduled to be completed in December 2015 at COP 21 in Paris. This document presents the South African position for the 21st Conference of the Parties (COP 21) of the United Nations Convention on Climate Change (UNFCCC) and the 11th Conference of the Parties serving as the Meeting of the Parties (CMP 11) to the Kyoto Protocol.

2. BACKGROUND

Climate change is one of the major global challenges of the 21st century that require global response. The adverse impacts of climate change are affecting all countries, especially developing countries, in the form of persistent drought and extreme weather events, rising sea levels, coastal erosion and ocean acidification, further threatening food security, water, energy and health, and more broadly efforts to eradicate poverty and achieving sustainable development. Combating climate change would require substantial and sustained reductions in greenhouse gas emissions (GHGs), which, together with adaptation, can limit climate change risks. The convention responsible for dealing with climate change is called United Nations Framework Convention on Climate Change (UNFCCC).

The UNFCCC was adopted in 1992 and entered into force in 1994. It provides the overall global policy framework for addressing the climate change issue and marks the first international political response to climate change. The UNFCCC sets out a framework for action aimed at stabilizing atmospheric concentrations of greenhouse gases to avoid dangerous anthropogenic interference with the climate system.

3. OVERSIGHT AND DECISION-MAKING IN THE UNFCCC

The Convention has established a variety of arrangements to govern, coordinate and provide for oversight of the arrangements described in this document. The oversight bodies take decisions, provide regular guidance, and keep the arrangements under regular review in order to enhance and ensure their effectiveness and efficiency. Arrangements for oversight and decision-making in the UNFCCC are as follows:

3.1 Conference of Parties:

The COP, established by Article 7 of the Convention, is the supreme body and highest decision-making organ of the Convention. It reviews the implementation of the Convention and any related legal instruments, and takes decisions to promote the effective implementation of the Convention. A total of

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195 Parties, as well as observer States and observer organizations are represented at sessions of the COP. The work is presided over by the President of the COP and guided by its Bureau. The COP meets once each year, unless it decides otherwise.

Decisions to promote the implementation of the Convention include the adoption of new protocols, for example the adoption of the Kyoto Protocol at COP 3, as well as the provision of guidance, requests, invitations and recommendations to Parties. The COP may also request the subsidiary and other bodies, and invite observer organizations to undertake work on specific topics, establish new arrangements and establish processes to conduct negotiations. Apart from decisions, the COP can also adopt conclusions, resolutions and declarations.

3.2 Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol:

The CMP, established by Article 13, paragraph 1, of the Kyoto Protocol, is the supreme body and highest decision-making organ of the Kyoto Protocol. It is responsible for reviewing the implementation of the Kyoto Protocol, and takes decisions to promote the effective implementation of the Protocol. A total of 192 Parties to the Kyoto Protocol, observer States and observer organizations participate in sessions of the CMP, which meets annually in conjunction with the COP. The President and Bureau of the CMP guide its work, and the in-session modus operandi is similar to that of the COP.

Decisions by the CMP to promote the effective implementation of the Kyoto Protocol can include the adoption of amendments, such as the recent Doha Amendment on the second commitment period of the Kyoto Protocol adopted at CMP 8. Similar to the COP, the CMP can produce decisions, conclusions, resolutions and declarations.

3.3 Subsidiary Bodies for Implementation:

The SBI was established by Article 10 of the Convention to advise and assist the COP and, in accordance with Article 15 of the Kyoto Protocol, to advise and assist the CMP, in the assessment and review of the effective implementation of the Convention and its Kyoto Protocol. The SBI reports to the COP and CMP on its work. Its modalities for participation, chairing, meetings, reporting and review are similar to those of the SBSTA.

The tasks of the SBI include, for example: (a) the consideration of Parties' national communications, in order to assess the overall aggregated effect of the steps taken in the light of the latest scientific assessments of climate change; (b) consideration of the Annex I Parties' national communications, in accordance with Article 12, paragraph 2, of the Convention, in order to assist the COP in carrying out the review of the adequacy of commitments as required by Article 4, paragraph 2(d), of the Convention; (c) the provision of assistance to the COP in preparing and implementing its decisions, in particular

reviewing the financial mechanism of the Convention, proposing recommendations on the arrangements for the intergovernmental process, and advising on budgetary and administrative matters.

3.4 **Subsidiary Body for Scientific and Technological Advice:**

The SBSTA was established by Article 9 of the Convention as one of the two permanent subsidiary bodies under the Convention. It provides information and advice to the COP and its other subsidiary bodies on scientific and technological matters relating to the Convention and, in accordance with Article 15 of the Kyoto Protocol, information and advice to the CMP relating to the Kyoto Protocol.

The SBSTA meets twice annually, in May/June and in conjunction with the annual sessions of the COP and the CMP at the end of the year. The SBSTA meets in a plenary setting, with contact and informal groups established to conduct work. All Parties, as well as observer States and observer organizations, participate in sessions of the SBSTA. The Chair of the SBSTA presides over the sessions, supported by the Vice-Chair and the Rapporteur. The SBSTA reports to the COP and the CMP on its work.

The tasks of the SBSTA include, for example: (a) assessment of the state of scientific knowledge on climate change and its effects; (b) the scientific assessment of the effects of measures taken in implementing the Convention; (c) the identification of technologies and know-how and advice on how to promote their development and/or transfer; (d) the provision of advice on scientific programmes, international cooperation in research and development and supporting capacity-building in developing countries; and (e) responding to scientific, technological and methodological questions that the COP and the SBI may put to it (see Article 9, paragraph 2, of the Convention).

4. CURRENT STATE OF PLAY:

The current system under the UNFCCC divide Parties into developed and developing countries. Furthermore, the developed countries also formed part of Annex I countries under the Kyoto Protocol which put forward specific measures to mitigate climate change. Notably, the United States of America never ratified the Kyoto Protocol. This led to the renegotiations of a better deal that can capture the USA under the Bali Action Plan. The Bali Action Plan was a two year negotiation from 2007 to 2009.

In 2009 the COP 15 Copenhagen Conference hoped to "seal the deal" and result in a fair, ambitious and equitable agreement, setting the world towards a path to avoid dangerous climate change. During the high-level segment, informal negotiations took place in a group consisting of major economies and representatives of regional groups, resulting in political agreement entitled the "Copenhagen Accord". In this Conference, South Africa pledged to take nationally appropriate mitigation action to enable a 34% deviation below the "business as usual" emissions growth trajectory by 2020, and a 42% deviation below the "business as usual" emissions growth trajectory by 2025. South Africa further clarified that: in accordance

with article 4.7 of the UNFCCC, the extent to which this action will be implemented depends on the provision of financial resources, technology and capacity building support by developed countries. With financial, technology and capacity building support from the international community, this level of effort will enable South Africa's greenhouse gas emissions to peak between 2020 and 2025, plateau for approximately a decade and decline in absolute terms thereafter. The Copenhagen Conference was however embroiled in controversy over transparency of the process that led to the Copenhagen Accord and as such trust was lost in the climate change negotiations.

The Durban Conference (COP 17) held in South Africa had to restore trust lost in Copenhagen. Durban decided to launch a new negotiation under the Ad Hoc Working group for Durban platform for Enhanced Action (ADP). The process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties takes place under workstream I of the ADP. It was agreed that the process shall be adopted at the twenty-first session of the COP, in 2015, for it to come into effect and be implemented from 2020. COP 17 further noted with grave concern the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels. To address the ambition gap, the COP therefore decided to launch a workplan (workstream II) on enhancing mitigation ambition to identify and explore options for a range of actions that can close the ambition gap, with a view to ensuring the highest possible mitigation efforts by all Parties.

The Doha conference (COP 18) was able to meet South Africa's priorities of (i) agreement on a 2nd commitment period of the Kyoto Protocol with no legal gaps, with a process to attain ratification, (ii) putting in a place a process under the UNFCCC permanent subsidiary body on implementation to further clarify comparable mitigation commitments for developed countries that are not participating in the 2nd commitment period of the Kyoto Protocol, (iii) agreement to further clarify the accounting rules of supplementary actions under the ambition work plan of the ADP, and (iv) agreement on a plan of work for the negotiation of a future agreement.

Negotiations in Warsaw conference (COP 19) focused on the implementation of agreements reached at previous meetings, including pursuing the work of the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action. To reinforce the Durban ADP decision, the meeting adopted an Intended Nationally Determined Contributions (INDCs) decision that invited all parties in a position to do so to initiate or intensify domestic preparations for their INDCs.

The Lima COP 20 had a task to develop a draft negotiation text to lay a foundation for a successful COP 21. Following lengthy negotiations on a draft decision for advancing the Durban Platform for Enhanced Action, COP 20 adopted the 'Lima Call for Climate Action,' which sets in motion the negotiations in the coming year

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towards a 2015 agreement, clarifying the process for submitting and reviewing INDCs, and enhancing pre-2020 ambition. The Lima Climate Change Conference was indeed able to lay the groundwork for Paris in 2015, by capturing progress made in elaborating the elements of a draft negotiating text for the 2015 agreement and adopting a decision on INDCs, including their scope, upfront information, and steps to be taken by the Secretariat after their submission.

South Africa as a global responsible citizen is committed to making a fair contribution to addressing the challenge of climate change based on science and equity and its national response considers both development space and environmental integrity. To this end, South Africa has initiated the process of researching and preparing its nationally determined contribution, to be communicated to the secretariat by the 1st of October 2015 in order to be included in the synthesis report on the aggregate effect of the INDCs communicated by Parties. South Africa submission on intended nationally determined contribution (INDC) includes adaptation, mitigation and means of implementation for both.

5. EXPECTED KEY OUTCOMES

5.1 Reflection on Negotiations to date:

Subsidiary Bodies

The agenda for the recently concluded negotiation in June 2015 in Bonn, Germany under the Subsidiary Body for Implementation and Subsidiary Body for Scientific and Technological Advice was limited to only mandated items for consideration, as the focus was on the draft negotiating text for adoption in Paris under the Ad Hoc Working Group on the Durban Platform for Enhanced Action. However, progress was made by the form of draft conclusions under Agriculture; REDD+ decision on non-carbon benefits which had been tabled by the African Group; and Response measures which was previously contested. The outcomes of the technical outcomes of the 2013-15 Review, which considered whether to revise the global temperature goal from 2 degrees C to 1.5 degrees C was held in abeyance until Paris.

ADP

The main purpose for the Bonn discussion was to streamline the 90 page negotiation text. However, developed country Parties were not willing to engage in any substantial discussion that could lead to streamlining of the text. For South Africa the main purpose was to ensure that G77 & China to come up with its own streamlined position. The mode of work in workstream I shifted to thematic work on specific elements of the Agreement through appointed co-facilitators, with overview in the single contact group.

There was progress and goodwill on workstream II and transparency of actions and support, primarily because the USA and European Union foresee an agreement that is primarily premise on transparency.

On finance progress was made in streamlining the G77+China position. However limited progress was made on adaptation in the agreement, including G77+China progress on National Adaptation Plans, as the Alliance of Independent Latin American Countries avoided tactically slowed down progress. Their rationale is avoiding adaptation being addressed through decisions rather than in the core agreement if too much progress is made too early.

Overall the Bonn June 2015 session produced guidance towards a better organised text with clear sections and options than was the case in the previous text. The ADP Co-Chairs were mandated to produce a 'consolidated and streamlined' version of the text by 24 July, and further identify aspects of the text that could form part of the legal agreement, and those elements that would be captured in decisions. Such documents will be made available on the 24 July 2015, just over a month before the next ADP session (31 Aug - 4 Sep).

South Africa is of the view that streamlining and negotiation still needs to happen in the next sessions in August and October, and has emphasised the need of the outputs of the negotiation text being recorded as revisions of the Geneva text, as the latter is the only legal basis for negotiation, and if the text does not get formally updated as revisions of the legal, the risk of a text emerging from non-party driven process is more likely should there be deadlocks in Paris.

5.2 South Africa's socio-economic and political interests that inform Country position

South Africa's position in the international negotiations and the overall framing of the INDCs is informed by the underlying principles, namely:

(i) to ensure that environmental and development imperatives are balanced;

(ii) to ensure that global emission reduction efforts are adequate to avert dangerous climate change while respecting developing countries' priorities for development and eradicating poverty; South Africa would therefore contribute its fair share to the global effort;

(iii) that, in accordance with the principle of common but differentiated responsibility, and respective capability, developed countries have an obligation to provide sufficient means of implementation to support both adaptation and mitigation actions by developing countries; and

(iv) that adaptation and mitigation must receive equal priority, in accordance with South Africa's National Policy Framework and the National Development Plan, and further, that adaptation is recognised as a global priority.

5.3 South Africa's expectation of the 2015 agreement in general

SA expects the 2015 agreement to:

(i) Reinforce **multilateral rules** based system of the UN;

(ii) Implement and contribute to the fulfillment of the **objective of the Convention** as set out in Article 2;

(iii) Be **inclusive** (applicable to all Parties); **fair** (give effect to the principles of equity and common but differentiated responsibilities and respective capabilities); **effective** (be based on sound science);

(iv) Be **adequate** (to keep temperature increase below 2°C);

(v) Enable and enhance the transition to a low emissions and climate resilient sustainable development pathway; and

(vi) Give **equal priority to adaptation** and mitigation with balanced provision of means of implementation.

5.4 SUMMARY OF SA POSITION FOR PARIS COP21

<u>Ad Hoc Working Group under the Durban Platform for Enhanced Action</u>

The 2015 Agreement to be adopted at CoP 21/CMP11 in Paris, France, should be under the Convention, and in accordance with its principles and provisions in particular the principles of common but differentiated responsibilities and respective capabilities and equity. The agreement must be consistent with science and equity, and further enhance a multilateral rules based system in a balanced and ambitious manner.

The agreement should provide legal parity between mitigation and adaptation. The UNEP second Adaptation Gap Report clearly points out at the increased burden for adaptation in developing countries from inadequate aggregate mitigation efforts. Therefore, the agreement should ensure mitigation ambition keeps the world on track for global temperature increase that is well below 2 degrees Celsius from pre-industrial levels by the end of the century.

Adaptation

South Africa will insist on the operationalization of the global responsibility for adaptation, through a global goal for adaptation that enhances the implementation of adaptation commitments, which takes into account adaptation investments by developing countries, adaptation needs and costs including support.

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Mitigation

South Africa calls for enhancement of mitigation ambition, in accordance with the provisions and principles of the Convention with a view to achieving the 1.5 or 2 degree Celsius target. In this regard, the developed country Parties and other Parties included in Annex II to provide climate finance as a means to enhancing action towards achieving the objectives of the Convention.

Response measures

South Africa's position is that we should maintain the forum on response measures and also calls for the establishment of a mechanism to avoid and minimize the negative economic and social consequences of response measures taken by developed country Parties on developing country Parties, and in particular to address policy issues of concern, such as unilateral measures.

Finance

South Africa support Africa's call that the 2015 agreement should also spell out the support from developed countries to the developing countries as stipulated in the Convention.

It is also important that the capitalization of the Green Climate Fund be continued in the pre-2020 period to fill the finance gap that currently exists. The GCF is supposed to mobilise $100 billion per annum from 2020 onwards. It is important to advocate the yearly targets for the capitalization of the GCF.

The COP also has to resolve the issue of sources and scale of finance for the post 2020 period.

Capacity building

South Africa has called for the establishment of the international capacity-building mechanism that can ensure coherence of this cross-cutting issue, whilst facilitating implementation of adaptation and mitigation in developing countries. Capacity building is still a necessity for many developing countries.

The international capacity-building mechanism under this agreement should be supported through the Financial and Technology mechanisms under the Convention and be linked to adaptation-related institutions.

Pre-2020 or Workstream II position under ADP

Workstream II is part of the Durban mandate and should therefore receive equal priority.

South Africa's position is that Parties to UNFCCC should urgently ratify the second commitment period under the Kyoto Protocol (KP 2). Developed countries not participating in KP 2 needs to fulfil their obligation under the Convention.

The Technical Expert Process under needs to do more, faster through identification of ambitious actions.

Provision of means of implementation is essential for implementation.

Workstream II could be more useful is it could design some form of the implementation mechanism that makes international collaboration possible. If the proposed Accelerated Implementation Mechanism could do this we will be fine with that.

5.5 Intended Nationally Determined Contributions (INDCs), elements and legal form and elements of the 2015 agreement:

5.5.1 Definition of the INDC

While the term INDC is not defined by any COP decision, the language "intended nationally determined contribution" provides some indications of the anticipated process that can inform Parties' preparation of their contributions which might well be Parties commitments after Paris. The term "intended" reflects the fact that the legal status of the contributions and their final form under the 2015 agreement are yet to be decided. Contributions may also be subject to adjustment, for example, if future rules change the assumptions (e.g., about land-use accounting) that Parties made when preparing their INDCs. The language "nationally determined" underscores that contributions will be developed by countries in accordance with their national circumstances rather than collectively determined. INDCs were defined at COP 19 as contributions "towards achieving the objective of the Convention as set out in its Article 2."

That objective is "to achieve the stabilization of greenhouse gas (GHG) concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner" (UNFCCC 1992). INDCs may also contribute to numerous domestic objectives associated with the shift to a low-carbon economy, including gains in energy efficiency, reduced deforestation, and improved air quality, among others as further described below. The term "contribution" is used without prejudice to the legal nature of the contribution or type of contribution.

5.5.2 Benefits of developing and submitting an INDC

The INDCs will be crucial to the success of the UN's climate deal, both in 2015 and in the future. It is the first time that all countries, whether rich or poor, have been obliged to come forward with pledges to manage their greenhouse gas emissions. INDCs act as a barometer of where the world stands on tackling climate change. This could be seen as median between bottom-up and top-down, where countries proposes their own targets, while the UN tracks whether they are enough. The success of the UN's new climate agreement will, to a significant degree, depend on the ambition of these pledges, which will determine the rate of action to tackle climate change after 2020, and limit global temperature below 2 degrees relative to pre-industrial levels.

Putting forward an INDC demonstrates a political commitment to limiting warming and, in turn, to limiting future risks posed by higher temperatures. The Durban decision to launch a process to develop the 2015 Agreement noted its applicability to all Parties. Climate change is a problem of the global commons, and, therefore, every country should participate in its solution. And given the significant risks posed by higher temperatures, the costs of inaction are too high for global community to accept.

INDCs can be an opportunity to design policies that can make economic growth and climate objectives mutually reinforcing. For example, policies that lower emissions not only reduce vulnerability to energy price volatility and supply disruptions, but they also produce significant benefits for human health and ecosystems by curbing air pollution. Climate action can also advance rural development as a result of better land management practices.

Furthermore, the process to develop an INDC can enable climate change to be linked to other national priorities such as sustainable development and poverty reduction. INDC preparation and implementation could also strengthen the institutional and technical capacity, enhance policy integration, and inform key stakeholders.

The draft INDC for South Africa is available online at https://www.environment.gov.za/event/deptactivity/cop21_indc_stakeholderconsultations for public comment.

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LRC
Legal Resources Centre

17 July 2015

For the attention of:

Mr N. Qongqo
State Attorney: Pretoria
Respondents' attorney
By email: naqongqo@justice.gov.za

With a copy to:

Mr T. Motlhe
Mothle Jooma Sabdia Inc
Applicant's attorneys
By email: ThipeM@mjs-inc.co.za

And to:

Mr David Cote
Lawyers for Human Rights
Southern African Litigation Centre's attorneys
By email: david@lhr.org.za

Dear Sir

Law Society of South Africa v President of the Republic of South Africa and Others (case number 20382/15): Amicus intervention by the Centre for Applied Legal Studies

1. We act for the Centre for Applied Legal Studies ("**CALS**").

2. CALS is a civil society organisation and registered law clinic based at the School of Law at the University of Witwatersrand. CALS is committed to the protection of human rights through empowerment of individuals and communities and the pursuit of systemic change.

3. In this regard, CALS operates across a range of human rights issues: rule of law, business and human rights, environmental justice, gender, and basic services. The purpose and vision of the rule of law programme is: (i) to protect systems of a constitutional democracy, which are necessary to achieve the

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fulfilment of all human rights; (ii) to protect civil and political rights as a precursor to the achievement of social and economic justice; and (iii) to work towards eradicating discrimination against people living in poverty.

4. The above matter falls within CALS' area of interest under the rule of law programme, and CALS believes that it can be of assistance to the court in the determination of the issues in question. As such, CALS intends to apply to be admitted as *amicus curiae* in order to make submissions on the proper procedure to be followed by the state when dealing with international agreements contemplated under section 231 of the Constitution of the Republic of South Africa, 1996, and in particular the role of public participation in this process.

5. However, CALS considers it prudent to first have regard to the respondents' answering papers before applying to be admitted. Depending on the attitude adopted by the state, it may be necessary for CALS to alter its submissions, or it may be unnecessary for CALS to intervene.

6. It is our understanding that the initial extension agreed amongst the parties was for the respondents to file their answering papers by 30 June 2015, which was thereafter extended to 6 July 2015, but that this has yet to be filed.

7. In the result, we would be grateful if you could give us an indication as to when the respondents expect to file their answering papers, and to provide us with a copy of the papers via email once they have been filed. Once this has been received, CALS will move as expeditiously as possible to review the answering papers and initiate the process in terms of rule 16A of the Uniform Rules of Court to be admitted as *amicus curiae*.

8. We look forward to hearing from you.

Yours faithfully

LEGAL RESOURCES CENTRE
Per: Avani Singh / Michael Power
avani@lrc.org.za / michael@lrc.org.za

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"CALS 6"

Constitutional Litigation Unit

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LRC
Legal Resources Centre

30 July 2015

For the attention of:

Mr T. Motlhe
Mothle Jooma Sabdia Inc
Applicant's attorneys
By email: ThipeM@mjs-inc.co.za

And to:

Ms N. Qongqo
State Attorney: Pretoria
Respondents' attorneys
By email: nqonggo@justice.gov.za

With a copy to:

Mr David Cote
Lawyers for Human Rights
Southern African Litigation Centre's attorneys
By email: david@lhr.org.za

And to:

Mr W. Spies
Hurter Spies Ing
Interveners' attorneys
By email: balkie@mweb.co.za

Dear Madam / Sir

Law Society of South Africa v President of the Republic of South Africa and Others (case number 20382/15): Request for consent in terms of rule 16A of the Uniform Rules of Court

1. As you are aware, we act for the Centre for Applied Legal Studies ("**CALS**" or "**our client**").

2. We refer to our letter dated 17 July 2015, in which it was set out that:

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2.1. CALS is a civil society organisation and registered law clinic based at the School of Law at the University of Witwatersrand;

2.2. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change;

2.3. CALS operates across a range of human rights issues, namely the rule of law, environmental justice, gender, basic services, and business and human rights;

2.4. The purpose and vision of CALS' rule of law programme is to protect systems of a constitutional democracy, protect civil and political rights as a precursor to the achievement of social and economic justice, and work towards eradicating discrimination against people living in poverty.

3. In the present matter, CALS has now considered the papers that have been filed by the parties, and is of the view that it is still necessary to intervene and offer assistance to the court in the determination of the issues in question.

4. Accordingly, we request the consent of the parties that our client be admitted as an *amicus curiae* in terms of rule 16A of the Uniform Rules of Court. We draw to your attention that CALS has been a party to a number of court proceedings in the past, including having been admitted as *amicus curiae* in, for instance, *Carmichele v Minister of Safety and Security and Another*,[1] *S v Engelbrecht*,[2] *Masiya v Director of Public Prosecutions, Pretoria and Another*[3] and *National Commissioner of Police v Southern African Human Rights Litigation Centre and Another*.[4]

5. The present matter raises important questions about the interplay between domestic law and international law, the proper interpretation of section 231 of the Constitution of the Republic of South Africa, 1996 and the government's duties to the South African public when entering into agreements on the international plane. In this regard, CALS seeks the opportunity to file publicly available evidence by way of affidavit, and to make written and oral submissions, focusing on the following issues:

5.1. The impact and consequences of the decision of the first respondent to enter into the 2014 Protocol on the SADC Tribunal at both the domestic and international levels;

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[1] 2001 (4) SA 938 (CC).
[2] 2004 (2) SACR 391 (W).
[3] 2007 (5) SA 30 (CC).
[4] 2015 (1) SA 315 (CC).

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5.2. The need for public consultation when entering into international agreements, the appropriate stage(s) at which this ought to take place, and the responsibility for such;

5.3. The irrationality of the President's failure to consult with the public, being those whose rights and interests would be affected by signing the treaty;

5.4. The impact and consequences of the failure to undertake such processes of public consultation prior to entering into international agreements;

5.5. The public consultation (or lack thereof) that has preceded the signing and/or ratification of instruments akin to the 2014 Protocol on the SADC Tribunal.

6. Being fully cognisant of the role of an *amicus*, CALS does not intend to repeat the submissions of the other parties in these proceedings.

7. We would be grateful if you could advise by no later than **3 August 2015** whether your respective clients are willing to consent to our client's intervention as an *amicus curiae*.

8. We look forward to hearing from you.

9. All our client's rights are reserved.

Yours faithfully

LEGAL RESOURCES CENTRE
Per: Avani Singh / Michael Power
avani@lrc.org.za / michael@lrc.org.za

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"CALS7" 00

M | J | S Incorporated

Reg No 2013/008818/21

Mothle Jooma Sabdia

Ground Floor, Duncan Manor Cnr Duncan and Brooks Streets, Brooklyn, Pretoria. PO Box 11147, Hatfield, 0028
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To	Legal Resource Centre
Email	avani@lrc.org.za/ michael@lrc.org.za
Your Ref	
Our Ref	**MR. T.A. MOTHLE/LOUISE / TAM3499**
Date	30 July 2015

Dear Sir ,

RE: THE LAW SOCIETY OF SOUTH AFRICA//THE PRESIDENT OF SOUTH AFRICA & OTHERS

The aforementioned matter as well as your letter dated 30 July 2015, refers.

We hereby give consent that your client be added as an *amicus curiae* in terms of Rule 16A of the Uniform Rules of Court.

We trust you will find the above in order.

Yours faithfully

MOTHLE JOOMA SABDIA INCORPORATED

PER: T A MOTHLE

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"CALS 8"

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Pretoria

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0001

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12 AUGUST 2015

Enquires: N QONGQO
Email:nqongqo@justice.gov.za

My ref: 1833/2015/Z22/
Your ref:

Mr. Michael Power
Legal Resources Centre
16th Floor, Bram Fischer Towers
201Albert Street
Marshalltown
Johannesburg

With a copy to:

Mr. T Motlhe
Mothle Jooma Sabdia Inc.
Applicant's attorneys
By email:ThipeM@mis-inc.co.za

And to:

Mr. David Cote
Lawyers for Human Right
Southern African Litigation Centre's attorneys
By email:david@lhr.org.za

BY FAX: 011 838 4273

RE: THE LAW SOCIETY OF SA / THE PRESIDENT OF SA AND THREE OTHERS

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We refer to the abovementioned matter and your letter 17 July 2015, terms of which you seek the admission of your client, the Centre for applied legal studies (CALS), as *amicus curiae* in the above matter in terms of Rule 16A.

The Respondents consent to CALS admission as *amicus curiae* in the matter, subject to the proviso that CALS will only be entitled to make legal submissions and will not be entitled to adduce any evidence in the application.

Yours faithfully

N QONGQO
FOR: STATE ATTORNEY (PRETORIA)

KT NN

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"CALS 9"

Avani Singh

From: Willie Spies <balkie@mweb.co.za>
Sent: 23 September 2015 05:15 PM
To: 'Avani Singh'
Cc: 'Michael Power'
Subject: RE: Law Society of South Africa / President of the RSA and Others (case no 20382/15)

Dear Mr Singh

We just received your email. The letter however dates back some time and we were under the impression that the LRC was already admitted as an amicus on August 3, 2015.

Be that as it may, since our clients have not yet been admitted as intervening parties, we doubt if our consent is necessary or relevant at this stage.

Kind regards

Willie Spies

Tel: 012 644 2676 • **Sel/Cell:** 083 676 0639
Faks/Fax: 012 644 1997 • **E-pos/E-mail:** willie@hurterspies.co.za
Posadres/Postal Address: Posbus/PO Box 14505, Lyttelton, 0140
Adres/Address: Eerste Vloer / First Floor, AfriForum Gebou / Building,
Hoek van / corner of DF Malan- and Unionlaan / Avenue, Kloofsig, Centurion

Hurter Spies Inc
prokureurs • attorneys



From: Avani Singh [mailto:avani@lrc.org.za]
Sent: 23 September 2015 04:05 PM
To: 'Willie Spies' <balkie@mweb.co.za>
Cc: 'Michael Power' <michael@lrc.org.za>
Subject: Law Society of South Africa / President of the RSA and Others (case no 20382/15)

Dear Sir

As you are aware, we act for the Centre for Applied Legal Studies ("our client"), which seeks to be admitted as an amicus curiae in the above matter.

We write to you to enquire whether your clients, the applicants for intervention, would be willing to consent to our client's application in terms of rule 16A of the Uniform Rules of Court. For your reference, please see attached the request for consent that was sent to the parties to the main application on 30 July 2015.

Whilst we are aware that your clients are not as yet formally parties to the main application, our client would prefer not to wait for the finalisation of the intervention application before filing its application. Our client therefore considers it prudent to seek your clients' consent at this stage in the event that your clients are granted leave to intervene.

We look forward to hearing from you.

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Kind regards

Avani Singh | Attorney
Constitutional Litigation Unit

LRC
Legal Resources Centre

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LRC
Legal Resources Centre

26 April 2016

For the attention of:

Mr T. Motlhe
Mothle Jooma Sabdia Inc
Applicant's attorneys
By email: ThipeM@mjs-inc.co.za

And to:

Ms N. Qongqo
State Attorney: Pretoria
Respondents' attorneys
By email: naqongqo@justice.gov.za

And to:

Mr David Cote
Lawyers for Human Rights
Southern African Litigation Centre's attorneys
By email: david@lhr.org.za

And to:

Mr W. Spies
Hurter Spies Ing
Interveners' attorneys
By email: balkie@mweb.co.za

Dear Madam / Sir

The Law Society of South Africa v President of the Republic of South Africa and Others (case number 20382/15): Application for intervention as *amicus curiae*

1. As you are aware, we act for the Centre for Applied Legal Studies ("**CALS**" or "**our client**").

2. We refer to our previous correspondence, in which CALS sought consent from the principal parties to be admitted as an *amicus curiae* in the above matter in order to advance legal submissions and to adduce evidence.

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3. We note in this regard that the Law Society of South Africa has granted CALS such consent; the respondents have consented to CALS being admitted as an *amicus curiae* to advance legal submissions, but not to adduce evidence. It is therefore necessary for CALS to bring an application in terms of rule 16A(5) of the Uniform Rules of Court to seek to be admitted by order of court.

4. It is CALS' intention to write to Deputy Judge President Ledwaba to request that the *amicus curiae* application be heard on the same day as the intervention application, which has been set down for 30 May 2016. In CALS' view, hearing the two applications on the same day would be expedient, and save both time and costs for the parties. There is also sufficient time for any party opposing CALS' application to file opposing papers, should it wish to do so.

5. Accordingly, we request that you advise by **midday on Friday, 29 April 2016** whether your respective clients would have any objection to CALS' proposal to hear its *amicus curiae* application on the same day as the intervention application.

6. We look forward to hearing from you.

7. All our client's rights are reserved.

Yours faithfully

LEGAL RESOURCES CENTRE
Per: Avani Singh
avani@lrc.org.za / michael@lrc.org.za

KT.
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"CALS 11"

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LRC
Legal Resources Centre

13 June 2016

For the attention of:

Mr W. Spies
Hurter Spies Ing
Attorneys for the 2nd to 7th applicants
By email: balkie@mweb.co.za

Dear Sir

Law Society of South Africa v President of the Republic of South Africa and Others (case number 20382/15): Request for consent in terms of rule 16A of the Uniform Rules of Court

1. As you are aware, we act for the Centre for Applied Legal Studies ("**CALS**" or "**our client**").

2. We refer to our previous correspondence, in which it was set out that CALS seeks to be admitted as an *amicus curiae* in the above matter, in order to file publicly available evidence by way of affidavit, and to make written and oral submissions, focusing on the following issues:

2.1. The impact and consequences of the decision of the first respondent to enter into the 2014 Protocol on the SADC Tribunal at both the domestic and international levels;

2.2. The need for public consultation when entering into international agreements, the appropriate stage(s) at which this ought to take place, and the responsibility for such;

2.3. The impact and consequences of the failure to undertake such processes of public consultation prior to entering into international agreements;

2.4. The public consultation that has preceded the signing and/or ratification of instruments akin to the 2014 Protocol on the SADC Tribunal.

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3. In view of your clients having now been admitted as co-applicants in the above matter, we therefore seek your clients' consent to CALS being admitted as an *amicus curiae* in accordance with rule 16A of the Uniform Rules of Court.

4. We look forward to hearing from you.

5. All our client's rights are reserved.

Yours faithfully

LEGAL RESOURCES CENTRE
Per: Avani Singh
avani@lrc.org.za

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