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IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

Case No:

In the matter between:

CENTRAL METHODIST MISSION,
JOHANNESBURG

First Applicant

LAWYERS FOR HUMAN RIGHTS

Second Applicant

NYATHI, BUTHOLEZWE

Third Applicant

D.S.

Fourth Applicant

and

CITY OF JOHANNESBURG

First Respondent

CHIEF OF JOHANNESBURG
METROPOLITAN POLICE DEPARTMENT

Second Respondent

GAUTENG PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE

Third Respondent

NATIONAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICE

Fourth Respondent

MEC FOR SAFETY AND SECURITY, GAUTENG

Fifth Respondent

MINISTER OF POLICE

Sixth Respondent

MEC FOR LOCAL GOVERNMENT, GAUTENG

Seventh Respondent

MINISTER OF CO-OPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS

Eighth Respondent

GAUTENG PROVINCIAL GOVERNMENT

Ninth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Tenth Respondent

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SECOND APPLICANT'S AFFIDAVIT

I, the undersigned,

JACOB VAN GARDEREN

do hereby make oath and state:

1. I am an adult male currently employed as National Director of Lawyers for Human Rights ("LHR") with its headquarters at the Kutlwanong Democracy Centre in Pretoria. I am an advocate in the High Court of South Africa and member of the Johannesburg Society of Advocates.
2. As will be explained below, as per the procedures under LHR's constitution, the Board has given me authorisation to depose to this affidavit on LHR's behalf.
3. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise indicated by statement or context, are within my personal knowledge.

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4. I have read the Founding Affidavit by Bishop Paul Verryn in this matter and I confirm the contents thereof insofar as they relate to me and LHR.

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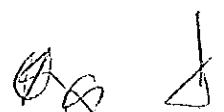
5. LHR is a juristic body having perpetual succession and being capable of acquiring and disposing of rights, including the right to movable and immovable property and to borrow money and to encumber movable and immovable property, for the purposes of fulfilling the aims and objectives of LHR, or incurring legal obligations of entering into legal transactions and of suing and being sued in its own name in terms of section 2.2 of LHR's constitution. A copy of the Constitution of Lawyers for Human Rights is attached as Annexure "JV1" to this affidavit.
6. LHR is established in terms of this constitution and is governed by a board of four (4) members (hereafter referred to as the "Board").
7. LHR is a non-profit, non-governmental organisation whose principal aims and objectives are to promote, uphold, foster, strengthen and enforce in South Africa all human rights, including civil rights, political rights and socio-economic rights. To this end LHR promotes the utilisation of law as an instrument for the promotion, protection and enforcement of the rights in the Bill of Rights; it assists in the maintenance of the highest standards of the administration of justice; and, protects

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and furthers fundamental human rights contained in the Constitution of the Republic of South Africa, 1996 as well as international human rights instruments.

8. In furtherance of its aims and objectives, LHR houses a number of projects focussing on specialised areas of human rights law including the Refugee and Migrant Rights Project, the Land and Housing Project, HIV / AIDS Project, Security of Farm-workers Project, Child Rights Project and a Strategic Litigation Unit.
9. LHR has registered law clinics located at our offices in Pretoria, Johannesburg, Durban, Uppington as well as Stellenbosch. Each of these clinics is duly registered with the appropriate law society in their respective provinces and employs at least one full-time attorney as well as candidate attorneys, para-legals and a number of support staff. Each clinic provides legal services in which the staff consult with clients, provide legal assistance and litigation services, where appropriate.
10. LHR's Refugee and Migrant Rights Project has been in existence since 1996 and it one of the only service providers in the Johannesburg area dealing specifically with the issue of asylum seekers, refugees and undocumented persons. The police is well aware of our role in assisting foreign nationals. We deny that they can claim that LHR would not have had a legitimate interest in consulting and advising our clients. I further submit that such actions on the part of the police were intended to obstruct the detainees' access to legal advice as well as obstruct our organization in giving such advice.



11. LHR therefore seeks standing in this matter in terms of section 38 (a) of the Constitutional of the Republic of South Africa, 1996 due to its direct interest in the events of that night as well as in terms of sections 38(b), (c) and (d) of the Constitution due to the impact on the migrant community.

LHR'S INTEREST IN THIS APPLICATION

12. LHR's Refugee and Migrant Rights Project established a detention monitoring programme in 2002. The aim of the programme is to monitor immigration detention at the Lindela Holding Facility as well as immigration detention by police at the SMG facility in Musina (along the Zimbabwe border) as well as at police stations in Gauteng, Limpopo and the Free State provinces.

13. LHR uses a number of strategies to assist access to services and the protection of rights for foreign nationals. This is part of LHR's broader mandate to protect and promote human rights through the use of the law.

14. One of our strategies in recent years has been to prevent the unlawful arrest and detention of foreign nationals. This has resulted having to embark on various pieces High Court litigation, particularly with regards to such detentions in Johannesburg, the Free State Province and the Musina area. These applications have been both in



the name of our clients and, where necessary, in LHR's own name when our clients cannot represent themselves or where the public interest necessitates it.

14.1. One such case was *Lawyers for Human Rights v. Minister of Safety and Security and Others* under case number 5824/09 in the North Gauteng High Court in which Raulinga, J. ordered the use of the detention facility in Musina operated by the South African Police Service was unlawful and unconstitutional due to the unlawful conditions of detention at that facility. A full copy of this unreported judgment can be made available should the court wish to peruse it.

14.2. Other cases have arisen from LHR's ongoing detention monitoring programme in relation to the Lindela Repatriation Centre. At the time of signing this affidavit, LHR has brought 20 high court applications for the review of unlawful detention in 2009 alone. Each of these cases resulted in the release of the detainees except for one. In that particular case the detainee was deported before his hearing date without the knowledge of LHR lawyers, which conduct was subsequently declared unlawful and unconstitutional by the South Gauteng High Court.

15. LHR has also been active in advocacy strategies by engaging with the Department of Home Affairs regarding the moratorium on Zimbabwean deportations and the

issuance of a special exemption permit dispensation specifically for nationals of Zimbabwe.

15.1. The moratorium on deportations has been in place since approximately April 2009. This moratorium is limited to Zimbabwean nationals who are undocumented in South Africa, but have not been convicted of serious crimes within this country. This moratorium is a welcome initiative by the South African government reflecting on the continuing unstable political and economic situation in Zimbabwe.

15.2. A further was announced by the Minister of Home Affairs in approximately March 2009, but has not yet been implemented. That initiative involves the stated plans of the Minister of Home Affairs to issue exemption permits to Zimbabwean nationals under section 31(2)(b) of the Immigration Act 13 of 2002 as an attempt to document as many Zimbabwe nationals as possible who would not otherwise qualify in terms of the definition of refugee status in the Refugees Act no 130 of 1998. This is also a welcome initiative, however it has not yet been implemented and it is unknown how and when it will be finalized.

16. Both initiatives represent a welcome acceptance by the Government that Zimbabwean migrants cannot and ought not be deported and that they ought to be

permitted to remain lawfully in South Africa for a period of time, irrespective of whether they formally qualify for refugees status.

17. Due to the fact that these initiatives, in particular the latter initiative relating to exemption permits, have not been fully implemented, many Zimbabwean nationals are left in limbo between the continued threat of arrest and detention by the police for being undocumented, the moratorium on deportations by the Department of Home Affairs and the announced, but not yet implemented plans, to issue documentation to Zimbabwe nationals in recognition of the conditions in their country of origin.

18. I point out, for example, that the arrests and harassment of Zimbabwean nationals described in the founding affidavit are entirely at odds with the apparent attitude of the Minister of Home Affairs and Cabinet in relation to the two initiatives already referred to.

19. This situation is exacerbated by the lack of shelter or protection for the poor in Johannesburg and other major cities. It should be noted that many foreign nationals are often poor due to their vulnerable situation caused by lack of documentation and consequent lack of access to services.

20. In approximately March 2009, LHR represented the interests of the group of Church residents sleeping outside of the Church building in the Pitje Chambers application, as described in the Founding Affidavit. The matter was removed from the roll before either LHR or its clients were formally joined as parties to the matter. LHR, however, has continued to be involved at the Church and it is for this reason that I was called on the evening of 3 July 2009 and became directly involved in the matters.

21. I will not repeat the facts as stated in the founding affidavit and I hereby confirm those facts insofar as they relate to me.

22. I stress that of particular concern for LHR was the fact that police officials refused me access to our clients upon arrest, as well as refusing the requests of our clients to see their attending lawyers, including myself, when asked to sign documents. This was despite the fact that we were in the police station at the time and such a consultation could have been easily facilitated. The actions of the police that night encroached upon the rights of arrested and detained persons in terms of section 35 of the Constitution, particularly in terms of sections 35(1)(c) and 35(2)(b).

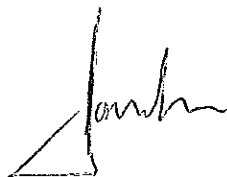
23. It is trite to state that these rights are necessary in order for detained persons to have access to sound legal advice and not sign or state anything which may

prejudice their rights. It is clear that preventing such access not only violates the basic rights of detainees, but in the present case, led to further confusion, anxiety and trauma for those detained.

CONCLUSION

24. In all the circumstances, I submit that LHR manifestly has a direct interest in this matter and that it also acts on behalf of a group of individuals who are unable to represent themselves as well as in the public interest.

25. On behalf of LHR, I therefore pray for the relief sought in the notice of motion.

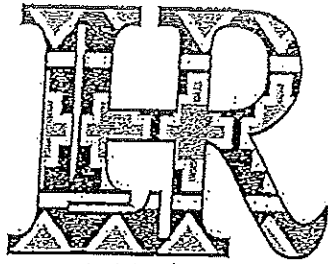


DEPONENT

I HEREBY CERTIFY that the Deponent has acknowledged that s/he knows and understands the contents of this affidavit, which was sworn to and signed before me at Protoria this 21st day of 10 2009 in compliance with the regulations contained in Government Notice R.1258, dated 21 July 1972, as amended.

COMMISSIONER OF OATHS

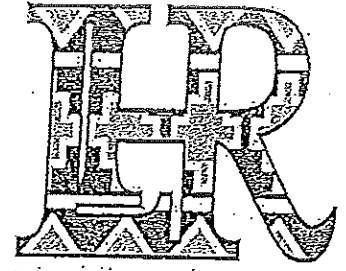
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LAWYERS FOR HUMAN RIGHTS

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LAWYERS FOR HUMAN RIGHTS

CONSTITUTION OF LAWYERS FOR HUMAN RIGHTS

This document constitutes the constitution of LAWYERS FOR HUMAN RIGHTS as adopted by the Board of Trustees on 12 March 2005.

Whereas Lawyers for Human Rights was established in 1979 and adopted its first constitution on 24 January 1981, which constitution was further amended on February 1993, and further amended at its AGM in 1994, and thereafter minor amendments followed from time to time; and

Whereas the previous constitutions have become inappropriate for the present de facto structures and operations of the organisation, the Board of Trustees, after due consultation with all the employees and other stakeholders;

Thereafter resolved at a meeting held on 12/03/2005, at IDASA Democracy Centre, Pretoria, to adopt this constitution.

1. Name of the Organisation

The organisation shall continue to be named LAWYERS FOR HUMAN RIGHTS. The acronym LHR may be used in the alternative. Throughout this constitution, the acronym LHR shall be used.

LHR is associated, but distinct from, The Lawyers for Human Rights Trust, (Reg. nr: IT 1260/01). LHR is a beneficiary of this Trust.

2. Legal Personality

- 2.1 LHR is a juristic person with all the rights, obligations and competencies associated with legal personality. All existing rights and obligations remain unaffected by the adoption of this constitution.
- 2.2 Without limiting the aforesaid, LHR has the right to acquire, dispose of or encumber any type of property, to enter into any contracts or other legal transactions, can sue and be sued in its own name, can make any type of investment, and may incur debts, all subject to this constitution. LHR may receive donations and may enter into funding agreements.
- 2.3 LHR may exercise these competencies only in the furtherance of its aims and objectives.
- 2.4 LHR will continue to exist as an organisation which seeks no profit. At present it is registered as a non-profit organisation with registration number NPO 927-027 and

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shall continue to be so registered or to be registered under legislation applicable to non-profit organisations from time to time.

2.5 No Employee, Board Member or "Friend of LHR" shall be liable for any of its debts.

3. Mission Statement

3.1 LHR aims to promote and enforce human rights and to strengthen democracy in South Africa.

3.2 LHR will seek to achieve these aims as part of the broader civil society movement as well as in co-operation with public and private institutions seeking to promote human rights and to strengthen democracy.

3.3 LHR does not promote party political or sectarian agendas.

4. The LHR Vision

LHR's vision is a South Africa in which all people and communities enjoy their human rights, are free to pursue their development in a united and peaceful country and in which all people enjoy a measure of equality and human dignity consonant with a value based democracy.

5. Aims and Objectives of LHR

5.1 LHR shall promote, uphold and strengthen all human rights in South Africa, including civil and political rights, socio-economic rights and environmental and developmental rights.

5.2 LHR shall educate and train individuals and organisations in human rights and democracy.

5.3 LHR shall advocate with appropriate institutions for the promotion of human rights and democracy.

5.4 LHR shall monitor the progressive realisation of human rights in South Africa.

5.5 LHR shall participate in local, regional and international efforts to strengthen human rights and democracy in conjunction with other organisations and institutions with similar objectives.

5.6 LHR shall develop the domestic and international human rights law through the use of courts or other appropriate institutions.

6. Functions and Activities of LHR

6.1 LHR may engage in research, study and publication of human rights issues.

6.2 LHR may organise conferences, workshops or any similar meetings to promote awareness, exchange ideas and mature the debate around human rights.

- 6.3 LHR may litigate, lodge complaints and initiate enquiries before any appropriate forum in aid of achieving its aims and objectives. LHR may do so in the name of its clients, organisations or in its own name where appropriate.
- 6.4 LHR may engage in any activity which furthers its aims and objectives.

7. Non Profit Nature of Organisation

- 7.1 LHR shall seek no profit to be distributed to any stakeholder in or outside the organisation.
- 7.2 LHR may charge fees for any training, consulting or other work performed. Such income shall remain in the organisation and shall be used for furtherance of the aims and objectives of LHR.
- 7.3 LHR shall be entitled to charge fees for legal services to the extent allowed by relevant laws and relevant law societies, more particularly it will be entitled to collect legal fees pursuant to successful litigation in terms of the relevant laws applicable from time to time.
- 7.4 LHR may never charge a fee or enforce a cost order which may be financially oppressive to another individual or organisation.
- 7.5 In general, all funds, profits and assets of LHR shall be utilised solely to further its aims and objectives. Office bearers, and "Friends of LHR", employees and contractors may be paid reasonable compensation for services rendered.

8. Structure of LHR

LHR shall consist of the following:

- 8.1 The Board of Trustees
- 8.2 The National Director
- 8.3 Employees and volunteers
- 8.4 Friends of LHR

9. The Board of Trustees

- 9.1 The overall control and governance of LHR vests in the Board of Trustees. LHR shall be governed in terms of rules and practices generally accepted for organisations of a similar type and size.
- 9.2 The Board of Trustees shall at all times consist of at least four members and not more than eight members.
- 9.3 The members of the Board at the date of adoption of this constitution will continue as Board members until such time as they resign or are replaced in terms of this constitution.

- 9.4 Members of the Board will be appointed for periods of three years whereafter they may be reappointed if available.
- 9.5 The Chairman of the Board will be appointed by the Board itself from one of its members.
- 9.6 New members of the Board will be appointed by existing Board members
- 9.7 Whenever a vacancy occurs in the membership of the Board or when a Board member's term expires, the then Chairperson of the Board will request the National Director to elicit nominations for new Board members from the public through a process to be approved by the Board.
- 9.8 Board members shall receive no remuneration for their services other than for out of pocket expenses as approved by the Board itself. The Board may approve a stipend for miscellaneous expenses and inconvenience.
- 9.10 The members of the Board must be eminent and reputable members of civil society with a track record of human rights work in South Africa.
- 9.11 No employee of LHR shall be eligible to be a member of the Board of Trustees. The Board may allow an employees' representative to attend Board meetings.

10. Powers and Functioning of Board of Trustees

- 10.1 The Board must meet at least twice a year and the venue is to be determined by the Chairperson. The National Director shall attend all Board Meetings and shall report to the Board at such meetings.
- 10.2 The Board will determine its own procedures which should be acceptable for the type and size of organisation involved.
- 10.3 The Board may meet by way of teleconference and may take decisions by circulation of resolutions.
Three members shall constitute a quorum.
- 10.4 The Board must keep minutes of its meetings and must take reasonable steps for the preservation of such records.
- 10.5 The Board has all such powers reasonably necessary to ensure that the organisation functions and works towards fulfilment of its aims and objectives.
- 10.6 Board decisions supported by a majority of members present, shall be binding.
- 10.7 The Board shall appoint a National Director or an acting National Director from time to time. The powers of the National Director are set out below.
- 10.8 The Board has the power to delegate any of its authority to the National Director or such other employee of LHR, as it deems appropriate. Such delegation should be in writing.
- 10.9 The Board may constitute any number of sub committees and may delegate any authority to a subcommittee.

11. The National Director

- 11.1 The National Director shall be responsible for the day to day running of LHR.
- 11.2 The National Director shall have such powers as determined by the Board.
- 11.3 If required, the Board may appoint an acting National Director who shall have the same powers as the National Director unless determined otherwise by the Board.

12. Employees of the Organisation

- 11.3 The National Director may appoint full time or part time staff for the organisation in terms of recruitment and appointment policies as determined by the Board from time to time.
- 11.4 The Board will from time to time determine the conditions of employment and the general salary structures of the employees.
- 11.5 Disciplinary procedures, retrenchments and other terminations of employment shall be done in accordance with written policy determined by the Board from time to time.
- 11.6 The organisation shall comply with all relevant labour laws applicable from time to time.

13. Friends of LHR

- 13.1 The organisation shall keep a register of individuals and organisations enrolled as "Friends of LHR"
- 13.2 Enrolled friends of LHR shall subscribe to a code of conduct approved by the Board.
- 13.3 The Board may from time to time determine an enrolment fee for friends of LHR.
- 13.4 A "Friend of LHR" may resign his/her/its membership at any time.
- 13.5 Involuntary termination of enrolment as a "Friend of LHR" shall take place in terms of the approved code of conduct.
- 13.6 Enrolment as a "Friend of LHR" is open to any person above the age of 18 who wishes to associate with the code of conduct and is not limited to formally qualified Lawyers, Paralegals, Judicial Officers or Law Teachers.

14. Financial Governance

- 14.1 The financial year of Lawyers for Human Rights is from the 1st of January to the 31st of December of each calendar year.
- 14.2 The Board shall appoint the organisation's auditors from time to time.

- 14.3 The Board of Trustees and the National Director must ensure that financial statements are produced for the organisation in respect of each financial year.
- 14.4 The auditors shall audit such financial statements and such audited financial statements shall be available to all parties with a bona fide interest therein.
- 14.5 The National Director shall have the power to open and close bank accounts for LHR and to obtain other banking facilities subject to such restrictions as the Board may impose from time to time.
- 14.6 The National Director may sign any funding agreement with a funder on behalf of LHR.
- 14.5 All transactions which involve obtaining credit or which encumber any LHR asset, must be approved by the Board.
- 14.6 Procurement Policy shall be determined by the Board.

15. Amendment of this Constitution

- 15.1 Any clause of this constitution may be amended by a resolution of the Board of Trustees.
- 15.2 Any such resolution may be passed without prior notice should all members of the Board be present and unanimously support such a resolution.
- 15.3 In other cases, notice of such intended amendment must be given to all Board members at least fourteen days prior to the Board meeting and in such event a resolution will become effective if two thirds of the Board members present at the meeting support such an amendment.

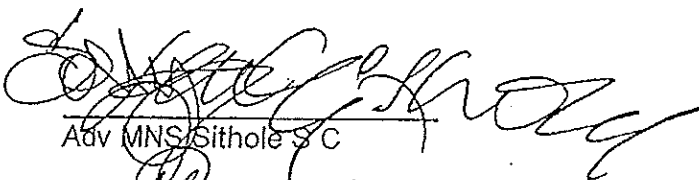
16. Dissolution of Organisation

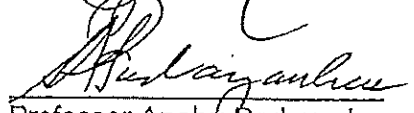
The organisation shall only be dissolved in terms of the following procedure:

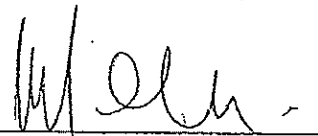
- 15.1 The organisation can only be dissolved by a decision supported by two thirds of the total of Board members holding office at the time, whether or not all such members be present at a meeting considering dissolution.
- 15.2 Prior to passing such a resolution, notice of the intended resolution must be given at least one month prior to the meeting to all board members, LHR employees and all "Friends of LHR"
- 15.3 Such notice shall call on all interested parties to make representations to the Board members should they so wish.
- 15.4 The Board must consider all representations and must properly debate the issue of dissolution.
- 15.5 In the event that the organisation is dissolved in accordance with a decision as described above, the members of the Board shall take further decisions relating to the winding up or the disposal of the assets of the organisation as required by the circumstances.

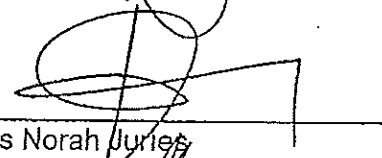
- 15.6 If a resolution is duly passed or if for any reason the Association ceases to exist, its assets, after payments of all its debts, shall devolve upon a non-profit organisation such as a charitable or educational or ecclesiastical institution of a public character in the Republic of South Africa as themselves have a similar aim, or if there is no such institution then to (an) a non-profit organisation whose aims are not inconsistent with those of the Association, and which are exempt from donation Tax, as the Board may decide and if no such decision has been made then such (body or bodies) non profit organisation falling within the foregoing provisions as may be agreed to by a majority of the Chairperson of the General Bar Council of South Africa, the President of the Association of Law Societies and the Chairperson of the Association of Law Teachers.

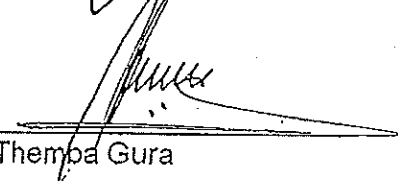
Adopted and signed on this 12th day of March 2005.


Adv MNS Sithole S C


Professor Anshu Padayachee


Ms Justice Monica Leeuw


Ms Norah Juries


Mr Thembu Gura

