

**REVISED CONSTITUTION**

**of the**

**VOLUNTARY ASSOCIATION**

**known as**

**COUNCIL FOR THE ADVANCEMENT OF THE SOUTH  
AFRICAN CONSTITUTION**

**(Abbreviation : "CASAC")**



| Clause | Heading                                           | Page |
|--------|---------------------------------------------------|------|
| 1      | INTRODUCTION                                      | 1    |
| 2      | CONTINUATION OF CASAC                             | 2    |
| 3      | OBJECTS OF CASAC                                  | 2    |
| 4      | GUIDING PRINCIPLES                                | 3    |
| 5      | LEGAL STATUS OF CASAC                             | 6    |
| 6      | POWERS OF CASAC                                   | 6    |
| 7      | COMPLIANCE PROVISIONS                             | 6    |
| 8      | DISTRIBUTION OF NET ASSETS ON DISSOLUTION         | 7    |
| 9      | FINANCIAL YEAR OF CASAC                           | 8    |
| 10     | AMENDMENT AND DISSOLUTION                         | 8    |
| 11     | MEMBERS OF CASAC                                  | 9    |
| 12     | ADMISSION OF MEMBERS                              | 11   |
| 13     | REGISTER OF MEMBERS                               | 11   |
| 14     | REMOVAL OF MEMBERS                                | 12   |
| 15     | TERMINATION OF MEMBERSHIP                         | 12   |
| 16     | RIGHTS OF MEMBERSHIP                              | 13   |
| 17     | OBLIGATIONS OF MEMBERS                            | 13   |
| 18     | MEMBER CONTRACTING WITH CASAC                     | 14   |
| 19     | THE COUNCIL                                       | 14   |
| 20     | THE EXECUTIVE COMMITTEE                           | 15   |
| 21     | LOSS OF OFFICE : EXECUTIVE COMMITTEE              | 17   |
| 22     | POWERS AND DISCRETIONS OF THE EXECUTIVE COMMITTEE | 17   |

Handwritten signature and initials, possibly "SK" or "SQ", located at the bottom right of the page.

|    |                                                                |    |
|----|----------------------------------------------------------------|----|
| 23 | RECORDS OF CASAC                                               | 18 |
| 24 | STANDARD OF CONDUCT : MEMBERS OF THE<br>EXECUTIVE COMMITTEE    | 19 |
| 25 | DECISIONS OF THE EXECUTIVE COMMITTEE                           | 20 |
| 26 | COUNCIL MEETINGS                                               | 24 |
| 27 | NOTICES                                                        | 26 |
| 28 | BANKING AND INVESTMENT OF FUNDS                                | 27 |
| 29 | ACCOUNTING RECORDS                                             | 28 |
| 30 | FINANCIAL STATEMENTS                                           | 28 |
| 31 | ANNUAL FINANCIAL STATEMENTS : PREPARATION, AUDIT<br>AND REVIEW | 29 |
| 32 | INDEMNITIES                                                    | 30 |
| 33 | DISCRETION OF MEMBERS AND THE EXECUTIVE COMMITTEE              | 31 |
| 34 | REGISTRATION : NONPROFIT ORGANISATIONS ACT                     | 31 |

SCHEDULE ONE :        DEFINITIONS OF WORDS AND PHRASES

SCHEDULE TWO :        COMPLIANCE PROVISIONS

SCHEDULE THREE :       CURRENT MEMBERS OF CASAC

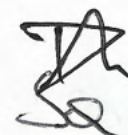
SCHEDULE FOUR :       CURRENT MEMBERS OF CASAC EXECUTIVE  
COMMITTEE

\* \* \* \* \*

## 1. INTRODUCTION

- 1.1 In 2010 the **COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION ("CASAC")** was established as a voluntary association with a written constitution ("the original constitution").
- 1.2 The Members of CASAC acting together in general meeting, or by way of a signed resolution, are known as the "Council".
- 1.3 Clause 18 of the original constitution permits the Council, at a duly convened and quorate general meeting, to adopt (subject to the conditions described in clause 1.4 below) a resolution to amend the original constitution.
- 1.4 By his/her certificate at page \_\_\_\_ of this document, the chairperson of the Council confirms that, in Cape Town on \_\_\_\_\_, and as contemplated in clause 18 of the original constitution :
- 1.4.1 A quorate general meeting of the Council was duly convened on twenty-eight (28) days' prior written notice (which notice stated the nature of the resolution to be proposed).
- 1.4.2 At that general meeting at least seventy-five (75) percent of the CASAC members present supported a resolution to amend the original constitution by replacing it in its entirety with the revised constitution contained in this document.
- 1.4.3 In the circumstances, by virtue of the adoption of that resolution, the original constitution has been replaced in its entirety by this revised constitution.

## 2. CONTINUATION OF CASAC



2.1 The **COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION** ["CASAC"] will from now on conduct its activities and be governed in accordance with the provisions of this revised constitution.

2.2 CASAC will continue to exist until dissolved in terms of clause 10 below.

### 3. **OBJECTS OF CASAC**

3.1 The principal objects of CASAC are :

3.1.1 The achievement of its first object, namely to promote, develop and affirm the rights and principles set out in the South African Constitution, in order to facilitate and advance progressive constitutionalism and deepen democracy in South Africa.

3.1.2 The initiation, funding and support of projects and programmes consistent with the first object.

3.1.3 The sponsorship of relevant lectures, workshops, colloquia, public engagements, dialogue, research, publications, advocacy, and other similar activities.

3.1.4 The provision of information, counsel, and advice, and the initiation and conduct or support of relevant litigation and advocacy, in the public interest.

3.1.5 The conduct of a sustained engagement and dialogue with the government of the Republic at all levels; and with political and advocacy bodies, labour unions, business organisations,



faith communities, social movements, and other similar organisations within the Republic, and elsewhere.

3.1.6 The preparation and submission of representations and relevant information to the South African Parliament, the Human Rights Commission, the Public Protector, and other statutory and independent bodies concerned with constitutional democracy within the Republic, or in an international context.

3.2 The secondary object of CASAC is to carry on or participate in (either alone or with any other person) any business, trade or undertaking ("Commercial Activity") which is consistent with or ancillary to its principal objects.

3.2.1 The secondary object of CASAC must not supersede or take precedence over its principal objects.

3.2.2 All the net profits from CASAC's Commercial Activities must be used only to fund the costs associated with the carrying on of CASAC's principal objects.

3.3 In this constitution CASAC's principal objects and secondary object will be referred to collectively as "the Objects".

#### 4. GUIDING PRINCIPLES

Whilst acknowledging the interdependence and importance of all rights and values represented in the South African Constitution, the following guiding principles are recorded as having motivated the establishment of CASAC :

4.1 *That the idea of "progressive constitutionalism" should be seen as a pivotal founding principle.*

- 4.2 *That the Constitution as the supreme law of the land, provides a framework for the social and economic transformation of South Africa, and for a deliberative, participatory, and inclusive democracy. This framework together with its underlying values and founding principles needs to be protected and advanced.*
- 4.3 *That the Constitution must be subject to on-going critical appraisal, to assess its efficacy as the needs of the country change. There may be a need to debate and lobby for constitutional and legislative reform to enhance the legitimacy of the democratic political process. The Constitution must be a living, not a static document that evolves to deepen democracy.*
- 4.4 *That the principle of the rule of law is a critical building block in seeking to pursue the concept of constitutionalism; public and private power must be exercised within the law in order to retain legitimacy, and to enhance a culture of responsibility and accountability to guard against the arbitrary use and abuse of power and authority.*
- 4.5 *That judicial independence is, in turn, an indispensable element, if not a pre-requisite for the rule of law and the integrity of the court system if it is to dispense justice that promotes substantive equality as well as procedural fairness.*
- 4.6 *That in order for people to organise lawfully to claim rights, and to participate meaningfully in democratic decision-making, civil liberties such as freedom of speech, access to information, and a free and tolerant political process are essential.*
- 4.7 *That the realisation of socio-economic rights is intertwined with civil liberties and political freedoms. Social and economic marginalisation deprives people of their fundamental right to live with security and*



*dignity and is a betrayal of the Constitution. Endemic poverty and inequality renders South Africa a fragile society, where the poor and the vulnerable, especially women and children, are condemned to the fringes and easily exploited. There is an unacceptable and unsustainable gap between the vision of the Constitution and the lived reality for far too many citizens. This gap must be closed. Providing people with access to decent education, adequate housing, and health care, and with the protection of a social security net, is essential for a cohesive society and the future prosperity of the nation.*

- 4.8 *That as traditional orthodoxies are being questioned in the global economy, so too must the Constitution take into consideration the socio-economic context in which it exists and be responsive to the scale, urgency and inter-connectedness of the challenges of globalization and sustainable development.*
- 4.9 *That the values that contribute to building a society with effective systems of open governance – ethical behaviour, accountability, competence, hard work, a spirit of public service with consequences for poor performance or corrupt conduct, non-violent resolution of disputes, and non partisanship – also need to be respected.*
- 4.10 *That a rights-based culture must also focus on the responsibilities and obligations that go with these rights, encouraging citizens to be active in improving their own lives and communities, in holding government to account through participative processes and sustained social dialogue. The goal is a deliberative democracy that celebrates diversity, where respect for the views and beliefs of others is the norm, and thus builds solidarity between people from different social groups.*

## 5. **LEGAL STATUS OF CASAC**

5.1 CASAC has been established as a voluntary association or *universitas personarum*.

5.2 CASAC exists as an entity separate from its Members.

5.3 No Member of CASAC will be liable for the debts or obligations of CASAC solely by reason of that Membership.

5.4 CASAC may own property, and sue and be sued, in its own name.

## 6. **POWERS OF CASAC**

CASAC has all of the legal powers and capacity of an individual, except to the extent that :

6.1 A juristic person is incapable of exercising any such power, or having any such capacity; or

6.2 Any such power or capacity is limited by any express provision of this revised constitution.

## 7. **COMPLIANCE PROVISIONS**

For as long as CASAC is approved by the Commissioner for the South African Revenue Service ("the Commissioner") as a public benefit organisation ("PBO") :

7.1 CASAC must comply with all the provisions of the Income Tax Act which apply to PBOs from time to time, whether set out in section 30 or elsewhere in that Act.

Handwritten signature and initials in the bottom right corner of the page.

- 7.1.1 Those provisions will be referred to in this revised constitution as the "Compliance Provisions".
- 7.1.2 The Compliance Provisions which apply as at the date of adoption of this revised constitution are set out in Schedule Two.
- 7.1.3 If the Income Tax Act is amended so as to change the Compliance Provisions, Schedule Two must be amended accordingly.
- 7.2 All the powers of CASAC, and the powers and discretions of the Membership, the Council and the Executive Committee, will be limited to the extent set out in the Compliance Provisions.
- 7.3 The Compliance Provisions will override any contradictory or conflicting provision of this revised constitution.

## **8. DISTRIBUTION OF NET ASSETS ON DISSOLUTION**

Despite any provision in any law or agreement to the contrary, if CASAC is wound up or dissolved :

- 8.1 No past or present Member of CASAC is entitled to any part of the net value of CASAC after its obligations and liabilities have been satisfied; and
- 8.2 The entire net value of CASAC must be distributed to the donor of the funds, or to one or more non-profit companies, voluntary associations or non-profit trusts :
  - 8.2.1 Having objects similar to the Objects of CASAC; and



8.2.2 Which are nonprofit organisations as defined in the Nonprofit Organisations Act, No. 71 of 1997; and

8.2.3 Which are themselves approved as PBOs (if CASAC, at the time of its dissolution or winding-up, is also approved as a PBO); and

8.2.4 As determined :

8.2.4.1 By the Council at or immediately before the time of CASAC's winding-up or dissolution; or

8.2.4.2 By the High Court, if the Council fails to make such a determination.

## 9. **FINANCIAL YEAR OF THE ASSOCIATION**

Unless and until the Council decides otherwise, the financial year of CASAC ends on the last day of February.

## 10. **AMENDMENT AND DISSOLUTION**

10.1 The Members may, in their absolute discretion, adopt a resolution to amend any or all of the provisions of this revised constitution, or to change the name of CASAC, or to dissolve CASAC, on condition that any such resolution must be a special resolution, namely :

10.1.1 Supported by seventy-five (75) percent of the Members present at a duly convened and quorate general meeting of the Council; or

10.1.2 Signed or assented to by twenty (20) percent of the Members in the manner contemplated in clause 26.4.



10.2 A copy of any such resolution must be delivered to :

10.2.1 The Commissioner (if CASAC, as at the date of the resolution, is approved as a PBO).

10.2.2 The Director for Nonprofit Organisations (if CASAC, as at the date of the resolution, is registered as a nonprofit organisation in terms of the Nonprofit Organisations Act, No. 71 of 1997).

10.3 If CASAC is dissolved, the Executive Committee must settle all remaining liabilities of CASAC out of the funds and assets of CASAC, or make provision for such settlement.

10.4 The net residue of CASAC's funds and assets which remains after the payment, settlement or provision referred to in 10.3 above, must be distributed in terms of clause 8.2.

## **11. MEMBERS OF CASAC**

11.1 There are two (2) categories of Membership of CASAC :

11.1.1 Individual Members; and

11.1.2 Institutional Members.

11.2 Individual Membership is open to natural people.

11.3 Institutional Membership is open to voluntary associations, non-profit companies, charitable trusts and other organisations, whether or not they are, in a strict legal sense, juristic persons.

- 11.4 The names of the Individual Members of CASAC as at the date of adoption of this revised constitution are set out in Schedule Three.
- 11.5 As at the date of adoption of this revised constitution, there are no Institutional Members of CASAC.
- 11.6 Every Institutional Member which may be admitted must :
- 11.6.1 Appoint an Institution Representative to exercise the rights of that Institutional Member.
- 11.6.2 Notify the name, email address and cellphone number of its Institution Representative to CASAC, and promptly notify CASAC of any change of Institution Representative.
- 11.7 Any Individual or Institutional Member who/which is admitted to Membership of CASAC will be deemed to have subscribed to the principal objects and guiding principles of CASAC.
- 11.8 There is no upper limit to the number of Individuals or Institutions who/which may be admitted as Members of CASAC.
- 11.9 There must at all times be a minimum of five (5) Members of CASAC (whether Individual Members and/or Institutional Members).
- 11.10 If the number of Members falls below that minimum (for whatever reason), the remaining Members must, by way of a resolution adopted by a simple majority, co-opt and appoint sufficient Individuals/Institutions as new Members to bring the number of Members to the required minimum.

## 12. ADMISSION OF MEMBERS



12.1 Except for the situation dealt with in clause 11.10, all Members of CASAC (both Individual and Institutional) are admitted by the Council in its absolute discretion, by way of an ordinary resolution.

12.2 Even if there are already sufficient Members to meet the minimum stipulated in clause 11.9, the Council will be entitled, in its absolute discretion, by way of an ordinary resolution, to appoint any Individuals or Institutions of its choice as additional Members.

### 13. REGISTER OF MEMBERS

The Executive Committee must establish and maintain a register of Members of CASAC which must contain at least the following information :

13.1 The full names of each Individual Member.

13.2 The full name, and registration number (if applicable) of every Institutional Member.

13.3 The email address and cellphone number of every Individual Member.

13.4 The full names, and email address and cellphone number, of every Institution Representative.

13.5 Each Member's date of appointment and, if applicable, the date of termination of Membership.

### 14. REMOVAL OF MEMBERS

The Council will be entitled, in its absolute discretion, by way of a special resolution, to remove any Individual Member or Institutional Member.

## 15. **TERMINATION OF MEMBERSHIP**

Membership of CASAC will terminate, immediately and automatically :

- 15.1 If an Individual Member becomes prohibited, or disqualified, by virtue of any provision of any law, from holding office as a trustee or a director.
- 15.2 If an Institutional Member becomes prohibited, or disqualified, by virtue of any provision of any law, from holding office as a trustee.
- 15.3 If an Individual Member or an Institutional Member resigns that Membership by notice in writing to CASAC.
- 15.4 If an Individual Member or an Institutional Member is removed by the Council as contemplated in clause 15.
- 15.5 If an Institutional Member is provisionally or finally liquidated or wound up, or is made subject to business rescue proceedings.
- 15.6 If an Individual Member is provisionally or finally sequestrated, or placed under an administration order.
- 15.7 Five years after that Member was last appointed as a Member; provided that Members will be eligible for re-appointment at any time.

## 16. **RIGHTS OF MEMBERSHIP**

- 16.1 Members are entitled to attend, speak and vote at Council meetings.



- 16.2 Members are entitled to consider and vote on proposed signed resolutions of the Council meeting.
- 16.3 Each Member is entitled to one (1) vote on any matter falling for decision at a Council meeting.
- 16.4 Members are entitled to participate in the deliberations of the Council meetings as it decides what recommendations and advice it will give to the Executive Committee, by way of assisting the organisation in performing its functions.
- 16.5 Every Member will be entitled to a copy of CASAC's annual financial statements, and to copies of all reports issued from time to time by the Council or the Executive Committee.
- 16.6 Any Member will be entitled, at any reasonable time, and from time to time, to inspect and make copies of any of CASAC's records.

## 17. OBLIGATIONS OF MEMBERS

- 17.1 With the prior approval of the Council, the Executive Committee may from time to time impose a Membership fee or similar charge to assist CASAC in covering its operational costs and financial commitments.
- 17.2 In imposing any Membership fee or similar charge, the Executive Committee may differentiate between different categories of Members.
- 17.3 If a Member fails to make timeous payment of any Membership fee or similar charge which may be levied by the Executive Committee, the Council will be entitled, in its absolute discretion, to remove that Member in the manner contemplated in clause 15.



17.4 Members must exercise their rights and perform their obligations under this revised constitution in good faith, and must not use their Membership for private gain or to benefit others improperly.

17.5 Members must refrain from any conduct which might compromise the reputation, good name, independence, impartiality or effectiveness of CASAC.

18. **MEMBER CONTRACTING WITH CASAC**

A Member will be entitled to contract directly or indirectly with CASAC, or to have an indirect or direct personal financial interest in any contract which CASAC may conclude, on condition that :

18.1 The Member declares that interest in the relevant contract in writing to both the Council and the Executive Committee; and

18.2 The Member does not participate in any proceedings of the Council or the Executive Committee during which the relevant contract is discussed or voted on; and

18.3 The conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by CASAC.

19. **THE COUNCIL**

19.1 The Council shall comprise all the Members of CASAC.

19.2 The Council shall meet three times per annum and exercise oversight over the functioning of the Executive Committee. The Executive Committee shall report on the operations and finances of CASAC to all meetings of the Council.

19.3 The Council shall set the strategic direction for CASAC, the budget and the programme priorities for the organisation. The Council shall

have the power to determine projects, programmes, and activities of CASAC, and generally the manner in which the resources of CASAC will be deployed and appropriated from time to time.

- 19.4 The powers contemplated in clause 6.
- 19.5 Any further powers and discretions which the Council may find necessary to execute its mandate and responsibilities in terms of this revised constitution, and generally to promote the Objects of CASAC.

## 20. THE EXECUTIVE COMMITTEE

- 20.1 Responsibility for executive management and day-to-day governance of CASAC, including the power to institute litigation on behalf of CASAC, vests in the Executive Committee.
- 20.2 The Executive Committee will comprise a minimum of five (5) and a maximum of nine (9) members, of whom one (1) must be chosen by the Council as its chairperson. The Executive Secretary shall be an ex officio member of the Executive Committee.
  - 20.2.1 The chairperson will continue to hold office until he/she is removed by ordinary resolution of the Executive Committee, or until he/she resigns.
  - 20.2.2 The chairperson of the Executive Committee will function also as the chairperson of the Council.
- 20.3 Other office bearers of the Executive Committee may be appointed from time to time by the Executive Committee as it considers necessary.
- 20.4 The members of the Executive Committee as at the date of adoption of this revised constitution, are recorded in Schedule Four.

- 20.5 Every member of the Executive Committee must be an Individual Member of CASAC, or an Institution Representative.
- 20.6 The members of every Executive Committee are elected by the Council, in the manner stipulated below.
- 20.7 At the first meeting of the Council which is convened after the date of adoption of this revised constitution, the Council must elect a new Executive Committee.
- 20.8 The members of an outgoing Executive Committee will be eligible for re-election to any subsequent Executive Committee.
- 20.9 The members of the new Executive Committee elected at the Council meeting referred to in clause 20.7 above will hold office for a period of two years.
- 20.10 If the number of members of an Executive Committee falls below the minimum stipulated in clause 20.2 above (for whatever reason), the Council must elect sufficient replacement members as soon as possible.
- 20.11 An Executive Committee will not be properly constituted, and will not be entitled to act in any way whatsoever, while it is made up of less than the stipulated minimum number of duly elected members.
- 20.12 Even if there are already in office the minimum number of members of the Executive Committee, the Council may, during the period of office of any Executive Committee, and subject only to the maximum number of members prescribed in clause 20.2, elect additional members to the Executive Committee in its absolute discretion.



20.13 Every election by the Council of an Executive Committee or one or more members of an Executive Committee, will be by way of an ordinary resolution.

20.14 The Council will be entitled, in its absolute discretion, by way of a special resolution, to remove any member of an Executive Committee from office.

## 21. **LOSS OF OFFICE : EXECUTIVE COMMITTEE**

A member of the Executive Committee will lose that office automatically and immediately :

21.1 If that person ceases, for any reason, to be a member of CASAC.

21.2 If the member is removed by the Council as contemplated in clause 20.14.

## 22. **POWERS AND DISCRETIONS OF THE EXECUTIVE COMMITTEE**

The Executive Committee will have the following powers and discretions :

22.1 The power to implement the organisation's strategy as determined by the Council.

22.2 The power to determine how the funds of CASAC are invested from time to time, the intention being that all CASAC funds be available to the Executive Committee to appropriate in pursuance of the Objects of CASAC, as the Executive Committee may deem appropriate, from time to time.

22.3 The power to accumulate and capitalise any portion of CASAC's receipts, and to determine which receipts should be regarded as income, and which receipts should be regarded as capital; including liquidation dividends received, or any return of capital or

capitalisation of profits (in the case of companies whose shares constitute a portion of the funds of CASAC); and the Executive Committee may generally decide any other question affecting the distinction between capital and income, as it may deem appropriate.

- 22.4 The power to employ staff, independent contractors, or other appropriate people, to provide CASAC with such skills and expertise as it may require in order to achieve its Objects.
- 22.5 It is specifically recorded that the Executive Committee shall be accountable to the Council.
- 22.6 Minutes of all Executive Committee meetings shall be distributed to all Members once ratified by the Executive Committee.
- 22.7 Should a Member(s) disagree with a decision taken by the Executive Committee they shall bring it to the attention of the Council for resolution with the Executive Committee.

## 23. RECORDS OF CASAC

The Executive Committee must ensure that CASAC maintains the following records :

- 23.1 A copy of this revised constitution, and any amendments to it.
- 23.2 A register of members, as contemplated in clause 14.
- 23.3 Copies of all :
- Annual financial statements of CASAC.
  - Accounting records of CASAC.

23.4 Minutes of all meetings and resolutions of the Executive Committee and the Council.

23.5 A record of its registered auditors (if any).

24. **STANDARD OF CONDUCT: MEMBERS OF THE EXECUTIVE COMMITTEE**

24.1 A member of the Executive Committee must not use that membership, or any information obtained in the capacity of member :

24.1.1 To gain an advantage for any person other than CASAC; or

24.1.2 To knowingly cause harm to CASAC.

24.2 A member must, while serving on the Executive Committee, exercise the relevant powers and perform the relevant functions of member :

24.2.1 In good faith and for a proper purpose; and

24.2.2 In the best interests of CASAC; and

24.2.3 With the degree of care, skill and diligence that may reasonably be expected of a person :

- Carrying out the same functions in relation to CASAC as those carried out by that member; and
- Having the general knowledge, skill and experience of that member.

25. **DECISIONS OF THE EXECUTIVE COMMITTEE**

25.1 The members of the Executive Committee may take decisions :

25.1.1 At an Executive Committee meeting; or

25.1.2 By way of a signed resolution.

**25.2 Executive Committee Meetings**

25.2.1 Meetings of the Executive Committee are convened by the chairperson.

25.2.2 The chairperson may convene an Executive Committee meeting at any time, on at least seven (7) days' notice to all the members.

25.2.3 The chairperson must convene an Executive Committee meeting if requested to do so in writing by any member.

25.2.4 If the chairperson fails to act on a written request to convene an Executive Committee meeting within seven (7) days after receiving that request, the member requesting that meeting may convene it.

25.2.5 The quorum necessary for the transaction of any business at an Executive Committee meeting is a majority of its members.

25.2.6 Each member present or represented at an Executive Committee meeting will be entitled to exercise one (1) vote on any matter put to the vote.

25.2.7 The members must make every reasonable effort to reach consensus on all matters arising for decision at any Executive Committee meeting. If consensus cannot be reached on any

matter, a proposal will be deemed to have been passed if supported by an ordinary resolution of the members (except in those cases where this revised constitution requires a special resolution).

25.2.8 The chairperson will be entitled to preside over all Executive Committee meetings. If the chairperson is not present or willing to act within fifteen (15) minutes after the time set for the start of any Executive Committee meeting, the members present must choose one of their number to chair the meeting.

25.2.9 In the case of a tied vote at an Executive Committee meeting :

25.2.9.1 The chairperson will **NOT** have a casting or deciding vote; and

25.2.9.2 The matter being voted on will fail.

25.2.10 A resolution put to a vote at an Executive Committee meeting may be voted on by a show of hands or by secret ballot, as decided by the chairperson.

25.2.11 The Executive Committee will be entitled to invite any people of its choice (including but not limited to employees of CASAC) to attend Executive Committee meetings as observers, and to speak (but not vote) at those meetings.

### 25.3 **Electronic Participation in Executive Committee Meetings**



25.3.1 The Executive Committee will be entitled to permit any member to participate in Executive Committee meetings by electronic communication.

25.3.2 Any electronic communication facility which may be employed for an Executive Committee meeting must enable all members using that facility to participate in that meeting :

- To communicate concurrently with each other without an intermediary; and
- To participate effectively in the meeting.

#### 25.4 Signed Resolutions

25.4.1 A resolution signed or assented to by the requisite number of members in the manner referred to below will be as valid and effectual as if it had been passed at a duly convened and quorate Executive Committee meeting.

25.4.2 The resolution must be :

25.4.2.1 In writing;

25.4.2.2 Circulated to all the members, either in printed or electronic form; and

25.4.2.3 Signed or assented to by the required number of members in any of the following ways :

- Signed in hand on the original printed resolution;
- Signed in hand on a copy of the original



printed resolution;

- Signed in hand on a copy of the original printed resolution which is then transmitted by electronic communication;
- Signed with an electronic signature; or
- Assented to in writing by way of electronic communication.

#### **25.5 Inadvertent Failure to Give Notice**

If a mistake is made, and a member is inadvertently not given notice of an Executive Committee meeting, or if a resolution is inadvertently not circulated to a member in the prescribed way, this will not affect the validity of any decision taken by the Executive Committee at any such meeting or by way of any such signed resolution.

#### **25.6 Minutes of Executive Committee Meetings**

The Executive Committee must keep minutes of the meetings of the Executive Committee, and any of its committees, and must include in the minutes every resolution adopted by the Executive Committee.

#### **25.7 Committees and Delegation**

The Executive Committee may delegate any of its powers or assign any of its duties to individual members, committees comprising members and others, or to any agent or employee of CASAC, as the Executive Committee chooses; on condition that :



- The Executive Committee must take reasonable steps to ensure that any such person or committee, in exercising the relevant powers or carrying out the relevant duties, conforms to any rules, restrictions or procedures which may be imposed by the Executive Committee from time to time; and
- The Executive Committee will not be divested of any power or duty by virtue of its delegation or assignment to any person; and
- The Executive Committee will be entitled, in its absolute discretion, to vary or set aside any decision made under any delegation or in terms of any assignment, or to revoke or amend the terms of any delegation or assignment.

## 26. COUNCIL MEETINGS

### 26.1 Annual General Meetings

26.1.1 An annual general meeting ("AGM") of the Council must be held in each year, as soon as possible [but in any event not more than six (6) months] after the end of each financial year.

26.1.2 The business of each AGM must include :

- The presentation and adoption of the annual report of the Executive Committee.
- The consideration of the annual financial statements of CASAC.
- The election at two (2) year intervals, or as and when



required, of people to serve as members of the Executive Committee .

- The appointment of auditors for CASAC (if it is deemed necessary to appoint auditors).
- Any other matters considered appropriate by the AGM.

## **26.2 Other General Meetings**

26.2.1 Other general meetings of the Council may be convened from time to time by :

26.2.1.1 The Executive Committee; or

26.2.1.2 The chairperson; or

26.2.1.3 At least ten (15) Members of CASAC, or twenty five (25) percent of the Members of CASAC (whichever number may be greater).

## **26.3 Notice of General Meetings of the Members**

26.3.1 At least twenty-one (21) days' prior written notice of an AGM must be addressed to all members of CASAC.

26.3.2 Other general meetings of the Council must be convened on not less than fourteen (14) days' written notice to the members.

26.3.3 The notice of an AGM or other general meeting must state in broad terms the business to be dealt with at that meeting.

#### 26.4 Quorum

The quorum necessary for an AGM or general meeting of the Council will be at least twenty five (25) percent of the members of CASAC present or represented at the meeting.

#### 26.5 Decisions at General Meetings of the Council

26.5.1 Decisions at AGMs and general meetings of the Council will be taken in the manner set out in clause 25 above, with the changes required by the context.

26.5.2 Except where this revised constitution stipulates that a special resolution of the Council is required, all decisions of the Council will be taken by ordinary resolution.

### 27. NOTICES

27.1 A notice may be given by CASAC to any member :

27.1.1 By giving it to the member personally; or

27.1.2 By sending it by electronic communication to any electronic address or fax number supplied by the member for this purpose.

27.2 Any notice sent by electronic communication will be deemed to have been received on the next business day after the proven date of despatch.

### 28. BANKING AND INVESTMENT OF FUNDS



28.1 The Executive Committee must ensure that all money received by CASAC is deposited in one or more bank accounts in the name of CASAC with a bank established under the Banks Act, No. 94 of 1990.

28.2 The Executive Committee must, from time to time, determine, by way of resolution :

- Who will have authority to operate the bank accounts of CASAC, sign cheques and other financial instruments and contracts on behalf of CASAC, and otherwise disburse CASAC's funds and incur commitments on behalf of CASAC; and

- The procedures to be followed in this regard;

on condition that every cheque and other financial transaction of CASAC (including electronic financial transactions), and every contract or agreement in the name of CASAC, must be signed or authorised in writing by at least two (2) people duly authorised by the Executive Committee.

## 29. ACCOUNTING RECORDS

CASAC must keep accurate and complete accounting records, in one of the official languages of the Republic, in compliance with generally accepted accounting practice.

## 30. FINANCIAL STATEMENTS

Any financial statements prepared by CASAC (including any annual financial statements) must :



- 30.1 Present fairly the state of affairs and business of CASAC, and explain the transactions and financial position of the business of CASAC.
- 30.2 Show CASAC's assets and liabilities, as well as its income and expenses.
- 30.3 Set out the date on which the statements were published, and the accounting period to which the statements apply.
- 30.4 Bear, on the first page of the statements, a prominent notice indicating :
  - 30.4.1 Whether the statements :
    - 30.4.1.1 Have been audited;
    - 30.4.1.2 If not audited, have been independently reviewed in the manner contemplated in the Companies Act, 2008; or
    - 30.4.1.3 Have not been audited or independently reviewed.
  - 30.4.2 The name, and professional designation, if any, of the individual or firm who prepared, or supervised the preparation of, the statements.
- 30.5 Not be false or misleading in any material respect.

31. **ANNUAL FINANCIAL STATEMENTS : PREPARATION, AUDIT AND REVIEW**



- 31.1 CASAC must prepare annual financial statements within four (4) months after the end of its financial year, and must furnish a copy of those statements to every Member.
- 31.2 CASAC's annual financial statements must be audited or independently reviewed by a registered auditor (selected and appointed by the Council in its absolute discretion). The Council will decide, in its absolute discretion, whether the annual financial statements are audited or independently reviewed.
- 31.3 The annual financial statements of CASAC must :
- 31.3.1 Include a report by the registered auditor who audits or reviews those statements.
- 31.3.2 Include a report by the chairperson with respect to the state of affairs, the business and profit or loss of CASAC.
- 31.3.3 Be approved by the Executive Committee and signed by the chairperson on behalf of the Executive Committee.

## 32. INDEMNITIES

- 32.1 Every Member and office bearer of CASAC will be indemnified out of the funds of CASAC against :
- 32.1.1 All costs, expenses and liabilities properly incurred by the Member or office bearer with the authority of CASAC, and in the course of CASAC's business; and
- 32.1.2 Any and all liability contemplated in clause 32.2, but subject to the provisions of clause 32.3.



32.2 No Member or office bearer of CASAC will be liable for the acts, receipts, omissions or defaults of any other Member or office bearer; or for joining in any receipt or other act for conformity; or for

32.2.1 Any loss or expense incurred by CASAC as a result of the insufficiency or deficiency of any security on which any of the funds of CASAC are invested;

32.2.2 Any loss or damage arising from the liquidation, sequestration, insolvency or delictual act of any person with whom any funds or securities are deposited;

32.2.3 Any loss or damage caused by any error of judgment or oversight on the part of the Member or office bearer; or

32.2.4 Any other loss, damage or misfortune which happens in the exercise of his/her functions as Member or office bearer.

32.3 Nothing contained in this clause 33 serves to indemnify a Member in respect of :

32.3.1 Any liability arising from wilful misconduct or wilful breach of trust on the part of the Member, or a failure to exercise the degree of care reasonably expected of a person in the position of the Member or office bearer.

32.3.2 Any fine imposed on a Member or office bearer as a consequence of having been convicted of an offence.

### 33. **DISCRETION OF MEMBERS AND THE EXECUTIVE COMMITTEE**

Where discretions are given to the Members or the Executive Committee in terms of this revised constitution, those discretions, except where expressly



limited or qualified, will be complete and absolute, and no person affected by any decision made by the Members or the Executive Committee in good faith pursuant to their discretionary powers will be entitled to challenge that decision.

**34. REGISTRATION : NONPROFIT ORGANISATIONS ACT**

CASAC will take steps to obtain registration as a nonprofit organisation in terms of the Nonprofit Organisations Act, No. 71 of 1997. In compliance with the provisions of that Act, the following information is recorded :

- 34.1 CASAC's income and property is not distributable to its Members or to its office-bearers, except as reimbursement for reasonable out of pocket expenses incurred in the execution of their duties, with the authority of the Executive Committee.
- 34.2 CASAC will continue to exist notwithstanding periodic changes that may occur in the composition of its membership.
- 34.3 The Members and office-bearers have no rights in the property or other assets of CASAC by virtue of their Membership or office.

I, Russell Ally IN MY CAPACITY AS CHAIRPERSON OF CASAC, CERTIFY THAT, AT A DULY CONVENED AND QUORATE GENERAL MEETING OF THE ADVISORY COUNCIL HELD via ZOOM Video Conference ON THE 22 DAY OF September 2020, A SPECIAL RESOLUTION WAS ADOPTED TO REPLACE THE ORIGINAL CONSITUTION IN ITS ENTIRETY WITH THIS REVISED CONSTITUTION.

  
 \_\_\_\_\_  
 Russell Ally



DATE OF CERTIFICATE :

\* \* \* \* \*

IA  
SQ

**SCHEDULE ONE****DEFINITIONS OF WORDS AND PHRASES**

In this revised constitution, unless the context clearly indicates otherwise :

1. "AGM" means an annual general meeting of the Members described in clause 27.1.
2. "audit" means the examination, in accordance with prescribed or applicable auditing standard, of :
  - Financial statements, with the object of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or
  - Financial or other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on that information.
3. "business day" means any day except a Saturday, Sunday or South African public holiday.



4. "CASAC" means the **COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION.**
5. "Commercial Activity" means an activity contemplated in clause 3.2.
6. "the Commissioner" means the Commissioner for the South African Revenue Service.
7. "Compliance Provisions" means the provisions referred to in clause 5, and recorded in Schedule Two.
8. "Council" means all of the members of CASAC as described in clause 12.
9. "electronic communication" bears the same meaning as defined in section 1 of the Electronic Communications and Transactions Act, no. 25 of 2002.
10. "Executive Committee" means the executive body of CASAC described in clause 21.
11. "first object" means the object recorded in clause 3.1.1.
12. "the Income Tax Act" means the Income Tax Act, no. 58 of 1962.

13. "Individual Member" means a Member described as such in clause 11.
14. "Institutional Member" means a Member described as such in clause 11.
15. "Institution Representative" means a representative as described as such in clause 11.6.
16. "the Members" means the Members of CASAC meeting or voting together in the manner contemplated in clause 11.
17. "month" means a calendar month.
18. "net profit" means all income and capital which accrues to CASAC pursuant to its Commercial Activities, less all tax and tax-deductible expenses paid in relation to or in the generation of such income and capital accruals.
19. "the Ninth Schedule" means the Ninth Schedule to the Income Tax Act.
20. "Objects" means the principal and secondary objects of CASAC.
21. "the original constitution" means the constitution referred to in clause 1.1.

22. "ordinary resolution of the Members"

means a resolution adopted by a simple majority of the Members present at a duly convened and quorate Council general meeting or AGM, or a written resolution signed or assented to by at least twenty (20) percent of the members.

23. "ordinary resolution of the Executive Committee"

means a resolution adopted by a simple majority of the members present at a duly convened and quorate Executive Committee meeting, or a written resolution signed or assented to by a simple majority of the members of the Executive Committee.

24. "PBO"

means a public benefit organisation approved by the Commissioner in terms of section 30 of the Income Tax Act.

25. "personal interest of a member"

includes an interest held by a relative of the member (as defined in the Income Tax Act) or a connected person in relation to that Member (as defined in the same Act).

26. "principal object"

means the Object of CASAC referred to in clause 2.

27. "Public Benefit Activities" means the following activities :
- public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed in Part I of the Ninth Schedule.
  - 18A Activities.
28. "registered auditor" means an individual or firm who/which has been registered as an auditor in terms of section 37 or 38 of the Auditing Profession Act, no. 26 of 2005.
29. "the Republic" means the Republic of South Africa.
30. "secondary object" means the Object of CASAC referred to in clause 2.
31. "special resolution of the Council " means a resolution adopted by seventy-five (75) percent of the members present at a duly convened and quorate Council general meeting or AGM, or a written resolution signed or assented to by at least twenty (20) percent of the members.



32. "special resolution of the Council" means a resolution adopted by seventy-five (75) percent of the members present at a duly convened and quorate Council meeting, or a written resolution signed or assented to by at least seventy-five (75) percent of the members of CASAC. .
33. "18A Activities" means those Public Benefit Activities which are listed from time to time in Part II of the Ninth Schedule.
34. References to people include references to corporate bodies, and *vice versa*.
35. The singular includes the plural, and *vice versa*, and reference to any gender includes a reference to the other genders.
36. Any reference to a statutory provision includes a reference to that provision as modified, amended, replaced or re-enacted from time to time.

\* \* \* \* \*



## **SCHEDULE TWO**

### **COMPLIANCE PROVISIONS**

#### **1. PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT**

For as long as CASAC is approved as a PBO, CASAC must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this constitution :

1.1 The sole or principal object of CASAC must be and remain to carry on one or more Public Benefit Activities, on condition that :

1.1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.

1.1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of CASAC, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

1.1.3 Each such activity carried on by CASAC must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).

1.2 CASAC must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for CASAC, and no single person may directly or indirectly control the decision-making powers relating to CASAC.

1.3 CASAC may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Objects for which CASAC has been established.



1.4 If and when CASAC is wound-up or dissolved in any manner provided for in this constitution, or as required by law, the net remaining assets of CASAC, after all the obligations and commitments of CASAC have been met, must be transferred to :

1.4.1 Any PBO; or

1.4.2 Any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any Public Benefit Activity; or

1.4.3 The government of the Republic in the national or provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,

which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.

1.5 The Executive Committee will be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any Public Benefit Activity) may not impose conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.



- 1.6 CASAC must submit to the Commissioner a copy of any amendment to this constitution, and must ensure that CASAC submits the required income tax returns together with the relevant supporting documents.
- 1.7 CASAC must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of CASAC are directed in the furtherance of its Objects.
- 1.8 CASAC must make sure that it does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
- 1.9 CASAC must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector in which CASAC operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Objects.
- 1.10 CASAC must comply with such reporting requirements as may be determined by the Commissioner.
- 1.11 CASAC must not use its resources directly or indirectly to support, advance or oppose any political party.



## 2. PROVISIONS IMPOSED BY SECTION 18A OF THE INCOME TAX ACT

- 2.1 When CASAC issues receipts to donors in terms of section 18A(2) of the Income Tax Act, CASAC must ensure that the donations from those donors are used solely :
- 2.1.1 To carry on CASAC's own Public Benefit Activities, namely those activities of CASAC which are contemplated in Part II of the Ninth Schedule; or
- 2.1.2 To provide funds or assets to any PBO, or any institution, board or body contemplated in paragraph 1.4.2 above, for use only to carry on Public Benefit Activities.
- 2.2 Where CASAC allocates donations to be used in terms of paragraph 2.1.2 above, CASAC must, within twelve (12) months after the end of the year of assessment in which those donations were received, distribute or incur the obligation to distribute at least fifty percent (50%) of those donations, unless the Commissioner, on application by CASAC, waives, defers or reduces the obligation to distribute.
- 2.3 Where CASAC, in any year of assessment, issues receipts to donors in terms of section 18A(2) of the Income Tax Act, CASAC must obtain and retain an audit certificate confirming that all the donations received or accrued in that year in respect of those receipts, were used by CASAC in the manner contemplated in paragraphs 2.1 and 2.2 above.
- 2.4 When CASAC issues receipts to donors in terms of section 18A(2) of the Income Tax Act, but does not use the donations from those donors to carry on its own Public Benefit Activities, and does not distribute (or incur an obligation to distribute) those donations in the manner contemplated in paragraph 2.2 above, but instead invests those donations, CASAC must, not later than six (6) months after every fifth (5<sup>th</sup>) anniversary of the date on which the Commissioner approved CASAC as a PBO, distribute,



or incur an obligation to distribute, all the dividends or other returns received in respect of that investment during that period of five (5) years.

- 2.5 CASAC must not issue a receipt in terms of section 18A(2) of the Income Tax Act in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar rights, or which constitutes an intangible asset or financial instrument, unless that financial instrument is :

2.5.1 A share in a listed company; or

2.5.2 Issued by a financial institution as defined in section 1 of the Financial Services Board Act, No. 97 of 1990.

\* \* \* \* \*



### SCHEDULE THREE

#### CURRENT MEMBERS OF CASAC

The names of the people who are Members of CASAC as at the date of adoption of this revised constitution are:

|                      |                    |
|----------------------|--------------------|
| Iraj Abedian         | Tania Ajam         |
| Russel Ally          | Oupa Bodibe        |
| Mbongiseni Buthelezi | Firoz Cachalia     |
| Richard Calland      | Halton Cheadle     |
| Hugh Corder          | Mukelani Dimba     |
| Adrian Enthoven      | Ebrahim Fakir      |
| Frene Ginwala        | Bobby Godsell      |
| Pippa Green          | Adam Habib         |
| Adila Hassim         | Sello Hatang       |
| Mazibuko Jara        | Tsepho Madlingozi  |
| Zonke Majodina       | Mosibudi Mangena   |
| Themba Maseko        | Yvonne Mokgoro     |
| Mavuso Msimang       | Lawson Naidoo      |
| Njabulo Ndebele      | Mcebese Ndletyana  |
| Tembeka Ngcukaitobi  | Thandabantu Nhlapo |
| Kate O' Regan        | Jovial Rantao      |
| Michelle le Roux     | Bishop Jo Seoka    |
| Wandile Sihlobo      | Khaya Sithole      |
| Tseliso Thipanyane   | Alison Tilley      |
| Fanie du Toit        | Wim Trengrove      |
| Mathatha Tsedu       | Pierre de Vos      |
| Leon Wessels         |                    |

\* \* \* \* \*

**SCHEDULE FOUR****CURRENT MEMBERS OF CASAC EXECUTIVE COMMITTEE**

The names of the people who are members of the Executive Committee of CASAC as at the date of adoption of this revised constitution are:

1. Russell Ally
2. Lawson Naidoo
3. Hugh Corder
4. Tseliso Thipanyane
5. Zonke Majodina
6. Michelle le Roux

Handwritten signature and initials in the bottom right corner of the page.

Advisory Council – 01 May 2020

| NAME                 | NAME               |
|----------------------|--------------------|
| Iraj Abedian         | Tania Ajam         |
| Russel Ally          | Oupa Bodibe        |
| Mbongiseni Buthelezi | Firoz Cachalia     |
| Richard Calland      | Halton Cheadle     |
| Hugh Corder          | Mukelani Dimba     |
| Adrian Enthoven      | Ebrahim Fakir      |
| Frene Ginwala        | Bobby Godsell      |
| Pippa Green          | Adam Habib         |
| Adila Hassim         | Sello Hatang       |
| Mazibuko Jara        | Tsepho Madlingozi  |
| Zonke Majodina       | Mosibudi Mangena   |
| Themba Maseko        | Yvonne Mokgoro     |
| Mavuso Msimang       | Lawson Naidoo      |
| Njabulo Ndebele      | Mcebisi Ndletyana  |
| Tembeka Ngcukaitobi  | Thandabantu Nhlapo |
| Kate O' Regan        | Jovial Rantao      |
| Michelle le Roux     | Bishop Jo Seoka    |
| Wandile Sihlobo      | Khaya Sithole      |
| Tseliso Thipanyane   | Alison Tilley      |
| Fanie du Toit        | Wim Trengrove      |
| Mathatha Tsedu       | Pierre de Vos      |
| Leon Wessels         |                    |
|                      |                    |
|                      |                    |
|                      |                    |



**WEBBER WENTZEL**

in alliance with &gt; Linklaters

**Mr Sello Chiloane**  
Company Secretary of the Judicial Services Commission

**Ms Tebogo Phaahlamohlaka**  
Administration officer of the Judicial Services Commission

**By Email:** [chiloane@concourt.org.za](mailto:chiloane@concourt.org.za);  
[TPhaahlamohlaka@judiciary.org.za](mailto:TPhaahlamohlaka@judiciary.org.za)

90 Rivonia Road, Sandton  
Johannesburg, 2196  
PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111

[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference

Our reference  
Moray Hathorn / S Robb  
3047490

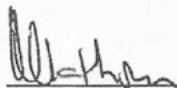
Date  
20 April 2021

Dear Sirs

# **REQUEST FOR RECORDINGS OF THE CONSTITUTIONAL COURT JSC INTERVIEWS 2021**

1. We represent the Council for the Advancement of the South African Constitution ("CASAC").
2. CASAC monitors the JSC processes in terms of its objectives of furthering the values and purposes of the Constitution of the Republic of South Africa. CASAC has requested that you furnish us with the recordings of the JSC interviews for the positions at the Constitutional Court that took place last week (12 April 2021 to 13 April 2021).
3. We will tender costs for such recordings, should this be necessary.

Yours faithfully



**WEBBER WENTZEL**

**Moray Hathorn**

Consultant

Direct tel: +27 11 530 5539

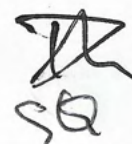
Direct fax: +27 11 530 6539

Email: [moray.hathorn@webberwentzel.com](mailto:moray.hathorn@webberwentzel.com)

2021 04 20 WW To JSC (Request For Recordings)(16482730.1)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Booyesen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Elser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Greal S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlal M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

**Chief Operating Officer:** SA Boyd





188, 14th Road, Noordwyk, Midrand, 1685  
Private Bag X10, Marshalltown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: [info@judiciary.org.za](mailto:info@judiciary.org.za)  
[www.judiciary.org.za](http://www.judiciary.org.za)

## JUDICIAL SERVICE COMMISSION

Enq: Ms K Moretlwe  
Email: [KMoretlwe@judiciary.org.za](mailto:KMoretlwe@judiciary.org.za)

28 April 2021

**Mr M Horthorn  
Webber Wentzel  
90 Rivonia Road  
Sandton, Johannesburg  
2196**

Dear Mr Horton

### **Request for recordings of the Constitutional Court Judicial Service Commission interviews 2021**

[1] We refer to your letter dated 20 April 2021, which we received on 23 April 2021.

[2] The recordings of the Judicial Service Commission interviews are being transcribed and a copy of the transcript of the Constitutional Court interviews shall be forwarded to you as soon as it becomes available.

Yours faithfully,

Sello Chiloane  
Secretary, Judicial Service Commission

**WEBBER WENTZEL**

in alliance with &gt; Linklaters

**Mr Sello Chiloane**  
Company Secretary of the Judicial Services Commission

**Ms Tebogo Phaahlamohlaka**  
Administration officer of the Judicial Services Commission

**By Email:** [chiloane@concourt.org.za](mailto:chiloane@concourt.org.za);  
[TPhaahlamohlaka@judiciary.org.za](mailto:TPhaahlamohlaka@judiciary.org.za)

90 Rivonia Road, Sandton  
Johannesburg, 2196  
PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111

[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference

Our reference  
Moray Hathorn / S Robb  
3047490

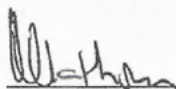
Date  
29 April 2021

Dear Sirs

# **REQUEST FOR RECORDINGS OF THE CONSTITUTIONAL COURT JSC INTERVIEWS 2021**

1. Thank you for your response to our letter of 20 April 2021 and your indication that you will provide us with the transcripts of the interviews.
2. In addition to that request, we also request that you furnish us with the audio recordings of the deliberations of the JSC following the interviews of the Constitutional Court candidates on 12 and 13 April 2021.
3. We will tender costs for such recordings, should this be necessary.

Yours faithfully



**WEBBER WENTZEL**

**Moray Hathorn**  
Consultant

Direct tel: +27 11 530 5539

Direct fax: +27115306539

Email: [moray.hathorn@webberwentzel.com](mailto:moray.hathorn@webberwentzel.com)

2021 04 29 WW To JSC (Request For Deliberations)(16514544.1)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair DHL Booyens AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Greal S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlal M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

**Chief Operating Officer:** SA Boyd





188, 14th Road, Noordwyk, Midrand, 1685  
Private Bag X10, Marshalltown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: [info@judiciary.org.za](mailto:info@judiciary.org.za)  
[www.judiciary.org.za](http://www.judiciary.org.za)

## JUDICIAL SERVICE COMMISSION

Enq: Ms K Moretlwe  
Email: [KMoretlwe@judiciary.org.za](mailto:KMoretlwe@judiciary.org.za)

30 April 2021

**Mr M Horthorn**  
**Webber Wentzel**  
**90 Rivonia Road**  
**Sandton, Johannesburg**  
**2196**

Dear Mr Horton

### **Request for recordings of the Constitutional Court Judicial Service Commission interviews 202**

[1] We refer to your letter dated 29 April 2021.

[2] It is not clear to the Judicial Service Commission ("JSC") the basis upon which you contend your client is entitled to the recordings of the JSC interviews of the candidates applying for the positions at the Constitutional Court. In the circumstances, the JSC will not provide these recordings to you.

Yours faithfully,

Sello Chiloane  
Secretary, Judicial Service Commission

## WEBBER WENTZEL

in alliance with &gt; Linklaters

**Mr Sello Chiloane**  
Company Secretary of the Judicial Services Commission

**By Email:** [chiloane@concourt.org.za](mailto:chiloane@concourt.org.za);

90 Rivonia Road, Sandton  
Johannesburg, 2196  
PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa  
Docex 26 Johannesburg  
T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111  
[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference

Our reference  
Moray Hathorn / S Robb  
3047490

Date  
5 May 2021

Dear Sirs

**REQUEST FOR RECORDINGS OF THE CONSTITUTIONAL COURT JSC INTERVIEWS 2021**

1. We note your refusal in your letter of 30 April 2021 of our request for the audio recordings of the deliberations of the JSC following the interviews of the Constitutional Court candidates on 12 and 13 April 2021. We also note that, in a previous letter, dated, 28 April 2021, you had no difficulty agreeing to giving us transcripts of the interviews themselves. Your latest letter is an inexplicable change of that position.
2. In your letter of 30 April 2021 you ask for the basis of our request for the audio of the deliberations during the session of 12 and 13 April 2020. First, it is the decision of the Constitutional Court in *Helen Suzman Foundation v the Judicial Service Commission* 2019 (4) SA 1 (CC) which entitles us to the material we seek. At paragraphs 23 to 24 Madlanga J said the following:

*[23] Surely, deliberations are relevant to the decision they precede and to which they relate. Indeed, HC Sanral correctly says so. They may well provide evidence of reviewable irregularities in the process, such as bias, ulterior purpose, bad faith, the consideration of irrelevant factors, a failure to consider relevant factors, and the like. Absent disclosure, these irregularities would remain hidden. Deliberations are the most immediate and accurate record of the process leading up to the decision.*

2021 05 05 WW To JSC(16533931.2)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair DHL Booysen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Greal S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katze M Kennedy A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Strauli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmingtton J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

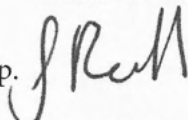
**Chief Operating Officer:** SA Boyd

*[24] If this is true of deliberations in general, it must surely be true of JSC deliberations as well. The JSC's own practice of distilling reasons for a decision from the deliberations is indication enough that JSC deliberations are of relevance to the decisions. They clearly bear on the lawfulness, rationality and procedural fairness of the decisions. The question is whether there is some legally cognisable basis that they must nonetheless be excluded from a rule 53 record. I deal with that question later.*

3. The outcome of this judgment was that the JSC was ordered, in terms of rule 53(1)(b), "to deliver the full recording of the proceedings sought to be reviewed in the main application, including the audio recording and any transcript of the deliberations of the JSC after the interviews on 17 October 2012."
4. Second, our client, CASAC, is considering the lawfulness of the JSC's decision and process. In order to do this, and to save time, it needs the audio recordings of the deliberations.
5. We humbly request that you reconsider your position in light of the above.

Yours faithfully

P.P.



**WEBBER WENTZEL**

Moray Hathorn  
Consultant

Direct tel: +27 11 530 5539

Direct fax: +27115306539

Email: moray.hathorn@webberwentzel.com





188, 14th Road, Noordwyk, Midrand, 1685  
Private Bag X10, Marshalltown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: [info@judiciary.org.za](mailto:info@judiciary.org.za)  
[www.judiciary.org.za](http://www.judiciary.org.za)

## JUDICIAL SERVICE COMMISSION

Enq: Ms K Moretlwe  
Email: [KMoretlwe@judiciary.org.za](mailto:KMoretlwe@judiciary.org.za)

11 May 2021

**Mr M Horthorn  
Webber Wentzel  
90 Rivonia Road  
Sandton, Johannesburg  
2196**

Dear Mr Horton

### **Request for recordings of the Constitutional Court Judicial Service Commission interviews 2021**

[1] We refer to your letter dated 5 May 2021.

[2] We do not intend to respond to each and every allegation contained in your letter.

Our failure to do so should not be construed as an admission thereof. The JSC reserves the right to do so should the need arise.

[3] The JSC denies that there is any change of its position. Furthermore, Rule 53(1)(b) does not apply in these circumstances. Therefore, the JSC position remains as indicated in the letter dated 30 April 2021.

Yours faithfully,

Sello Chiloane  
Secretary, Judicial Service Commission



**SAnews**.gov.za  
South African Government News Agency



MENU

Search SAnews

## Chief Justice calls for credible evidence of corruption

Saturday, September 14, 2019

Chief Justice Mogoeng Mogoeng has called on anyone with evidence of corruption against the Judiciary to come forward with that information.

"It bears repetition that, if you love this country and all our people, if you have credible evidence of capture or corruption against the Judiciary, please share it with us and with the public and be prepared to testify to its veracity," he said.

This follows allegations made on social media that not only have some judges received money from President Cyril Ramaphosa's CR17 election campaign, but also that the Judiciary is corrupt.

The Chief Justice, alongside his colleagues Free State Deputy Judge President Cagney Musi and Judge President of the Gauteng Division of the High Court of South Africa Dunstan Mlambo, addressed the allegations at a media briefing on Friday.

He said gratuitous allegations of corruption can only delegitimise the Judiciary and endanger constitutional democracy.

"We are dead against corruption and capture. South Africans need and deserve a credible, independent and truly transparent Judiciary, to root out these injurious practices," said the Chief Justice.

He said he will approach Police Commissioner General Khehla Sithole to investigate the source of the allegations.

"I have asked the Secretary General of the Office of the Chief Justice, Ms Memme Sejosengwe, to ask the National Commissioner of Police, General Khehla Sithole, to use all relevant capacities at his disposal to uncover the real forces behind the

Get Breaking  
News Updates

Your E-mail Address

Subscribe

### Most Read

How to register for  
COVID-19 vaccine

102002      17 May  
Views      2021

Registration for  
COVID-19 vaccine now  
open for those over  
60

233534      16 Apr  
Views      2021

Gauteng increases  
vaccination sites from  
28 to 63

5090      24 May  
Views      2021

*Handwritten signature/initials*

mask(s) making apparently gratuitous allegations of corruption or capture against the Judiciary," he said.

"Mr Nathi Mncube showed me a tweet by someone who claims to have informed me of certain judges in the Free State High Court who have allegedly been captured by Mr Ace Magashule, and that I did nothing about it. We have never received that information," he said.

The Chief Justice said he has been assured by all the provincial leaders of colleagues against whom these disturbing allegations have been made that the allegations are false.

"In the absence of concrete proof to the contrary, I believe my colleagues. Anybody with evidence to support these confidence-damaging allegations that any judge is corrupt or has been captured, must stop hiding behind fictional identities or names in media platforms," he said.

Mogoeng said there are checks in place to ensure that the Judiciary is not susceptible to corruption.

"I have said many times before that virtually all measures necessary to insulate judges from corruptibility and secure our fierce independence have been put in place and are constitutionally entrenched, all the way into our retirement."

The Chief Justice said it would take a thoroughly bad individual "completely bereft of legal profession and judicial ethics" to embrace corruption.

Mogoeng urged those with any evidence to make their identities known to the Judiciary and the South African public.

"Tell us which judge has been captured or corrupted and by whom; if money or benefit was given, how much, when and produce the verifiable documentary or electronic proof.

"And for the sake of the South African public that deserve a corruption-free Judiciary, be prepared to give evidence even in a court of law or commission of inquiry," said the Chief Justice. - SAnews.gov.za

Share this post:

Home affairs extends validity of asylum seekers, refugee status **124**

22410 06 May  
Views 2021

Social relief distress grant comes to an end

19065 30 Apr  
Views 2021

UIF begins processing new COVID-19 TERS applications

23336 05 Mar  
Views 2021

SA News on Facebook



South African

Government News

48.6K likes



South African Government News

59 minutes ago

Due to further breakdowns of generating units, Eskom will implement load shedding from 4pm this afternoon.

According to the power utility, the implementation of stage 2 load shedding is due to further breakdowns of generating units



News Sport TV Radio Education TV Licences Contact Us

For all official information and updates regarding COVID-19, visit the South African Department of Health's website at [www.sacoronavirus.co.za](http://www.sacoronavirus.co.za)




HOME » HOMEPAGE FEATURED STORY SLIDER »

## Mogoeng sticks by judges implicated in CR17 scandal

14 September 2019, 7:13 AM | SABC | @SABCNews

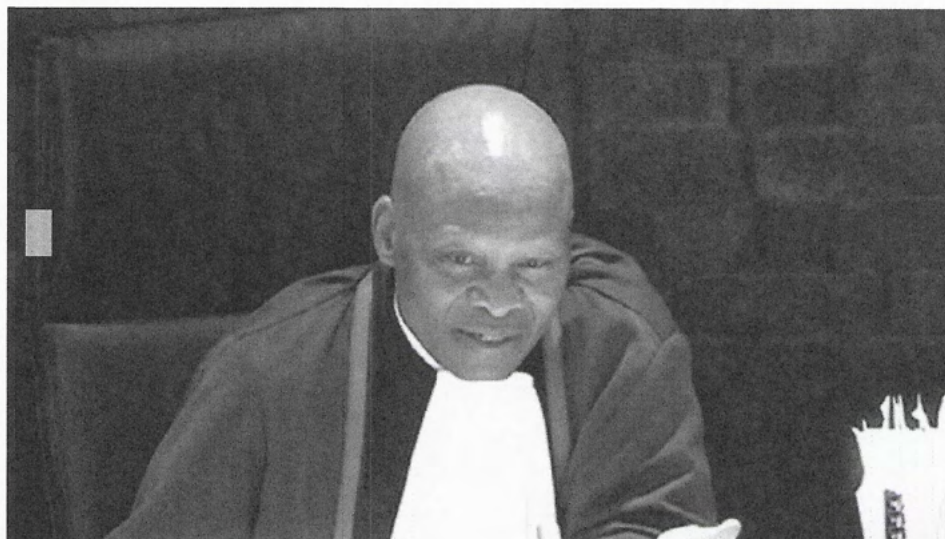


Image: SABC News

Justice Mogoeng has challenged those using social media to make claims of corruption in the judiciary to provide proof and reveal themselves

Chief Justice Mogoeng Mogoeng says in the absence of proof of alleged corruption by judge, he has to believe his colleagues' denials.

Justice Mogoeng has challenged those using social media to make claims of corruption in the judiciary to provide proof and reveal themselves.

The claims were made by anonymous profiles on social media. They mention a list of judges, who are alleged to have received cash from the Cyril Ramaphosa 2017 presidential campaign.

The Chief Justice was addressing journalists in Midrand, Johannesburg.

"Make your true identity and contact details known to us and the South African public; 2. Tell us which Judge has been captured or corrupted and by whom; 3. If money or benefit was given, how much, when, and produce the verifiable documentary or electronic proof; and 4. For the sake of the South African public that deserve a corruption-free Judiciary, be prepared to give evidence even in a court of law or Commission of Inquiry."

However, in an unexpected twist, a businessman from Limpopo, Motsile Rahube, made fresh allegations at the media conference hosted by Justice Mogoeng.

Watch for more:

### MOST VIEWED

24hrs Week Month

**CORONAVIRUS:** Your daily update  
Community of Olievenhoutbosch ask  
Minister Cele to shut down local police  
station  
Chaos erupts over leadership election  
at Pan-African Parliament  
DA says 50 000 South Africans signed  
its petition against proposed Firearms  
Control Bill  
SABC reports profit of R43-million for  
April 2021

### LATEST



#### SOUTH AFRICA

Limpopo mother up for toddler's  
murder says spirits ordered her to  
commit the crime



#### LIFESTYLE

DA's Makashule Gana, Solly Malatsi  
to embark on fundraising run



#### AFRICA

SA PAP delegation condemns  
'brazen attempt' to undermine the  
AU's authority



#### SOUTH AFRICA

Stage 2 load shedding to be  
implemented from 4pm



#### BUSINESS

*Handwritten signature/initials*

PN5



MINISTRY  
PUBLIC ENTERPRISES  
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 80 Hamilton Street, Arcadia  
Tel: 012 431 1118/1150 Fax: 012 431 1039 Private Bag X9079, Cape Town, 8000 Fax: 021 465 2381

126

**Mr Sello Chiloane**  
Secretary Judicial Service Commission  
Constitutional Court  
Private Bag X10  
**Marshalltown**  
2107

[Chiloane@concourt.org.za](mailto:Chiloane@concourt.org.za)

Dear Mr Chiloane

I refer to remarks made by the Chief Justice, Justice Mogoeng, about myself at the hearings being conducted by the Judicial Services Commission (JSC) yesterday.

It is in the public interest that I provide as much clarity as I can about my interactions with the Chief Justice in my official capacity, as Minister of Finance. We have no personal relationship.

Although I do not have a complete recollection, like the Chief Justice, of the meeting in April, 2016, I have only interacted with the Chief Justice on professional matters such as:

1. As the Chief Justice correctly points out, on matters related to the recommendations of the Commission on the Remuneration of Public Office Bearers at a time when the fiscus was constrained due to the impact of the financial crisis;
2. As a courtesy, the appointment of retired judges to perform certain functions (eg. the appointment of retired Judge Ngoepe as the Tax Ombud);
3. The separation of the budget of the judiciary from that of the Department of Justice (concluded in 2015), and
4. The judgement of the Constitutional Court in the matter of EFF and DA vs the Speaker of the National Assembly and others, decided on 31 March, 2016: in which judgement the court required that the National Treasury (NT) should determine the "reasonable percentage" of the "reasonable cost" of certain non-security upgrades at the residence of the then President of the Republic.

According to my records, the CJ agreed to meet me in Cape Town, on 6 April, 2016 to discuss one or more of the above matters. 127

I do not have a complete recollection of the matter which I needed to discuss: it could have been receiving clarity on the judgement referred in 4 above and / or the matter of the Tax Ombud.

The NT needed guidance on the practical implementation of "reasonable percentage" and "reasonable cost". In the event, the NT officials meticulously executed the directives of the Court and reported its determination (about R7.8 million) to the Court as required.

On the matter of the Tax Ombud, Judge Ngoepe was appointed by me, as Minister of Finance, after appropriate consultations, in about September, 2013 for a period of three years. His appointment would have come to an end in September, 2016. It was my intention to renew his contract for a further three years, commencing October, 2016.

Judge Pillay is a friend and comrade of long standing. She was also the partner of the late Mr. Yunus Mahomed (who passed away in 2008), a close comrade in the anti-apartheid struggle and with whom I worked in the formation of civics, in the UDF, and in the ANC underground in the 1970s and 1980s.

As I recall, after the completion of the cordial discussion on the matter for which the meeting was requested, I, in passing, did refer to Judge Pillay's interview with the JSC. The CJ responded. I then left.

Although, like the CJ, I cannot recall the content of the meeting, I did not meet the Chief Justice to discuss Judge Pillay. The enquiry about Judge Pillay was purely incidental to the purpose of the meeting.

In any event, as the Chief Justice himself indicated at the JSC, by the time I met him to discuss one or more of the matters outlined above "it was public knowledge that you (Judge Pillay) did not make it".

I want to state emphatically that I would never, and nor did I in any way, seek to influence the Chief Justice, whose independence I have always respected.

As a member of the Executive branch of the state, I am very conscious of the fact that our democracy is based on the separation of powers and the relative independence of the judiciary, legislature and executive.

I trust the above provides some clarity on my interactions with the Chief Justice.

Yours faithfully,



**PJ GORDHAN MP  
MINISTER**

**DATE: 14 April 2021**

