

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO 81783/18

In the matter between:

THE RIGHT2KNOW CAMPAIGN

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2018 -11- 10
JUDGE'S SECRETARY REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

APPLICANT

RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that the abovenamed applicant will apply to this Court, on **TUESDAY 13 NOVEMBER 2018 at 10h00** or so soon thereafter as counsel may be heard, for an order in the following terms (as reflected in the draft order annexed marked "X"):

1. This application is heard as one of urgency under Rule 6(12), the requirements of the Rules of Court in respect of notice, service and time periods being dispensed with and the applicant's departure therefrom being condoned.
2. The respondent shall permit at least twenty (20) accredited members of the media to attend, record and report upon the interviews of candidates for appointment as National Director of Public Prosecutions ("**the interviews**"), subject to:
 - 2.1. the following equipment limitations:

- 2.1.1. video: two video cameras may be used at a time and the locations of the cameras are not to change while the interviews are in progress;
 - 2.1.2. audio: the media may install and operate their own audio-recording systems provided this is unobtrusive and does not interfere with the interviews;
 - 2.1.3. still cameras: only two photographers are permitted, their locations are not to change, and no changing of lenses or film is permitted while the interviews are in progress.
 - 2.1.4. all camera, video and audio equipment must be in position at least 15 minutes before the start of the interviews and may be moved or removed only when the interviews are not in progress, and cameras, cables and the like are not to interfere with free movement within the interview venue;
 - 2.1.5. lighting: no movie lights, flash attachments or artificial lighting devices are permitted during the interviews;
 - 2.1.6. operating signals: no visible or audible light or signal may be used on any equipment;
- 2.2. the following pooling arrangements:
- 2.2.1. only one media representative may conduct each of the audio, video and still photography activities;
 - 2.2.2. this media representative is to be chosen by the media themselves, and is to operate an open and impartial distribution scheme, in terms of which the footage, sound or photographs would have to be distributed in a 'clean' form, that is, with no visible logos, etc, to any other media organisation requesting it,

and would also be archived in such a manner that it remains freely available to other media;

- 2.2.3. if no agreement can be reached on these arrangements, no expanded media coverage may take place;
- 2.3. an absolute bar on audio recordings or close-up photography of discussions among the members of the interview panel;
- 2.4. the interview panel having the discretion to direct, after considering concise oral representations from the interviewee concerned and one representative of the media present, and after giving reasons, that a specific portion of an interview be closed to the media, where public disclosure of such portion could reasonably be expected to:
 - 2.4.1. prejudice the effectiveness of methods, techniques, procedures or guidelines for the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law, or the prosecution of alleged offenders;
 - 2.4.2. lead to a circumvention of the law or facilitate the commission of an offence;
 - 2.4.3. prejudice a contemplated, pending or ensuing prosecution, or result in a miscarriage of justice in that prosecution;
 - 2.4.4. prejudice a contemplated, pending or ensuing investigation of any contravention or possible contravention of the law;
 - 2.4.5. reveal, or enable a person to ascertain, the identity of a confidential source of information relating to the enforcement or administration of the law;

2.4.6. result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law; or

2.4.7. prejudice or impair the fairness of a trial or the impartiality of an adjudication.

3. The costs of this application shall be borne by the respondent.

4. The applicant is granted any further and/or alternative relief the Court deems fit.

TAKE NOTICE FURTHER that the founding affidavit of **MLULEKI MARONGO** will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed **RUPERT CANDY ATTORNEYS INC.** as its attorneys of record in this matter, and will accept notice and service of all documents in these proceedings at the addresses (including the email address) set out below.

TAKE NOTICE FINALLY that, if you intend opposing this application:

- (a) you must, by **18h00** on **SUNDAY 11 NOVEMBER 2018**, deliver notice of such intention, as well as your answering affidavit(s);
- (b) the applicant shall then, by **12h00** on **MONDAY 12 NOVEMBER 2018**, deliver any replying affidavit(s), its index and heads of argument; and
- (c) you must then, by **20h00** on **MONDAY 12 NOVEMBER 2018**, deliver your heads of argument.

DATED at Johannesburg on this 10th day of **NOVEMBER 2018**.



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TO: THE REGISTRAR
High Court of South Africa
Gauteng Division
PRETORIA

AND TO: THE RESPONDENT
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
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In the matter between:

THE RIGHT2KNOW CAMPAIGN

APPLICANT

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

MLULEKI MARONGO

state under oath as follows:

1. I am an adult male, employed by the Right2Know Campaign ("R2K") as an access to information organiser.
2. I am duly authorised to depose to this affidavit and bring this application on behalf of the applicant.
3. Unless otherwise indicated, the facts in this affidavit fall within my personal knowledge and, to the best of my belief, are true and correct. Any legal submissions are made on the advice of the applicant's legal representatives, which I believe to be correct.

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PARTIES

4. The applicant is R2K, a non-profit organisation with its national office situated at 107 Community House, 41 Salt River Rd, Salt River, Cape Town.
5. R2K is a democratic, activist-driven campaign that unites and strengthens citizens to raise public awareness, mobilise communities, and undertake research and targeted advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs and live free from want, in equality and in dignity. A copy of R2K's Constitution is attached, marked "MM1", and a copy of R2K's Founding Principles is attached marked "MM2".
6. The respondent is the President of the Republic of South Africa ("**the President**"), who serves as the Head of State and Head of the National Executive under section 83 of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**").

SYNOPSIS

7. This is an urgent application for a final interdict directing the President to permit members of the media to attend, record and report on the upcoming interviews of candidates for appointment as the National Director of Public Prosecutions ("**the NDPP**"), which are scheduled to commence on 14 November 2018, the day after this application is to be heard.
8. The President has decreed that the interviews be completely closed to the public. He has given no justification for this position.
9. R2K thus seeks an order directing the President to leave the interviews open to the public, through the media, subject to appropriate conditions that will prevent any disruption of the interviews and any prejudice to legitimate prosecutorial interests.

URGENCY

10. R2K is advised that, if this Court's Rules and Practice Manual are followed to the letter, and each party delivers its documents on deadline, an opposed application can only be heard at least 71 court days after it is instituted. The interviews are scheduled to commence on 14 November and conclude on 16 November 2018. The interviews can hardly be postponed, as the President is obliged by court order to appoint the NDPP by 19 December 2018, and needs time to consider the input of the panel. R2K can thus not obtain any redress in the ordinary course.
11. R2K is also advised that, under this Court's jurisprudence and practice concerning urgency, the applicant may depart from the timetable prescribed by the Rules and the Practice Manual only to the extent necessary to ensure that the applicant is not denied substantial redress, while taking great care to ensure that the respondent is afforded a reasonable opportunity to state its case, and that the Court is seized with a case that is ripe and properly presented, in both form and substance.
12. R2K is advised and submits that this balance would be achieved by observing the following truncated timetable:
 - 12.1. R2K serves this application by email on Saturday 10 November 2018 (as the President's office has consented to service by email);
 - 12.2. The President delivers his notice of opposition and his answering affidavit(s) on Sunday 11 November 2018;
 - 12.3. R2K delivers its replying affidavit(s), and presents the indexed and paginated papers to the clerk of the relevant Judge by 12h00 on Monday 12 November 2018;

- 12.4. R2K and the President shall exchange concise heads of argument by 08h00 on Tuesday 13 November 2018;
- 12.5. The application is called for hearing at 10h00 on Tuesday 13 November 2018, or as soon thereafter as counsel may be heard.
13. R2K submits that this departure from the Rules is strictly necessary in the present circumstances, and prays that it be condoned by the Court.

FACTS

14. The position of NDPP is currently vacant. This vacancy arose on 13 August 2018, when the Constitutional Court, in *Corruption Watch NPC & Others v President of the Republic of South Africa & Others; Nxasana v Corruption Watch NPC & Others* 2018 (2) SACR 442 (CC), declared the appointment of Shaun Abrahams invalid and directed the President to appoint a new NDPP within 90 court days. That period expires on 19 December 2018.
15. The President appointed an advisory panel to shortlist, interview and recommend candidates for appointment as NDPP. On 22 October 2018, the President issued a press release, a copy of which is attached marked "MM3", announcing the steps the panel would take to invite applications and nominations, to shortlist, interview and vet candidates, and to make recommendations to the President.
16. On 2 November 2018, R2K learned from a news report, a copy of which is attached marked "MM4", stating that the President had directed that the panel's interviews of shortlisted candidates should be closed to the public. The dates of the interviews were not known at that stage.

17. R2K shortly began an expedited process of consultation among leaders and other stakeholders, and resolved on Thursday 8 November 2018 to instruct attorneys to challenge the President's direction.
18. On Thursday 8 November 2018, R2K instructed its attorneys to address a letter to the President, a copy of which is attached marked "MM5", explaining that it would be unconstitutional to hold the interviews in secret, and thus demanding that they be held in public.
19. On Friday, 9 November 2018, the President issued a press release, a copy of which is attached marked "MM6", stating that the panel has shortlisted twelve candidates who will be interviewed between 14 and 16 November 2018.
20. At 16h18 that afternoon, R2K's attorneys received a response from the President's Acting Head of Legal and Executive Services, a copy of which is attached marked "MM7", stating that:

there is no process prescribed by the Constitution or the National Prosecuting Authority Act for the appointment of the NDPP.

The President has decided to exercise his power to appoint the new NDPP in manner that allows for inclusive inputs. This does not however change the nature of the President's power to appoint the NDPP.

The decision taken by the President is that the interviews of the NDPP will not be in public.

21. At 17h18 that same evening, R2K's attorney responded to the Presidency by email, a copy of which is attached marked "MM8", stating that they had been instructed to bring this urgent application to Court, and setting out the intended timetable.

MERITS

22. The Constitution commands that, in the exercise of public power, openness is the rule and secrecy the exception. Any imposition of secrecy must be justified. This is deeply embedded in the Constitution:
- 22.1. section 1(d) entrenches “*accountability, responsiveness and openness*” among the values on which our system of democratic government is founded;
 - 22.2. section 16(1) enshrines “*the right to freedom of expression, which includes— (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas*”;
 - 22.3. section 36(1) provides that all rights enshrined in the Bill of Rights (including the right to freedom of expression) may only be limited in a manner that is “*reasonable and justifiable in an open and democratic society*” (emphasis added);
 - 22.4. section 39(1)(a) re-emphasises that the Bill of Rights must be interpreted to “*promote the values that underlie an open and democratic society*” (emphasis added);
 - 22.5. section 41(1)(c) obliges all organs of state (including even the President) to “*provide effective, transparent, accountable and coherent government*”; and
 - 22.6. section 195(1) demands that public administration (including the President) must be accountable (paragraph (f)), as well as transparent, “*by providing the public with timely, accessible and accurate information*” (paragraph (g)).
23. These values, rights and principles are especially important in respect of the NDPP and the National Prosecuting Authority (“NPA”), which the NDPP leads, because

public confidence in the NDPP and the NPA is integral to public confidence in the justice system as a whole.

24. In *Democratic Alliance v President of South Africa & Others* 2013 (1) SA 248 (CC) (where the Constitutional Court invalidated the appointment of Menzi Simelane as NDPP), the Court reflected on “*the importance of this portfolio in the context of our democracy*”, observing as follows (at para 26):

... It is true that the functions of the National Director are not judicial in character. Yet, the determination of prosecution policy, the decision whether or not to prosecute and the duty to ensure that prosecution policy is complied with are ... fundamental to our democracy. The office must be non-political and non-partisan and is closely related to the function of the judiciary broadly to achieve justice and is located at the core of delivering criminal justice.

25. It is for this reason that section 9(1)(b) of the National Prosecuting Authority Act 32 of 1998 (“**NPA Act**”) constrains the President to appoint someone who is “*a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned*”.
26. Instructively, the United Nations Guidelines on the Role of Prosecutors (the status of which are recognised in the NPA Act) set similarly high standards:

Qualifications, selection and training

1. *Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.*
2. *States shall ensure that:*
 - (a) *Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or*

ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) *Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.*

27. The public are entitled to see and hear, and discuss and debate among themselves, how the shortlisted candidates stack up to these standards. How else can the public have confidence in the process, and in the calibre of the candidate who is selected?
28. Section 8 of the NPA Act also requires that the “*need for the prosecuting authority to reflect broadly the racial and gender composition of South Africa must be considered when members of the prosecuting authority are appointed*”. This applies no less, and surely more, to the NDPP. Yet South Africa has never had a female NDPP. The public is entitled to scrutinise how the panel addresses this travesty, if at all, especially as the seven-member panel does not include a single woman.
29. Added to this, section 179 of the Constitution requires that the NPA must exercise its functions “*without fear, favour or prejudice*”, meaning that it must be protected from interference with its independence. In *Glenister v President of the Republic of South Africa & Others* 2011 (3) SA 347 (CC) (dealing with the independence of the Hawks), the Constitutional Court held (at para 207) that “*public confidence in mechanisms that are designed to secure independence is indispensable*”. The Court adopted much of its reasoning from a 2008 comparative study by the Organisation for Economic Co-operation and Development, which found, among other things,

that “[t]ransparent procedures for appointment and removal of the director ... are important elements to prevent undue interference” (Court’s emphasis).

30. In the *Corruption Watch* case cited above, which gave rise to the present vacancy, the Constitutional Court admonished (at para 88) that “*the rule of law dictates that the office of NDPP be cleansed of all the ills that have plagued it for the past few years*”. This is precisely why the interviews must be conducted in public. To shut the public out of this important process will further erode public confidence in the integrity and independence of the NDPP and the NPA.
31. Despite all of this, the President has given no justification at all, let alone adequate justification, for hiding the interviews under a blanket of secrecy. He simply says that, because there is no process prescribed in the Constitution, he can prescribe any process he likes. That approach is capricious and constitutionally unsound.
32. In the *Democratic Alliance* case cited above, the Constitutional Court (at para 23) held as follows:

... it is correct that the determination whether a candidate does fulfil the fit and proper requirement stipulated by the Act involves a value judgment. But it does not follow from this that the decision and evaluation lies within the sole and subjective preserve of the President. Value judgments are involved in virtually every decision any member of the Executive might make where objective requirements are stipulated. It is true that there may be differences of opinion in relation to whether or not objective criteria have been established or are present. This does not mean that the decision becomes one of subjective determination, immune from objective scrutiny.
33. It follows from this that the absence of a prescribed procedure for the appointment of the NDPP does not denote the absence of constitutional constraints on such a process. It must be conducted in a manner that is consistent with the values, rights

and principles which entrench transparency and accountability at the bedrock of our constitutional state, and enshrine the independence of the NDPP and NPA.

34. Judges are interviewed in public. So is the Public Protector. There is no evidence that this renders the interview process less effective. On the contrary, it serves as a vital check against dishonesty on the part of candidates, as well as arbitrary and abusive questioning by interviewers. It ensures the highest degree of preparation and probity on the part of all candidates and all interviewers.
35. The process of selecting and appointing the NDPP is thus a matter of profound public interest and importance. In short, the public have a right to know how and why the President has selected a particular candidate (over others) to be entrusted with such enormous public power and responsibility.
36. R2K accepts and appreciates the need to ensure that the media do not disrupt the interviews or distract the candidates. The order sought by R2K accordingly makes the media's presence subject to stringent conditions, modelled on those that apply to media presence in this Court under Annexure A12 of the Practice Manual.
37. R2K also accepts and appreciates that candidates and panellists may need, to some limited degree, to traverse information about prosecutorial methods and specific cases, which, if disclosed, could compromise the work of the NPA. The order R2K seeks is thus also subject to the panel having the discretion to close the interview for so long as such information is being traversed. Parliament has already defined such information in section 39 of the Promotion of Access to Information Act 2 of 2000, the terms of which are incorporated into the order sought by R2K.

38. Consequently, subject to these conditions, there is no constitutional justification for the President to close the interviews to the public. He must be directed to keep them open.

WHEREFORE R2K respectfully prays for an order in terms of the notice of motion to which this affidavit is attached.



DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at SANDTON on this the 10 day of November 2018, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

QU. 27.5.18
.....
Commissioner of Oaths ex officio
Advocate Koeddo Von Heerde
.....
Advocate of the High Court
of South Africa
1A Protea Place Sandown
Date 10 November 2018
.....



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MMI
✓

CONSTITUTION

of the

VOLUNTARY ASSOCIATION

known as

THE RIGHT2KNOW CAMPAIGN
(Abbreviation : The Right2Know/Right2Know/ R2K)

AS AMENDED ON 15 MARCH 2014.

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PREAMBLE

WHEREAS

- A. The Constitution of the Republic of South Africa (the Constitution) includes within its Bill of Rights, an entrenched Right of Access to Information, for which the Promotion of Access to Information Act No. 2 of 2000, as amended, makes detailed provision. The Constitution also contains a Right to Freedom of Expression.
- B. The Object of such rights is the right to know, which includes the right to transparency, accountability, a free and diverse media, effective governance affecting both public and private bodies, and the promotion of a human rights culture and social justice in South Africa.
- C. The Founder Members have resolved to establish an Association to advance the public interest in the achievement of this Object, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THE FOUNDERS HEREBY RESOLVE AND AGREE AS FOLLOWS:-

1. NAME

- 1.1 The name of the Association shall be:

THE RIGHT2KNOW CAMPAIGN
(Abbreviation : The Right2Know/Right2Know/R2K)

- 1.2 The Association shall have power at any time to change its name (and/or the acronyms "the, Right2Know and R2K") as may be deemed appropriate, subject to compliance with the formalities contemplated by clause 15 hereunder.

2. LEGAL STRUCTURE

- 2.1 The Association is constituted as a juristic person or body corporate, which is separate and distinct from its members and officers-bearers, and which shall continue to exist through "perpetual succession", notwithstanding periodic changes which may occur in the composition of its membership and/or the identity of its officer-bearers.
- 2.2 The Association shall have the capacity to acquire rights, including ownership of assets; and to incur duties and liabilities; and enter into contracts, apart from its members and officers; with the right to sue and be sued in its own name.
- 2.3 As a duly constituted Non-Profit Organisation ("NPO"), the Association shall do all such things as may be necessary to procure its registration in terms of the Non-Profit Organisations Act, No. 71 of 1997, as amended. It shall also seek approval by the Commissioner for SA Revenue Service (SARS) for the

fiscal status of a "Public Benefit Organisation" ("PBO"), as contemplated by Section 30 of the Income Tax Act, No. 58 of 1962, as amended; and for purposes of Section 18A of that Act.

- 2.4 As a Registered NPO and Approved PBO, the Association shall ensure that its income and property (including rights and assets), however derived, shall be applied solely towards the promotion of its Sole or Principal Object which constitutes a "Public Benefit Activity"; and no portion thereof shall be paid, transferred, or distributed, directly or indirectly, by way of dividend, bonus, or otherwise to its Members or Office-Bearers – provided that this provision shall not preclude the payment in good faith of reasonable remuneration to any such Member or Office-Bearer in return for services rendered. Save as aforesaid, no Member or Office Bearer shall have any right or interest in the property, assets, or interests of the Association by virtue of their Membership or Office.

3. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context clearly otherwise indicates:

- 3.1 "Association" means this Voluntary Association, namely the Association which will be described as the "The Right2Know Campaign "
- 3.3 "Commissioner" means the Commissioner for The South African Revenue Service ("SARS").
- 3.5 "Income Tax Act" means The Income Tax Act No. 58 of 1962, as amended.
- 3.6 "Minister" means The Minister of Finance.
- 3.7 "National Working Group" or "NWG" means the governance structure of the Association, which is to be constituted in accordance with clause 6, in order to exercise overall responsibility for the affairs of the Association, directly or indirectly by delegation to one or more of the Provincial Working Groups.
- 3.8 "National Summit" means the Annual General Meeting of the Association, which is to be convened from year to year, in accordance with Clause 10.
- 3.9 "National Membership" means those persons who are admitted to membership by the NWG, in recognition of their concern and commitment to support the objects of the Association, and at the nomination of the relevant PWG. Such national membership shall be valid until the next national summit.
- 3.10 "Ninth Schedule" means the Ninth Schedule to the Income Tax Act, in terms of which "Public Benefit Activities" are listed and defined for purposes of section 30, and

for purposes of section 18A of the Act; subject in each instance, to any such amendments or additions thereto as may from time to time be enacted or prescribed

- 3.11 "Nonprofit Organisations means The Nonprofit Organisations Act, No. 71 of Act" 1997, as amended.
- 3.12 "Prescribed Fiscal in Conditions" means the provisions prescribed from time to time in terms of sections 30 and 18A of the Income Tax Act, as being applicable to Public Benefit Organisations approved by the Commissioner for purposes of exemption from income tax in terms of Section 10(1)(cN); and for purposes of the tax deductibility of grants and donations in terms of section 18A of the Act. Such provisions as are presently applicable as at the date of adoption of this Constitution being set forth in Schedule "B" hereto; but being subject to any amendments or additions thereto as may from time to time be enacted or prescribed.
- 3.13 "Provincial Working Group" or "PWG" means a provincial governance structure of the Association, which is to be constituted from time to time in accordance with the provisions of clause 9, in order to exercise responsibility for the affairs of the Association in terms of its delegated mandate within the area of such delegation.
- 3.14 "Public Benefit Activities" means the activities designated as such in terms of the Ninth Schedule to the Income Tax Act and/or pursuant to a determination by the Minister in terms of section 30(1) of the Act.
- 3.15 "Public Benefit the Organisation" means an Organisation duly approved as such by Commissioner in terms of section 30 of the Income Tax Act.
- 3.16 "The Republic" means the Republic of South Africa.
- 3.17 The singular shall include the plural; and terms referring to persons shall include juristic persons; and *vice versa* in each instance.
- 3.18 Any reference to the Income Tax Act; the Nonprofit Organisations Act; or any other Statute mentioned or referred to hereunder, including the Schedules and Regulations applicable thereto, shall be deemed to denote such Statutes, Schedules, and Regulations, as they may be amended from time to time, including any legislation constituting a re-enactment or substitution thereof.

4. OBJECT, VISION AND PURPOSE

The Association shall be established for the following Object, Vision and Purpose, viz:-

4.1 Object

To promote human rights and democracy by advocating for the right to know – that is to be free to access and to share information. The organisation shall do so, inter alia by:

- Campaigning for laws, policies and practices consistent with the right to know;
- Campaigning for a media that is free and diverse;
- Campaigning for and assisting communities to access information held by government or the private sector that is necessary for the social, economic and environmental justice they need; and
- Campaigning for and supporting whistleblowers who act so that the public can exercise the right to know.

4.2 Vision

"We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity."

4.3 Purpose

- *To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.*
- *To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.*
- *To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.*
- *To propagate our vision throughout society.*
- *To engage those with political and economic power where necessary.*

- *To act in concert and solidarity with like-minded people and organisations locally and internationally.*

5. MEMBERSHIP

- 5.1 The Membership of the Association shall consist of National Membership;
- 5.2 The persons admitted initially to Membership shall be those whose names are reflected accordingly on the relevant Membership Schedules attached to this Constitution.
- 5.3 Further Members in the categories of National Membership may be admitted from time to time at the sole and absolute discretion of the National Working Group (which may include the requirement for Membership Fee) that may be determined from time to time with respect to such category of membership.
- 5.4 For the avoidance of doubt, it is confirmed that the National Working Group shall have a complete and unfettered discretion with regard to the acceptance or rejection of applications for membership, or the suspension or termination of membership, as they may deem appropriate and in the best interests of the Association. Such decisions shall be taken as set out below.

6. NATIONAL WORKING GROUP

- 6.1 "The National Working Group shall be responsible for the running of the affairs of the Association. The NWG shall be the highest decision making authority between National Summits and or National General Meetings. The NWG shall be constituted from year to year by election, co-option, or *ex officio*, as the case may be, in terms of the succeeding provisions. Only bona-fide members may be eligible for election (or co-option in special cases determined by the National Summit) to the NWG, with due consideration to even (equal) representation by functioning PWGs."
- 6.2 The National Working Group shall comprise a minimum of Seven (7) and a maximum of Fifteen (15) persons, who shall be designated by election of the National Summit as the Association's NWG, by the National Membership. Office-Bearers may be appointed by the National Working Group from within its rank, as it may deem desirable from time to time, including:
- 6.2.1 A Chairperson and/or
 - 6.2.2 A Vice-Chairperson; and/or
 - 6.2.3
 - 6.2.4 A Secretary; and/or
 - 6.2.5
 - 6.2.6 A Treasurer.

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- 6.3 The persons serving initially on the National Working Group, and the initial Office-Bearers, shall be those whose names are reflected on the Schedule to this Constitution. Such persons shall hold office until the first National Summit, but shall be eligible for re-election thereafter.
- 6.4 The National Working Group may itself co-opt up to Three (3) persons to serve as additional Members of the National Working Group, and any such co-opted persons shall likewise hold office until the next-occurring National Summit, and shall be eligible for re-coopton or election thereafter, as the case may be.
- 6.5 By Resolution adopted by no less than Seventy-Five (75%) of its members at the relevant time (excluding the person concerned), the National Working Group shall be entitled to remove or suspend from office any person elected or appointed to the National Working Group.
- 6.6 If any member of the National Working Group misses three meetings of the National Working Group without tendering their apologies, a motion must be tabled by the Chairperson calling for their removal at the next NWG meeting, and must be duly considered by the meeting, and voted on.

7. VACATING OFFICE

Persons appointed to the National Working Group shall vacate office in the event that any such person:-

- 7.1 completes the term of office for which she/he was appointed, without subsequent re-election or co-option; or
- 7.2 dies, or tenders her/his resignation in writing; or
- 7.3 becomes of unsound mind; or otherwise unfit or incapable of acting in this capacity;
- 7.4 becomes disqualified in terms of either the Trust Property Control Act, or the Companies Act, or any legislation substituted therefor, from acting as a Trustee, Director, or in any other fiduciary capacity; or
- 7.5 is removed from Office, in terms of a Resolution duly passed in accordance with the provisions of clause 6.6 above.

8. PROCEDURE AT NATIONAL WORKING GROUP MEETINGS

The National Working Group shall conduct its meetings, and regulate its proceedings, as it may find convenient from time to time, provided that:

- 8.1 The members of the National Working Group shall elect a Chairperson for that meeting.

- 8.2 The Chairperson or Vice-Chairperson, if any, may at any time convene a meeting of the National Working Group; but shall be obliged to do so, if so requested in writing by any Three (3) Members of the National Working Group.
- 8.3 The quorum necessary for the transaction of any business by the National Working Group shall require the participation of at least Five (5) of its Members.
- 8.4 At all meetings of the National Working Group each member shall have ONE (1) vote.
- 8.5 All questions arising shall be decided by consensus. Failing consensus, all questions arising shall be decided by a majority of votes, provided that in the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 8.6 Proper minutes shall be kept of all proceedings of the National Working Group, including a record of all persons present at each meeting. Minutes shall be signed by the members of the National Working Group resident near the National Office, and shall be available for inspection or copying by any National Member or Provincial Member of the association.
- 8.7 The National Working Group shall be entitled to delegate any of its powers and prerogatives to one or more of its Members, or to a Special Purpose Committee (which may include persons who are not members of the National Working Group), or to an employee or agent for the Association, as it deems appropriate. The person/s to whom any such delegation is made shall, in the exercise of delegated powers and prerogatives, conform to any directions or procedures that may be stipulated by the National Working Group with regard thereto.

9. PROVINCIAL WORKING GROUP

- 9.1 The Provincial Working Groups may be established from time to time by decision, and at the discretion of the National Working Group; and in that event shall be mandated to undertake such activities and pursue such purposes as are consonant with the Objects, Vision and Purpose of the Association, within the area in respect of which it has been mandated.
- 9.2 The Provincial Working Group shall only have such powers and prerogatives as may be delegated at the discretion of the National Working Group; and it shall conform to any such directions, conditions and procedures as may be stipulated by the National Working Group from time to time.
- 9.3 The Provincial Working Group shall nominate those persons who should attend the National Summit, in numbers agreed by the NWG. The NWG shall invite those persons nominated by the PWG to the Annual Summit, at which invitation they will become national members.

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- 9.4 Save insofar as the context may clearly otherwise indicate, the provisions of this Constitution which have reference to the National Working Group shall also apply mutatis mutandis with respect to the conduct of the affairs of a Provincial Working Group, within the designated area of this mandate.

10. NATIONAL SUMMIT

10.1 The National Summit is the highest decision-making body of the Campaign. The ultimate authority and responsibility for the exercise of the powers of the Association; including power to determine policy, values, and strategy; and for authorising and mandating the National Working Group (NWX), the establishment (or dis-establishment) of Provincial Working Groups, and for determining their operating conditions (with an ancillary right to review such decisions and actions), shall vest in the National Summit.

10.2 The National Summit will constitute the Annual General Meeting of the Association, and shall be held initially within a period of Fifteen (15) months after the adoption of this Constitution; and thereafter from year to year, within a period not exceeding Three (3) months after the end of each Financial Year.

10.3 The business of a National summit shall include, inter alia:

- 10.3.1 the presentation and adoption of the Annual Report;
- 10.3.2 the consideration of the Annual Financial Statements;
- 10.3.3 the consideration of an annual Budget for the ensuring year;
- 10.3.4 the election of persons who shall serve on the National Working Group for the ensuing year;
- 10.3.5 the appointment of Auditors;
- 10.3.6 such other matters as may be considered appropriate by the Meeting.

10.4 Other National General Meetings

Other General Meetings of the National Membership may be convened from time to time as may be considered necessary at the request of:

- 10.4.1 The National Working Group;
- 10.4.2 the Chairperson or Vice-Chairperson, if any; or
- 10.4.3 any Two (2) or more Provincial Working Groups.

10.4 General Meeting Notices

Not less than fourteen (14) business days' prior written notice of each such general meeting shall be given to all National Members of the Association, and to each Provincial Working Group. Such notices shall state in broad terms the business to be transacted at the Meeting: provided that should the

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Chairperson, having been duly requested, fail to give such notice within Ten (10) business days of written request, the persons entitled to request the Meeting shall themselves be entitled to give notice of, and to convene the Meeting.

10.6 Resolutions and Voting

10.6.1 At all National General Meetings, a resolution put to the vote shall be decided by a show of hands, or by a poll – if the Chairperson shall so determine. A poll shall be taken as directed by the Chairperson, and the result of the poll shall constitute the resolution of the Meeting.

10.6.2 Each member present or represented shall be entitled to One (1) vote, and all matters arising shall be determined by consensus, if possible; but in the absence of consensus, then by decision of majority of the Voting Members present or represented at the meeting. The Chairperson shall be entitled to a second or casting vote, in the event of an equality of votes.

10.7 Quorum

A quorum in respect of any National General Meeting of the Association shall require the participation of at least a majority of the National Members entitled to attend and vote.

10.8 Adjournment

In the event of any National General Meeting being convened but no quorum being present, such Meeting shall stand adjourned to another twenty-one (21) business days thereafter, as may be determined by the National Working Group. Written notice reflecting such adjournment shall be given to all persons entitled to attend and exercise a vote at such meeting. At such reconvened National General Meeting, the Members then present or represented shall be deemed to constitute a quorum.

11. **POWERS AND DISCRETIONS**

Subject to the **Prescribed Fiscal Conditions** referred to in clause 18, the National Working Group, or any Provincial Working Group (to the extent that it may be so delegated) shall be vested with the undermentioned powers and discretions, viz :

11.1 The power to administer and generally conduct the affairs of the Association.

11.2 The power to initiate and determine activities of the Association, within the ambit of what are statutorily defined as "Public Benefit Activities"; and generally the manner and terms upon which the resources of the Association shall be invested, utilised and appropriated from time to time; including the power to determine how the funds of the Association shall be invested, with the intent and purpose that all such funds shall be held, invested, and appropriated by the National Working Group, as it may deem appropriate in its sole discretion from time to time.

- 11.3 The General Investment and Administrative Powers, set forth in Schedule "A" hereto, within the ambit of the overriding Prescribed Fiscal Conditions referred to in clause 16.
- 11.4 Any such further powers and discretions as may be found necessary to execute its fiduciary responsibilities hereunder, and to promote the best interests and advance the purposes of the Association, and exercise due responsibility with respect to its affairs.

12. NOTICES

- 12.1 Notices of Meetings shall be delivered to each Member entitled thereto, either personally, electronically, by prepaid registered post, or in any such other manner, as may be deemed appropriate by the Chairperson (or Vice-Chairperson, if any); and such Notices shall be directed to the last address known to and recorded with the Association in respect of the person concerned.
- 12.2 The inadvertent, but *bona fide*, omission to address notices to any person entitled thereto shall not invalidate the proceedings of the ensuing meeting.
- 12.3 If delivered personally, notices shall be deemed to have been received on the date of proven delivery.
- 12.4 If despatched electronically, notices shall be deemed to have been received twenty-four (24) hours after proven data transmission.
- 12.5 If despatched by prepaid registered post to an address in the Republic, notices shall be deemed to have been received five (5) days after the proven date of despatch.

13. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS

- 13.1 The Annual Financial Year of the Association shall be as from 1 January in each year to 31 December in the succeeding year.
- 13.2 The National Working Group, and the Provincial Working Groups shall ensure that the Association keeps proper books of account. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in South Africa, and shall clearly reflect the affairs of the Association. The books of account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant, or in such other manner by a competent disinterested person, as may be deemed appropriate by the National Working Group.
- 13.3 A copy of the Annual Financial Statements shall be made available to each National and Provincial Member of the Association as soon as possible after

the close of the financial year.

14. BANKING ACCOUNT AND SIGNATURES

- 14.1 The Association's banking and financial affairs shall be conducted through one or more banking accounts.
- 14.2 All cheques, promissory notes, and other documents requiring signature on behalf of the Association shall be signed by such persons as may be duly authorised by the National Working Group from time to time.

15. AMENDMENTS TO CONSTITUTION AND DISSOLUTION

- 15.1 By decision of the National Members at a specially convened National General Meeting:

- 15.1.1 the name of the Association may be changed; and/or
- 15.1.2 the terms of this Constitution may be amended; and/or
- 15.1.3 the Association may be dissolved;

provided that written notice of the proposed resolution is given to all National Members not less than Twenty-One (21) business days prior to the date of the meeting at which it is to be considered; and provided further that such notice duly states the nature of the resolution to be proposed.

Any such resolution shall be deemed to have been duly adopted if it is supported by no less than Two-thirds ($\frac{2}{3}$) of all the National Members of the Association at the relevant time.

- 15.2 Notwithstanding anything to the contrary contained in this Constitution, it is confirmed that a resolution signed by all the National Members of the Association, shall be valid as if passed at a duly convened General Meeting of the Association.
- 15.3 A copy of any amending Deed, or Resolution, as the case may be, shall be submitted following its adoption, to the Commissioner, and to the Director appointed in terms of the Nonprofit Organisations Act.
- 15.4 In the event of the dissolution of the Association, any net residue of funds remaining after provision for all its liabilities and expenses, shall be given or transferred to one or more other Approved Public Benefit Organisations, or other eligible beneficiary institutions, as may be determined by the National Working Group at its discretion; provided that any such portion of the net residue as may arise in consequence of donations made by taxpayers to whom receipts have been issued in terms of section 18A of the Income Tax Act, must be given or transferred to some other beneficiary institution eligible for purposes of section 18A, as may be approved by the Commissioner in terms of the Income Tax Act.

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16. INDEMNITY

- 16.1 Subject to the limitations of any relevant Statute, each member of the National or Provincial Working Groups, and all their office bearers, shall be indemnified by the Association for the consequences of acts done and decisions taken in good faith, on the Association's behalf; and it shall be the duty of the Association to pay all costs and expenses which any such person may incur, or become liable for, as a result of contracts entered into, or acts or deeds done in her/his capacity, and with the authority of the relevant Working Group.
- 16.2 Subject to the provisions of any relevant statute, no member of the National or Provincial Working Groups or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of the duties of her or his office or in relation thereto, unless it arises in consequence of her or his dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

17. AMBIT OF DISCRETIONS

Where discretions are vested in the National Working Group, Provincial Working Group, and/or a General Meeting of members of the Association in terms of this Constitution, such discretions, except where expressly limited, shall be complete and absolute.

18. PRESCRIBED FISCAL CONDITIONS

- 18.1 Anything to the contrary hereinbefore contained or implied notwithstanding, the powers of the Association, shall be subject to due compliance with all conditions stipulated from time to time in respect of Public Benefit Organisations in terms of section 30 of the Income Tax Act, as read with the Ninth Schedule thereto, in order thereby to ensure that the Association both establishes and retains its tax-exempt status in terms of section 10(1)(cN) of the Act, and the further fiscal benefits envisaged by section 18A of the Act. The Prescribed Fiscal Conditions applicable to the Association at the time of adoption of the Constitution shall be such as are set forth in Schedule "B" to this Constitution, but remain subject to any amendments thereto as may be enacted or prescribed at any time
- 18.2 In furtherance of its Purpose and Sole Object, the Association may accept donations in support of its Public Benefit Activities, as identified from time to time in terms of Part II of the Ninth Schedule; and with the authority of the

Commissioner it may issue receipts in terms of section 18A of such Act, for the benefit of South African taxpaying donors. The National Working Group and Provincial Working Groups shall ensure full compliance by the Association with the special conditions prescribed by the Income Tax Act with respect to such tax deductible donations, including any new conditions that may be imposed by regulation, or by the exercise of the statutory powers and discretions vested in the Minister and/or the Commissioner, as the case may be.

19. REGISTRATION: NONPROFIT ORGANISATIONS ACT

The Association shall take all such steps as may be necessary to procure and retain registration in terms of the Non-Profit Organisation's Act, No. 71 of 1997. Accordingly, having regard to the mandatory requirements of the relevant legislation, it is hereby recorded with respect to the Association (described as "the Organisation"), as follows:

- 19.1 The Organisation's name shall be as stated in clause 1.1;
- 19.2 The Organisation's Purpose and Sole Object shall be as stated in clause 4;
- 19.3 The Organisation's income and property shall not be distributable to members or office-bearers as stated, or in terms of clause 2.4, save insofar as they may be reimbursed for reasonable out of pocket expenses incurred in the execution of their duties,
- 19.4 The Organisation shall be deemed to be a body corporate, and shall have an identity separate and distinct from its Members, as envisaged by clause 2.1;
- 19.5 The Organisation shall continue to exist notwithstanding periodic changes that may occur in the composition of its Membership, its governing structures, or its Office-Bearers, as envisaged by clause 2.1;
- 19.6 The Members or Office-Bearers shall have no rights in the property or other assets of the Organisation by virtue of their membership or office, as stated in clause 2.4;
- 19.7 The powers of the Organisation shall be as set forth in this Constitution, including clauses 11 and 17, as read with Schedules "A" and "B";
- 19.8 The organisational structure and mechanisms for the Organisation's governance shall be as set forth in this Constitution, including clauses 6, 9, and 10;
- 19.9 The rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings, shall be as stated in clauses 10 and 20;
- 19.10 The manner in which decisions are to be made shall be as stated in clauses 6, 8, 9, and 10;





- 19.11 The Organisation's financial transactions must be conducted by means of a banking account, as stated in clause 14.1;
- 19.12 The date for the end of the Organisation's financial year shall be as stated in clause 13.1;
- 19.13 The procedure for changing the constitution shall be as stated in clause 15;
- 19.14 The procedure by which the Organisation may be wound up or dissolved shall be as stated in clause 15;
- 19.15 If the Organisation is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to some other eligible Nonprofit Organisation or institution, having the same or similar objectives, as stated in clause 15.4, as read with clause 9 of Schedule "B".

20. FURTHER MEETING FORMALITIES

- 20.1 A "round robin" resolution – that is a resolution in writing, supported and signed unanimously by all persons eligible to vote thereon – shall be as valid as if passed at a duly convened meeting; and, unless stated to the contrary, shall be deemed to have been passed as at the date of the last signature thereto. Any such "round robin" Resolution may be recorded in a single document, or in several documents, as may be found convenient.
- 20.2 For the avoidance of doubt, it is further stipulated that Meetings of the National Working Group and the Provincial Working Group may be held at any time or times, and at any place or places, subject to due notice having been given thereof; and such meetings may be held simultaneously in more than one place, provided that all persons involved are linked to each other by telephone, video, teleconference or other facilities, whereby they may communicate and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present together at the same time and place.

EASTERN CAPE BASED MEMBERSHIP

<u>FULL NAMES OF FOUNDER MEMBER & INITIAL</u> <u>NATIONAL WORKING GROUP</u>	<u>SIGNATURE</u>	<u>DATE</u>
Thembani Onceya		

GAUTENG BASED MEMBERSHIP

<u>FULL NAMES OF FOUNDER MEMBER & INITIAL</u> <u>NATIONAL WORKING GROUP</u>	<u>SIGNATURE</u>	<u>DATE</u>
Dale T McKinley		
Kate Skinner		
Jayshree Pather		

<u>National Member from Gauteng</u>	<u>SIGNATURE</u>	<u>DATE</u>
Adam Noord		

KZN BASED MEMBERSHIP

<u>FULL NAMES OF FOUNDER MEMBER & INITIAL</u> <u>NATIONAL WORKING GROUP</u>	<u>SIGNATURE</u>	<u>DATE</u>
Roy Chetty		
Eric Tate		

<u>National Member from KZN</u>	<u>SIGNATURE</u>	<u>DATE</u>
Desmond D'Sa		

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WESTERN CAPE BASED MEMBERSHIP

<u>FULL NAMES OF FOUNDER MEMBER & INITIAL</u> <u>NATIONAL WORKING GROUP</u>	<u>SIGNATURE</u>	<u>DATE</u>
Alison Tilley		
Hennie van Vuuren		
Murray Hunter		

<u>National Member from Western Cape</u>	<u>SIGNATURE</u>	<u>DATE</u>
Vinayak Bhardwaj		

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SCHEDULE "A"

GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

Subject to the limitations set forth in the **Prescribed Fiscal Conditions** (Annexure "B"), the ASSOCIATION, shall have the following **General Investment and Administrative Powers**, in addition to those special powers and discretions as are set forth in the Constitution to which this Schedule is annexed, viz:

1. To invest and reinvest the funds of the ASSOCIATION in a manner permitted by law, as they may deem appropriate, in their sole and absolute discretion; which may include, if deemed appropriate, the transfer and investment of funds off-shore.
2. To retain, or take over assets and investments constituting the subject matter of donations made to the ASSOCIATION, and to retain them in the form in which they are received, or realise and re-invest the proceeds thereof.
3. To realise or vary any investments from time to time forming part of the funds of the ASSOCIATION, and re-invest the proceeds thereof in any authorised investments.
4. To allow investments forming part of the funds of the ASSOCIATION to remain uninvested, or in their original state of investment upon acquisition by the ASSOCIATION.
5. Lend money to the ASSOCIATION, with or without security, and with or without provision for interest, as may be deemed appropriate.
6. To borrow on such terms and conditions as The Board may consider fit for any of the purposes of the ASSOCIATION; including the payment of liabilities of the ASSOCIATION; the payment of capital to any other permitted beneficiary; the making of any loan in furtherance of the Sole Object of the ASSOCIATION; the preserving or acquiring of any assets or investments; the subscription of any shares with powers from time to time to consent to any alteration or variation in the terms applicable thereto; and as security for any moneys so borrowed, The Board shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the funds of the ASSOCIATION, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace such borrowings or security.
7. To guarantee (either gratuitously or for a consideration) the performance of contracts or obligations of any third party in order to promote the sole object of the ASSOCIATION, upon such conditions, and with or without security, as The Board in its sole and absolute discretion may deem fit; provided that such transaction is entered into for the benefit of the ASSOCIATION.
8. To exercise the voting power attached to any shares forming part of the funds of the ASSOCIATION, as The Board may consider appropriate in the best interests of the ASSOCIATION; and to enter into arrangements as it may consider necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any company of whose capital the shares shall form

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portion.

9. To deal with, and turn to account, any of the assets forming part of the funds of the ASSOCIATION, by way of exchange, sale, lease or otherwise and in exercising any powers of sale, The Board shall be entitled to cause such sale to be effected by public auction, tender, or private treaty as it may consider appropriate.
10. To purchase or acquire both movable and immovable property for use by the ASSOCIATION itself in the conduct of its affairs, and in furtherance of the Specified Activities.
11. In respect of any immovable property donated to, or forming part of the funds of the ASSOCIATION, at any time:
 - 11.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
 - 11.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document and to obtain copies of deeds, bonds or documents for any purposes and generally to do or cause to be done any act whatsoever in any such Registry or office.
12. To transfer shares or other assets into the name of any nominee/s for the ASSOCIATION, or into the name/s of any one or more of The Board.
13. To cause any Company to be incorporated, or any Trust, Foundation, or Association not for Gain, to be established, which is owned or controlled, directly or indirectly by the ASSOCIATION; for the purpose of holding specific assets or undertaking specified activities which serve to promote the Sole Object of this ASSOCIATION, in the Republic or elsewhere, in accordance with the provisions of this Constitution.
14. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the ASSOCIATION, and bring sequestration, liquidation or judicial management proceedings against any person.
15. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the ASSOCIATION and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
16. To attend meetings of creditors of any person indebted to the ASSOCIATION

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whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors and generally exercise all rights of a creditor.

17. To exercise the voting power attaching to any share, stock, debenture or unit, in such manner as The Board may deem fit, for the purpose of amalgamation, merger or compromise, in any Company or Trust in which any such share, stock, debenture or unit is held.
18. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture or unit forming part of the assets of the ASSOCIATION.
19. To engage employees in a part-time or full-time capacity; determine their remuneration; and terms of employment, and delegate to them such duties as The Board may determine; and to dismiss them.
20. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
21. To treat as income any periodic receipts although received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
22. To determine in such manner as The Board may consider fit what shall be treated as income and what shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the TRUST; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as The Board may consider fit.
23. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business of whatever nature required to be done pursuant to this Constitution, and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees, or for any loss occasioned by their employment.
24. To exercise all such management and executive powers as are normally vested in the Board of Directors of a Company with regard to the affairs of the ASSOCIATION.
25. To exercise any of such powers and authorities not only in the Republic, but also in any other part of the world.
26. Generally, to deal with assets or investments forming part of the funds of the ASSOCIATION, in such manner as The Board may deem advisable; and to this end it shall be vested with any such additional powers and authorities as it may require to enable it to do so.

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SCHEDULE "B"

PRESCRIBED FISCAL CONDITIONS

[In terms of sections 18A and 30 of the Income Tax Act]

Once approved by the Commissioner for the South African Revenue Service (SARS) as a "Public Benefit Organisation" in terms of Section 30 (and, insofar as it may be applicable, also for purposes of Section 18A) of the Income Tax Act, No. 58 of 1962, as amended, this Constitution shall be deemed also to include the following provisions prescribed in terms of the Income Tax Act, which shall in that event become binding upon and applicable to the ASSOCIATION, in accordance with the requirements of that Act, viz;

- 1 As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, the Company shall :**
 - 1.1 Ensure that any eligible donations actually paid or transferred to the ASSOCIATION, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.
 - 1.2 Ensure that during each year of assessment preceding the year of assessment of the ASSOCIATION during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Seventy-Five Percent (75%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.
 - 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.
 - 1.4 Ensure that an audit certificate is provided upon submission by the ASSOCIATION to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the ASSOCIATION in that year, in respect of which section 18A receipts were issued by the ASSOCIATION, were utilised in the manner contemplated by that section.
- 2 As a Public Benefit Organisation approved by the Commissioner for**

purposes of section 30 of the Income Tax Act, the ASSOCIATION shall:

- 2.1 Carry on the public benefit activities of the ASSOCIATION in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the ASSOCIATION, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Take reasonable steps to ensure that each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups)
- 2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the ASSOCIATION are directed in the furtherance of its objects.
- 2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.
- 2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the ASSOCIATION, and that no single person directly or indirectly controls the decision making powers of the ASSOCIATION.
- 2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to :
 - 2.8.1 any Public Benefit Organisation which has been approved in terms of section 30(3) of the Income Tax Act;
 - 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
 - 2.8.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act.
- 2.9 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; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such

donor to derive some direct or indirect benefit from the application of such donation.

- 2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.
- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was 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 Act or any other Act administered by the Commissioner.
- 2.12 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 and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the ASSOCIATION, for a period of at least four years after the date of the last entry in any such book; or
 - 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the ASSOCIATION, for a period of four years after the completion of the transaction, act or operation to which they relate.



MMZ

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Mission, Vision and Principles

Stay in touch

Sign up to get R2K's weekly news summary or monthly update at www.r2k.org.za/signup.

Or [contact us directly](#) if you want to get more active in the Campaign.

Our Vision

"We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity. "

Social media



Our Mission

- To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.
- To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.
- To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.
- To propagate our vision throughout society.
- To engage those with political and economic power where necessary.
- To act in concert and solidarity with like-minded people and organisations locally and internationally.

R2K Principles ("The Shalimar Principles")

Preamble

We subscribe to the right to know, which is founded in the right to dignity and is realised through rights freely to access and share information.

We shall defend and advance the right to know, encouraged that it and its constituent rights were won through peoples' struggles in South Africa and internationally, and are affirmed in the Constitution of South Africa, the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights.

We commit to the following principles, both in our own policies and practices and in the vision we propagate throughout society:

Principle 1: Access to Information

All people have the right to access information, and have it equally. This right has inherent value and enables many other democratic rights.

MMZ

The right to access information must be defended and advanced in law, policy and practice as demanded inter alia by section 32 of the Constitution of South Africa.

Principle 2: Free Flow of Information

All people have the right to express themselves – that is to share information, including opinion – freely and equally. This right has inherent value and enables many other democratic rights.

The right to free expression must be defended and advanced in law, policy and practice as demanded inter alia by section 16 of the Constitution of South Africa.

Principle 3: Free and Diverse Media

The media have rights and corresponding duties to access and disseminate information, including opinion, freely and fairly, without fear or favour. These rights and duties are vital to the public's exercise of many other democratic rights.

Media freedom must be defended and advanced in law, policy and practice as demanded inter alia by section 16 of the Constitution of South Africa.

Media diversity must be extended so that everyone, in particular the socially and economically marginalised, shall have a voice.

Principle 4: Accountability and Transparency

Transparency, achieved through the right to know, holds power to account so that political, social, economic and environmental justice is realised.

Principle 5: Informed Public Participation

The right to know empowers all people to participate in democracy actively and effectively so that they can defend and advance their political, social, economic and environmental rights.

Principle 6: Truth and Quality of Information

The rights to access information must be served through the provision of information that is reliable, verifiable and representative of the data from which it is derived, and must include the right to access source data itself. Information must be provided transparently and equally, untainted by partisan interests.

Principle 7: Proactive Dissemination of Information

Public and private bodies must disseminate information proactively. Laws providing for access to information must not be used as a shield to obstruct its release.

Principle 8: Equality

All rights, including the rights here demanded like any other right, are equal to all people regardless of any human or social characteristic including class, race, gender, language or sexual orientation.

Principle 9: Community Involvement

The right to know is vital to the struggles of communities demanding political, social, economic and environmental justice. Campaign efforts rooted in communities and their needs are vital to the campaign's success and the realisation of a responsive and accountable democracy that can meet the basic needs of our people.

Principle 10: Solidarity

The full realisation of the right to know cannot be defined by individuals, organisations or borders. Our campaign is best served where we act in concert and solidarity with like-minded people and organisations locally and internationally.

Get Involved

Contact us and get involved in the movement

(021) 447 1000

admin@r2k.org.za

R2K organisers

Gauteng

Ntombiyebongo Tshabalala: 082

710 3138

Thami Nkosi: 062 624 5992

Stay Connected



Kush

mm

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41 Salt River Rd, Salt River, 7925

KwaZulu-Natal

Lazola Kati: 072 956 7753

Sithembiso Khuluse: 082 843
9976

Western Cape

Vacant: 021 447 1000

Other Provinces

Bongani Xezwi: 082 525 3949

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Handwritten signatures and initials:
M.M. (bottom left)
K.A. (top right)
" (bottom right)



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NDPP Selection Advisory Panel holds first meeting

22 October 2018

Pretoria - The Advisory Panel appointed by President Cyril Ramaphosa to identify and conduct interviews with individuals worthy of consideration to occupy the position of the Head of the National Prosecuting Authority (NPA) convened for the first time earlier today, Monday 22 October 2018.

The aim of the meeting was to confirm the mandate of the Panel and to determine how it would set about completing its work.

The Panel agreed on a framework and that it would ensure that worthy persons shortlisted are appropriately vetted before recommendations are sent to the President for consideration.

The Panel unanimously decided that interested persons and organisations will be invited to identify to the Panel, persons who should be considered for appointment through an advertisement in the media calling for nominations/applications.

The Panel has further decided on the following timeframes relating to the work to be completed:

- (a) 23 October 2018: invitation for applications and nominations for fit and proper South Africans who possess legal qualifications for the position of the National Director of Public Prosecutions in accordance with the National Prosecuting Act, 1998 (Act No. 32 of 1998).

Applications and nominations are to be sent to The Presidency, Private Bag x1000, Pretoria, 0001 or Hand deliver at Government Avenue, Union Buildings, for attention: Nhlanhla Mshengu and the

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closing date is 02 November 2018.

The advertisement will be published in the media.

- (b) 02 November 2018: closing date for applications and nominations;
- (c) 05 to 16 November 2018: shortlisting and interview processes;
- (d) 19 to 23 November 2018: vetting of shortlisted candidates; and
- (e) 26 to 30 November 2018: assessment by Panel of persons and finalisation of recommendations.

The Panel agreed to submit shortlisted names to the President by December 07, 2018.

The Panel chaired by Energy Minister Jeff Radebe comprises:

- Mr TK Makwetu (Auditor-General of South Africa);
- Adv BC Majola (Chairperson of the South African Human Rights Commission);
- Adv B Roux (General Council of the Bar of South Africa representative);
- Mr R Scott (Law Society of South Africa representative);
- Mr L Manye (Advocates for Transformation representative);
- Mr LB Sigogo (Black Lawyers Association); &
- Mr M Notyesi (National Association of Democratic Lawyers representative).

Media enquiries: Khusela Diko, Spokesperson to the President, on 072 854 5707

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SA exposed as safe haven for criminals

There is a reason that many of the world's most wanted criminals seek refuge in South Africa, adopting pseudonyms and living comfortable lives, writes Mandy Wiener.

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Presidency: Public won't be privy to interviews for new NPA boss, experts express disappointment

2018-11-02 20:01

Jeanette Chabalala

news24

Applications and nominations for a new National Director of Public Prosecutions (NDPP) close on Friday but the public won't be able to see the interview process.

Presidency spokesperson Khusela Diko confirmed to News24 this week that the interviews would not be open to the public.

Diko did not want to provide further details.

However, speaking to News24 on Friday, the executive secretary of Council for the Advancement of the South African Constitution Lawson Naidoo said conducting the interviews in public would "enhance" the process of finding a new National Prosecuting Authority (NPA) head.

"This is such an important and crucial office in the country and given the current state of the NPA, it [would] rebuild public trust in that institution," Naidoo said.

READ: NDPP appointment process a step in the right direction - former NDPP Vusi Pikoli

"It would appear to make sense that the interviews are conducted in public so that South Africans can be ensured that the right person and the best person is chosen for the job. I think the secrecy will undermine the integrity of the process."

'Candidates might not want to be interviewed in public'

Spokesperson for Society of State Advocates and Prosecutors of South Africa Elivera du Plooy also told News24 that the organisation was disappointed that it was not included in the process.

"We are concerned about the fact that we are excluded from the process and that it is not public hearings. It should be a transparent process and we are just disappointed," she said.

"We believe that if the president and government feel that judges' appointments be made public then why not the NDPP – it is such an important position."

Freedom Under Law chairperson Johann Kriegler also weighed in on the issue, saying in the interest of transparency, maximum public participation should be welcomed.

However, Kriegler said some candidates might not wish to be interviewed in public.

"They [might] not want public speculation," he said.

Unprecedented steps



NATIONAL PROSECUTING AUTHORITY
South Africa

NPA

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The power to appoint and remove the head of the NPA is bestowed on the president.

But the advisory panel President Cyril Ramaphosa appointed to identify candidates and conduct interviews for the position, has decided to take a different – and unprecedented – route.

ALSO READ: Radebe to head panel in search for new NPA boss

Diko said earlier that the panel agreed on a framework to ensure that worthy people shortlisted were appropriately vetted before recommendations were sent to the president for consideration.

Diko said assessments by the panel and the finalisation of its recommendations would take place from November 23 to 30, following the shortlisting of candidates.

"The panel unanimously decided that interested persons and organisations will be invited to identify to the panel persons who should be considered for appointment through an advertisement in the media calling for nominations/applications," Diko said at the time.

Makwetu, Roux on panel

The panel also decided on the time frames for work to be completed.

She said the panel agreed to submit names of shortlisted candidates to Ramaphosa by December 7.

Among those on the panel, chaired by Energy Minister Jeff Radebe, is Auditor General Thembekile Makwetu and General Council of the Bar of South Africa representative advocate Barry Roux.

The panel is to complete its work within a timeline that allows Ramaphosa to comply with a deadline set by the Constitutional Court to appoint a new National Director of Public Prosecutions.

The court gave Ramaphosa 90 court days after making its ruling on August 13.

At the time, the highest court in the land ruled that the appointment of Shaun Abrahams as NPA head was unconstitutional and invalid.

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At least 20 people have reportedly been hospitalised owing to salmonella poisoning in Durban, KwaZulu-Natal.

Two 'high-ranking gangsters' among mourners at Pete Mihalik's funeral

At least two alleged high-ranking gangsters have paid their respects at the funeral of slain Cape Town lawyer Pete Mihalik at St Mary's Cathedral.

Man killed while trying to stop boys fighting at Eastern Cape traditional ceremony

A 28-year-old man was stabbed to death in the early hours of Saturday, seemingly while trying to stop a fight at a traditional ceremony.

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Rupert Candy

~ WMS "

From: Rupert Candy <rupert@rupertcandy.co.za>
Sent: 08 November 2018 14:37
To: 'geofrey@presidency.gov.za'
Cc: 'Kabelo Monageng'
Subject: R0002: The Right2Know Campaign: Urgent Application for live broadcast of interview process for appointment of the National Director Of Public Prosecutions 181108 - Letter to President Ramaphosa re NDPP interviews.pdf

Attachments:

Importance: High

Tracking:	Recipient	Read
	'geofrey@presidency.gov.za'	
	'Kabelo Monageng'	
	'Ben Winks'	
	'MLULEKI MARONGO'	
	Kabelo Monageng	Read: 08/11/2018 15:05

Dear Mr. Mphaphuli,

Further to our telecon today, kindly find attached an urgent letter for the attention of the Honourable President.

Please note the deadline for response.

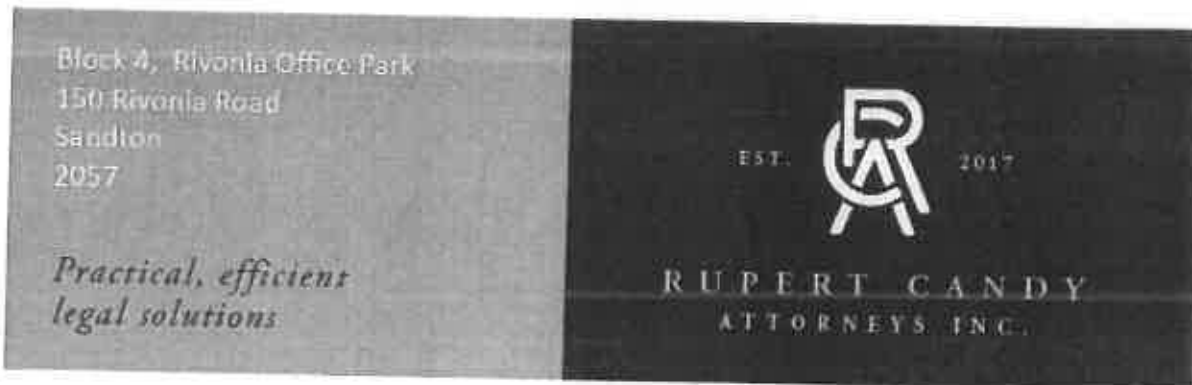
Kindly acknowledge receipt.

Yours faithfully,

Rupert Candy

Director

T +27 10 035 0867 M +27 78 237 4870 E rupert@rupertcandy.co.za



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THE HONOURABLE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

PRESIDENT MATAMELA CYRIL RAMAPHOSA

Per e-mail: geofrey@presidency.gov.za

Your reference

Our reference

Date

R Candy/R0002

8 November 2018

"URGENT"

Dear Mr. President,

THE RIGHT2KNOW CAMPAIGN: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW PROCESS FOR APPOINTMENT OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

1. We act for the Right2Know Campaign ("our client").
2. Our client is a voluntary association founded in 2010 and its objective, vision and purpose are, amongst others, campaigning for and assisting communities to access information held by government, or the private sector, that is necessary for the social, economic and environmental justice that they need. It supports the vision of a constitutional democracy that is open, accountable, participatory and responsive, believing that in this foundation, a society and an international community can be built in which we all live free from want, in equality and in dignity.
3. We are instructed that the process for the appointment of the next, permanent National Director of Public Prosecutions ("NDPP") commenced on 5 November 2018.
4. We understand that your Office has decided that the interview process will not be open to the public. This is inconsistent with the Constitution of the Republic of South Africa, Act No. 108 of 1996, section 1(d), of which declares that our democratic state is founded on the values of openness, responsiveness and accountability. Given the immense public interest in the permanent appointment of the NDPP, the

Rupert Candy Attorneys Inc. (Registration no. 2018/506575/21)

Director: Rupert Candy (LLB: UKZN, Howard College Campus | Certificate: Medical Law, UP | Certificate: Sports Law, UP)

Block 4, Rivonia Office Park, 150 Rivonia Road, Sandton, 2057 | Tel: (+27) 10 035 0867 | Mobile: (+27) 78 237 4870 | E-mail: rupert@rupertcandy.co.za

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decision to hold the interview process behind closed doors cannot be justified.

5. Our client has instructed us to demand that you confirm, **by 16:00 tomorrow, 9 November 2018**, that the necessary practical arrangements will be made for the NDPP interview process to be accessible by members of the public, including by live broadcast.
6. Failing this, we hold instructions to launch an urgent application to the High Court for the same relief.
7. We look forward to your urgent reply.

Yours faithfully,

Rupert Candy

Director

RUPERT CANDY ATTORNEYS INC.

Tel: (+27) 10 035 0867

E-mail: rupert@rupercandy.co.za

This document has been submitted electronically and is thus not signed.

MM Kunt₂



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The Presidency update on the suitable NDPP candidate shortlisting process

9 November 2018



The advisory panel appointed by President Cyril Ramaphosa to identify suitable candidates for the position of National Director of Public Prosecutions (NDPP) has shortlisted 12 candidates who will be interviewed between 14 and 16 November 2018.

Minister of Energy Jeff Radebe chairs a panel comprising broad representation of the legal fraternity which is mandated to identify potential candidates, establish that they meet the required criteria, conduct interviews with potential candidates, and recommend at least three candidates to the

President.

Having invited applicants and called for nominations for the position of the NDPP, the panel received 22 applications and 24 nominations by the close of business on 2 November 2018.

The panel met on the evening of Thursday, 8 November 2018, to draw up a short list of candidates from the applications and nominations received.

The following persons have been shortlisted:

1. Adv S Batohi
2. Adv G Breytenbach G
3. Adv K M Chauke
4. Adv J R De Kock
5. Adv A Johnson

KMH

MM

6. Adv M Lumphondo
7. Adv M Makhari
8. Adv N Manaka
9. Mr S X Mapoma
10. Adv C S Mlotshwa
11. Adv D M Noko
12. Adv M S Ramaite

Media enquiries: Khusela Diko, Spokesperson to the President, on 072 854 5707

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Rupert Candy

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From: Geoffrey Mphaphuli <Geofrey@presidency.gov.za>
Sent: 09 November 2018 16:18
To: Rupert Candy (rupert@rupertcandy.co.za)
Subject: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW NDPP
Attachments: SKM_C654e18110916250.pdf

Good day

Please find the attached letter.

Regards

Mr Geoffrey Mphaphuli
Principal State Law Advisor
The Presidency
Tel: +27 12 300 5403
Cell: +27 82 578 6484
Fax: +27 12 300 5780
E-mail: Geofrey@presidency.gov.za
Website: www.thepresidency.gov.za



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MM KVA



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Rupert Candy
Rupert Candy Attorneys Inc.
150 Rivonia Road
Sandton
2057

Per email: Rupert@rupertcandy.co.za

Dear Mr Candy

THE RIGHT2KNOW CAMPAING: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW PROCESS FOR THE APPOINTMENT OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Reference is made to your letter dated 08 November 2018. Your letter has been referred to the Legal and Executive Services Unit for further attention and reply.

Section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 , gives power to appoint the National Director of Public Prosecutions to the President. The Supreme Court of Appeal in this regard in matter of *Democratic Alliance v The President of the RSA & others* (263/11) [2011] ZASCA 241 at paragraph 92 stated the following regarding the appointment of the NDPP " *In this regard, counsel for the respondents are correct, when they point out that the President's original power to appoint the NDPP is sourced in s 179(1)(a) of the Constitution, which provides in express terms that the NDPP is appointed by the President, 'as head of the National Executive'. The act of appointment is thus clearly executive action.*"

In paragraph 107 of the above mentioned judgement the Supreme Court of Appeal goes further and stated the following " *It is true that no process is prescribed, either by the Constitution or by any provision of the Act, for the President to follow in assessing a candidate's fitness for the position of NDPP*" . It is clear from the above that the Court acknowledges that there is no process prescribed by the Constitution or the National Prosecuting Authority Act for the appointment of the NDPP.

The President has decided to exercise his power to appoint the new NDPP in manner that allows for inclusive inputs. This does not however change the nature of the President's power to appoint the NDPP.

ICAH

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The decision taken by the President is that the interviews of the NDPP will not be in public.

We trust that you will find the above in order.

Regards



Mr Geoffrey Mphaphuli
Acting Head: Legal and Executive Services

Date: 09/11/2018

MMK/Kest

Rupert Candy

MMMS

Subject: FW: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW NDPP

Importance: High

From: Rupert Candy <rupert@rupertcandy.co.za>
Sent: 09 November 2018 17:19
To: 'Geofrey Mphaphuli' <Geofrey@presidency.gov.za>
Cc: 'Kabelo Monageng' <kabelo@rupertcandy.co.za>
Subject: RE: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW NDPP
Importance: High

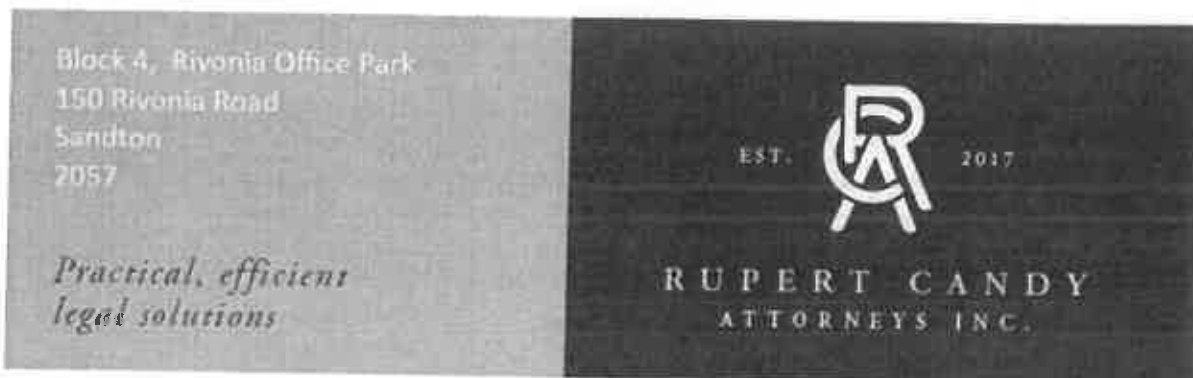
Dear Mr. Mphaphuli,

1. Thank you for your reply.
2. We note that the President has today announced the shortlist of candidates, who will be interviewed from 14 – 16 November 2018.
3. Kindly advise where the interviews will take place?
4. Regarding our client's next step; given the urgency of the matter, and further to paragraph 6 of our letter of yesterday, we are instructed to advise you of the following:
 - a. We will serve our clients' founding papers during the course of tomorrow, 10 November 2018;
 - b. The President may deliver his answering papers during the course of Sunday, 11 November 2018;
 - c. We will serve our client's replying papers during the course of Monday, 12 November 2018; and
 - d. We intend arguing the urgent application on Tuesday, 13 November 2018.
5. Kindly provide any other email address that we may use to correspond with regarding this matter.

Yours faithfully,

Rupert Candy
Director

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MMMS
KMH