

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case no: CCT143/15 and CCT171/15

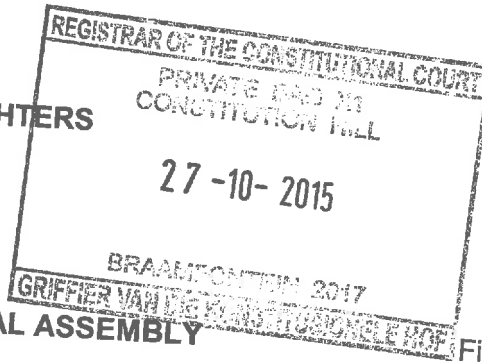
Application of:

CORRUPTION WATCH (RF) NPC

Applicant for admission as *amicus curiae*

In the matter between:

THE ECONOMIC FREEDOM FIGHTERS



Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

REPUBLIC OF SOUTH AFRICA

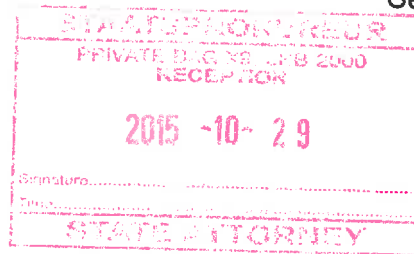
PRESIDENT JACOB GEDLEYIHLEKISA ZUMA

Second Respondent

THE PUBLIC PROTECTOR

Third Respondent

and in the matter between:



DEMOCRATIC ALLIANCE

Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

PRESIDENT JACOB GEDLEYIHLEKISA ZUMA

Second Respondent

MINISTER OF POLICE

Third Respondent

PUBLIC PROTECTOR


Fourth Respondent

FILING NOTICE

BE PLEASED TO TAKE NOTICE THAT that the Applicant in this matter presents for service and filing:

1. Application to intervene as *amicus curiae*.

DATED AT **JOHANNESBURG** ON THIS **27th** DAY OF **OCTOBER 2015**



WEBBER WENTZEL

Applicant's attorneys

10 Fricker Road

Illovo Boulevard

JOHANNESBURG

Ref: V Movshovich

Tel: (011) 530 5000

Fax: (011) 530 5111

Ref: V Movshovich / P Dela / D Cron
3004494

TO: THE REGISTRAR
Constitutional Court, Constitution Hill
Braamfontein
JOHANNESBURG

AND TO: GODLA AND PARTNERS
Attorneys for the Economic Freedom Fighters
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2nd Floor, Waalburg Building
CAPE TOWN
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c/o DUDU MTHIMUNYE HLUYO ATTORNEYS
Corner House, Ground Floor
77 Commissioner Street
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ACKNOWLEDGEMENT OF RECEIPT

RECEIVED BY: Dudu

SIGNATURE: [Signature]

DATE: 29.10.15

TIME: 11:04

**RECEIVED WITH
PREJUDICE**

AND TO: MINDE SCHAPIRO & SMITH INC
 Attorneys for the Democratic Alliance
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 Building Number 2
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 c/o **CHRISTODOULOU & MAVRIKIS**
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 50 Sixth Road, Hyde Park
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 Tel: 011 325 4201
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CHRISTODOULOU & MAVRIKIS INC ATTORNEYS
 RECEIVED WITHOUT PREJUDICE
 DATE: 29/10/15 TIME: 15:00

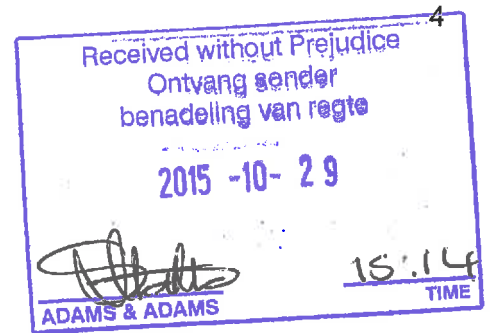
ACKNOWLEDGEMENT OF RECEIPT
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 TIME:

AND TO : STATE ATTORNEY
 Attorneys for President Zuma, the Speaker of the National Assembly and
 the Minister of Police
 4th Floor, Liberty Life Centre
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 95 Albertina Sisulu Street
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 E-mail: VDhulam@justice.gov.za

ACKNOWLEDGEMENT OF RECEIPT
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 TIME:

STATSPROKURER
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 RECEIPTS
 2015-10-29
 Signature: [Handwritten Signature]
 Time: 11:28
 STATE ATTORNEY

AND TO: TO: ADAMS & ADAMS
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Lynwood Bridge Office Park
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Lynwood Manor
PRETORIA
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Fax: 012 432 6599
Email: andrew.molver@adamsadams.com
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Fax: 011 784 2888
Ref: Manisha Maganbhai-Mooloo



ACKNOWLEDGEMENT OF RECEIPT
RECEIVED BY: Sivu MATHA
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DATE: 29/10/2015
TIME: 15:15

AND TO : THE SPEAKER OF THE NATIONAL ASSEMBLY
c/o PARLIAMENT OF SOUTH AFRICA
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AND TO : PRESIDENT JG ZUMA
Tuynhuys
CAPE TOWN
Fax: 021 462 2838

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case no: CCT143/15 and CCT171/15

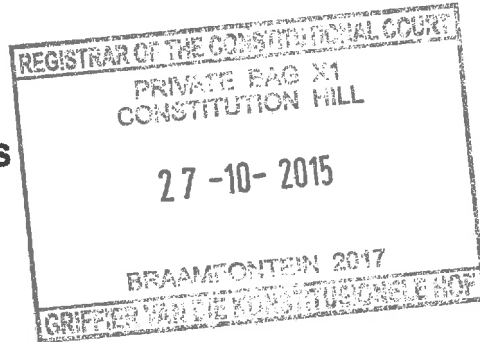
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and

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PRESIDENT JACOB GEDLEYIHLEKISA ZUMA
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First Respondent

Second Respondent

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and in the matter between:

DEMOCRATIC ALLIANCE

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**SPEAKER OF THE NATIONAL ASSEMBLY
PRESIDENT JACOB GEDLEYIHLEKISA ZUMA
MINISTER OF POLICE
PUBLIC PROTECTOR**

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NOTICE OF MOTION

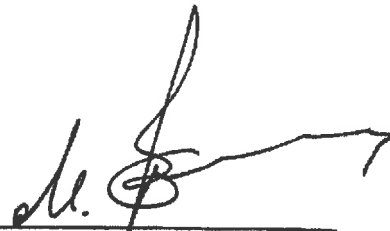
TAKE NOTICE that **CORRUPTION WATCH** ("the applicant") hereby makes application to the Constitutional Court for an order in the following terms:

1. That the applicant is admitted as an *amicus curiae* in these matters;
2. That the applicant is granted the right to present written submissions in these matters and oral argument at the hearing of these matters;
3. That any party opposing this application is ordered to pay the applicant's costs, including the costs of two counsel;
4. Further and/or alternative relief.

TAKE NOTICE further that the affidavit of **DAVID LEWIS**, together with annexes thereto, will be used in support of this application.

TAKE NOTICE further that the applicant will accept notice and service of all documents in these proceedings at the address set out below.

DATED AT JOHANNESBURG ON THIS 27th DAY OF OCTOBER 2015



WEBBER WENTZEL

Applicant's attorneys

10 Fricker Road

Illovo Boulevard

JOHANNESBURG

Ref: V Movshovich

Tel: (011) 530 5000

Fax: (011) 530 5111

Ref: V Movshovich / P Dela / D Cron
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TO: THE REGISTRAR
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AND TO: GODLA AND PARTNERS
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 Corner House, Ground Floor
 77 Commissioner Street
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 Tel: 011 036 5944
 Fax: 086 503 3295
 E-mail: dudu@mthimunyehluyo.co.za

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CHRISTODOULOU & MAVRIKIS INC ATTORNEY:

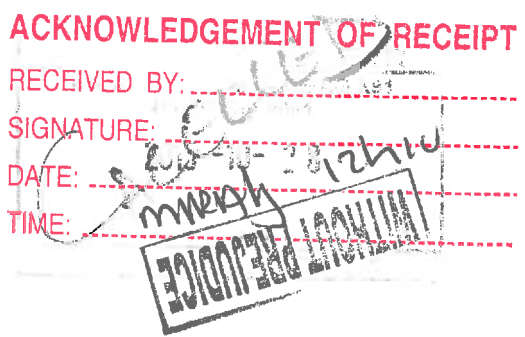
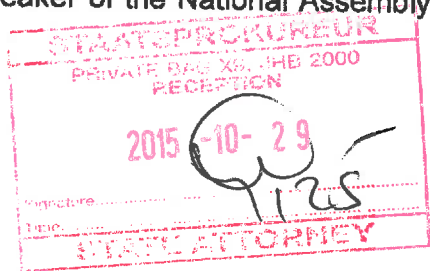
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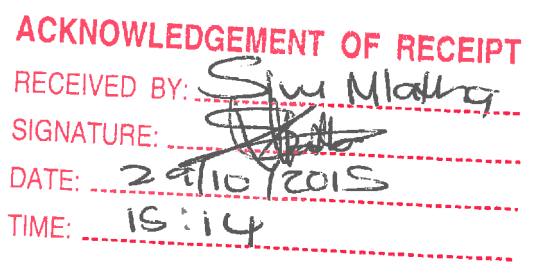
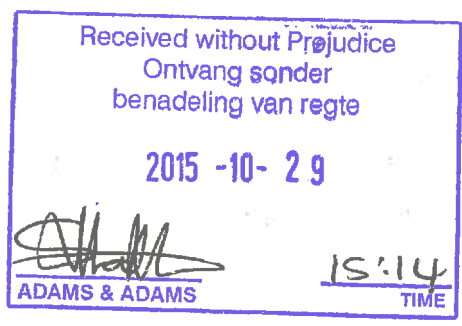
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AND TO : STATE ATTORNEY
 Attorneys for President Zuma, the Speaker of the National Assembly and
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 22 Long Street
CAPE TOWN
 Tel: 021 441 9200/03
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 E-mail: Immanuel@justice.gov.za
c/o STATE ATTORNEY
 12th Floor, North State Building
 95 Albertina Sisulu Street
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 Fax: 086 612 4106
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 E-mail: VDhulam@justice.gov.za



AND TO: TO: ADAMS & ADAMS
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 Ref: Manisha Maganbhai-Mooloo



AND TO : THE SPEAKER OF THE NATIONAL ASSEMBLY
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MINISTER OF POLICE

Third Respondent

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Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

DAVID HARRIS LEWIS

do hereby make oath and state that:

1. I am the executive director of Corruption Watch.
2. Corruption Watch is a civil society organisation duly registered as a non-profit company in terms of the company laws of the Republic of South Africa with its head office at 4th Floor, Rosebank Corner, 191 Jan Smuts Avenue, Parktown North.
3. I am duly authorised to depose to this affidavit on behalf of Corruption Watch.
4. The facts contained in this affidavit are both true and correct, and within my personal knowledge unless the context provides otherwise. Where I rely on information conveyed to me by others I believe that information to be true and correct.
5. Where I make submissions of a legal nature I do on the advice of Corruption Watch's legal representatives.
6. I depose to this affidavit in support of Corruption Watch's application in terms of Rule 10 of the Constitutional Court Rules for its admission as an *amicus curiae* in two matters before this Court, brought by the Economic Freedom Fighters ("EFF") and the Democratic Alliance ("DA"), respectively, against the President of the



Republic of South Africa ("the President") and the Speaker of Parliament ("the Speaker").

7. Both applications raise issues concerning the status and scope of the Public Protector's remedial directions, and the appropriate responses of organs of state and state officials to remedial action taken by the Public Protector.
8. As I explain below, Corruption Watch has an interest in both of these critically important issues.

ABOUT CORRUPTION WATCH

9. Corruption Watch is a non-profit civil society organisation. It is independent, and has no political or business alignment. Its ultimate objectives include fighting the rising tide of corruption, combatting the abuse of public funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.
10. Corruption Watch is governed by an independent board of directors comprising: me (executive director), , Mr Vusi Pikoli, Advocate Adila Hassam, Ms Mary Metcalfe, Ms Alice Brown, , Mr Zwelinzima Vavi, Mr Mavuso Msimang, Archbishop Njongonkulu Ndungane, and a former Justice of the Constitutional Court, Ms Catherine O'Regan.
11. Confronting corruption requires an active and engaged citizenry that is prepared to hold to account leaders who wield public power and control public resources. The investigation and exposure of malfeasance and corruption in the public sector and the abuse of state resources are among Corruption Watch's core objectives.



12. To this end, Corruption Watch endeavours to discharge its mandate of exposing corruption and the abuse of public funds by: (i) seeking to ensure that those who engage in such abuse are held accountable; and (ii) by developing and fostering tools with which civil society may defend the Republic from the abuse of public resources and their diversion from lawful and worthwhile state projects and undertakings.
13. Corruption Watch does so in a number of ways, including utilising its available resources to investigate reports of corruption and maladministration. In certain instances, this entails Corruption Watch working together with the Public Protector and law enforcement agencies.
14. Corruption Watch has a legal advocacy and policy unit that, where appropriate, will litigate in order to ensure that the laws of South Africa are developed and applied in a manner that serves to assist the fight against corruption and public malfeasance through fostering transparency and accountability of both public and private persons or entities.
15. Corruption Watch has as an integral part of its mandate ensuring good governance within South Africa's public administration, upholding the rule of law, and preventing, deterring and combatting all forms of corruption and maladministration by organs of state and state officials.
16. Corruption Watch recently intervened as an *amicus curiae* in the SABC case¹ before the Supreme Court of Appeal, and made submissions concerning the proper interpretation of the Public Protector's powers under s 182(1)(c) of the

¹ South African Broadcasting Corporation (SBC) Ltd & Others v Democratic Alliance & Others [2015] ZASCA 156 (8 October 2015)

J *the 21*

Constitution. Corruption Watch's submissions are in large part reflected in the Supreme Court of Appeal's findings.

17. Corruption Watch believes it can assist this Court by making submissions on the proper scope and application of the Public Protector's constitutional powers.

CORRUPTION WATCH'S INTEREST IN THE PROCEEDINGS

18. At the heart of the cases brought by the EFF and the DA are issues around the proper compliance by state officials with the Public Protector's remedial action. As I explain, Corruption Watch has a clear interest in these issues.
19. The Public Protector's Nkandla report addresses the wrongdoing of the President, various members of the executive, and public officials. The findings in respect of the public officials are rooted in their failure to comply with the relevant procurement law. The findings in respect of the President, on the other hand, are rooted in his failure to comply with his obligations under the Constitution, and the Executive Members' Ethics Act, 82 of 1998 ("the Ethics Act"). The President stands accused of an abuse of power. That is the subject matter of this case.
20. The Public Protector directed the President to pay back a reasonable percentage of the costs of the purported security upgrades at Nkandla, and to calculate those costs with the assistance of National Treasury and the Department of Public Works. He was also required to reprimand the Ministers involved for the manner in which the Nkandla project was handled, and the way in which public funds were abused.

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21. These remedial directions have not been implemented. To the extent that the President claims they have been or are in the process of being implemented, it would appear that the implementation is calculated to defeat the purpose and spirit of the Public Protector's report. The primary mechanism the President appears to be using to this end is to characterise the Public Protector's report as merely one of many competing reports that he will ultimately take into account. Corruption Watch will argue that this undermines the letter and purpose of s182 of the Constitution, as well as the findings of the Supreme Court of Appeal in the SABC case.
22. Moreover, to the extent that the President attempts to limit the issues before the Court to failings in the procurement process, he is not entitled to do so. The Public Protector has expressly found that the President has been unjustly enriched by the misuse of state funds, and has directed that he remedy the consequences of the abuse of public funds.
23. Corruption Watch has an interest in the President's compliance with the Public Protector's remedial action in and of itself. However, Corruption Watch has a wider interest in this matter. This is because, as an organisation fighting against the abuse of procurement laws on a daily basis, we are acutely aware that the conduct of the President in the Nkandla scandal in general, and his response to the Public Protector's remedial directions in particular, has impacted on the broader fight against procurement corruption.
24. Indeed, the President's failure to implement the Public Protector's remedial action, coupled with pronouncements in Parliament to the effect that her report is not



binding on him, strike a blow to the law enforcement agencies, including the Public Protector, and their collective efforts to combat abuse of public power.

25. Corruption Watch has experience in investigating procurement irregularities, and has first-hand knowledge of unfortunate trend of impunity with which state officials engage in maladministration and corruption. We have received a large number of reports pertaining to procurement corruption, with approximately 720 reports having been made to our various reporting channels over the last three years. Corruption Watch assists complainants in working with the Public Protector to investigate and remedy these complaints.
26. For the benefit of the Court I attach an analysis of these reports marked "DL1". As the analysis demonstrates, approximately 34% of complainants allege violations of supply chain management processes within provincial government, while 29% involve local governments.
27. But what is particularly concerning in the context of the present case is the effect that the President's conduct in the face of the Public Protector's Nkandla report has had on the accountability of public officials.
28. I have noted an increasing trend in state officials acting with impunity when called upon to respond to complaints by members of the public about procurement corruption and abuses of public power. Yet, these channels of complaint, if properly managed and resourced, can be a powerful - and often the final - bulwark against state malfeasance. This is particularly so in the context of South Africa, where millions who are subject to state abuse cannot afford proper legal and forensic representation.

S. M. M.

29. It is clear that members of the public are, however, less likely to complain to Corruption Watch and the Public Protector (often taking great personal risks in doing so) when state officials undermine the Public Protector's remedial action.
30. In the context of public procurement, the example set by the President in failing to implement the Public Protector's remedial directions negatively influences the application and enforcement of ethical standards and procurement rules. The flouting of these standards and rules will doubtless diminish their force and the public's faith in the remedial process. The fact that it is the head of state and government who is running roughshod over a chapter 9 institution in this case simply encourages breach and impunity by lower level officials. This is a position which South Africa's nascent democracy, with already endemic patterns of maladministration and corruption, can ill-afford.

SUMMARY OF CORRUPTION WATCH'S INTENDED SUBMISSIONS

31. In summary, if it is granted leave to intervene in the present matters, Corruption Watch intends to make submissions in relation to the following issues:
- 31.1 First, Corruption Watch intends to make submissions on the status and scope of the Public Protector's remedial powers. It will contend that, properly interpreted, s 182(1)(c) of the Constitution confers on the Public Protector the power to take appropriate remedial action that has legal effect, and cannot be ignored by organs of state or state of officials.
- 31.2 Section 182(1)(c) of the Constitution empowers the Public Protector to take remedial action consequent upon a finding of impropriety or prejudice in the conduct of state affairs or public administration. This includes the power to

direct an organ of state or state official to remedy any such impropriety or prejudice.

- 31.3 Having regard to South Africa's constitutional framework and history, there is a constitutional imperative in affording the Public Protector substantial powers to hold public officials to account for malfeasance or maladministration in public office. It is in this context that the scope and effect of section 182(1)(c) must be understood.
- 31.4 Corruption Watch intends to make submissions on how the rights of members of the public, and the state's duties, under the Bill of Rights and the requirements of good administration in section 195 of the Constitution, inform the interpretation of the Public Protector's powers under the Constitution.
- 31.5 The Public Protector's powers must be interpreted in a manner that is complementary to the powers of other constitutional bodies, such as Parliament and the judiciary. The Public Protector's powers must be interpreted generously so as to add to, rather than foreclose, remedies available to members of the public and the state itself.
- 31.6 Second, Corruption Watch proposes to address how organs of state and state officials ought to respond to the Public Protector's remedial action in circumstances where they elect not to take the Public Protector on review.
- 31.7 It will be contended that organs of state and state officials are in those circumstances obliged to implement the Public Protector's remedial action as swiftly as possible.



- 31.8 In doing so they may engage others to assist in the implementation of the Public Protector's remedial directions. However, this does not mean that the organ of state or public official in question is at liberty to enlist other organs of state, state officials or third parties for purposes of determining whether or not to comply with remedial action directed by the Public Protector, or the extent to which compliance should be implemented. Organs of state and state officials may not set up parallel processes to undermine the Public Protector's findings and remedial action.
- 31.9 In this regard, Corruption Watch will make submissions in relation to the duties imposed by the Constitution on all other organs of state to support the proper implementation of remedial action ordered by the Public Protector.
- 31.10 Finally, Corruption Watch will submit that, having regard to the role and importance of her office, the Public Protector's powers are not limitless but are to be construed widely in a way which permits her to fulfil her constitutional mandate to the benefit of the public and the Republic. And Parliament retains discretion, to be exercised within constitutional limits, to regulate the exercise of the Public Protector's remedial powers by national legislation.
32. I submit that the submissions Corruption Watch intends to make will be relevant and useful in the determination of the issues in the EFF and DA applications, and will, given Corruption Watch's unique experience, be different to those of the other parties.

CONCLUSION AND RELIEF SOUGHT

33. On 21 and 23 October 2015 Corruption Watch addressed letters to all of the parties requesting their consent to its admission as *amicus curiae*. I attach copies of these letters marked "DL2" to "DL3".
34. On 22 October 2015 the DA responded, consenting to Corruption Watch's intervention. A copy of the DA's letter is attached marked "DL4".
35. On 26 October 2015, EFF and the Public Protector also consented to Corruption Watch's intervention. Copies of the relevant letters are annexed marked "DL5" and "DL6".
36. The President, the Speaker and the Minister of Police have not responded as at the time of deposing to this affidavit.
37. I respectfully submit that Corruption Watch has satisfied the requirements for admission as an *amicus curiae*.
38. I pray for orders admitting Corruption Watch as an *amicus curiae*, and permitting it to present written and oral argument, as per the notice of motion that accompanies this affidavit.



DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Illovo on this the 21 day of October 2015, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 19 August 1977, as amended having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:
DESIGNATION:
ADDRESS:

SURAIYA LAMBAT
COMMISSIONER OF OATHS
RAMSAY WEBBER INC.
2ND FLOOR, THE RESERVE
54 MELVILLE ROAD
ILLOVO, JOHANNESBURG
REF: 24/11/2012



REPORTS ANALYSIS

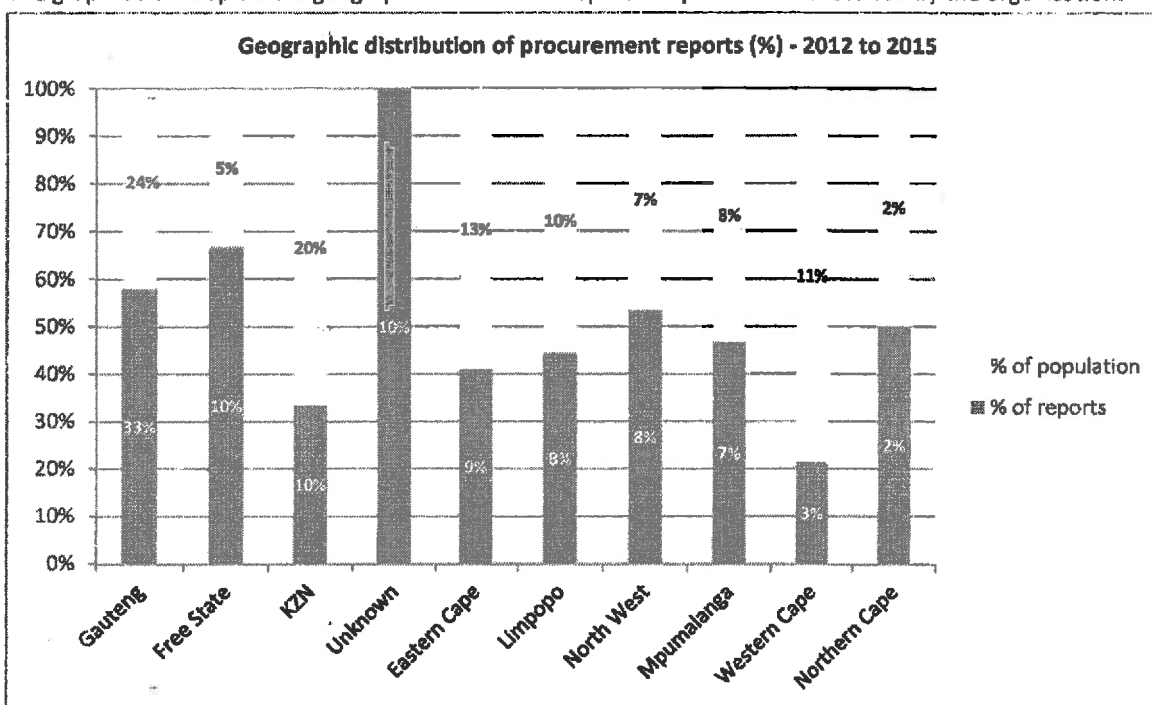
REPORT ON CORRUPTION IN PROCUREMENT

Corruption Watch has received a large number of reports detailing corruption in procurement processes across South Africa. As at 30 September 2015, Corruption Watch has received over 720 reports on procurement. This analysis aims to provide insight into reporting trends, and into the different types of corrupt activities that have been reported to Corruption Watch, in order to grapple with how corruption is affecting the procurement practices in South Africa.

General Reporting Trends for Procurement

1. Geographic Distribution

As at 30 September 2015, Corruption Watch had received a total of 728 reports of corruption in procurement. The majority of these reports emanate from the Gauteng province (33%) which is unsurprising given the number of national departments and large municipalities located in this province. The graph below depicts the geographical location of reports on procurement received by the organisation:

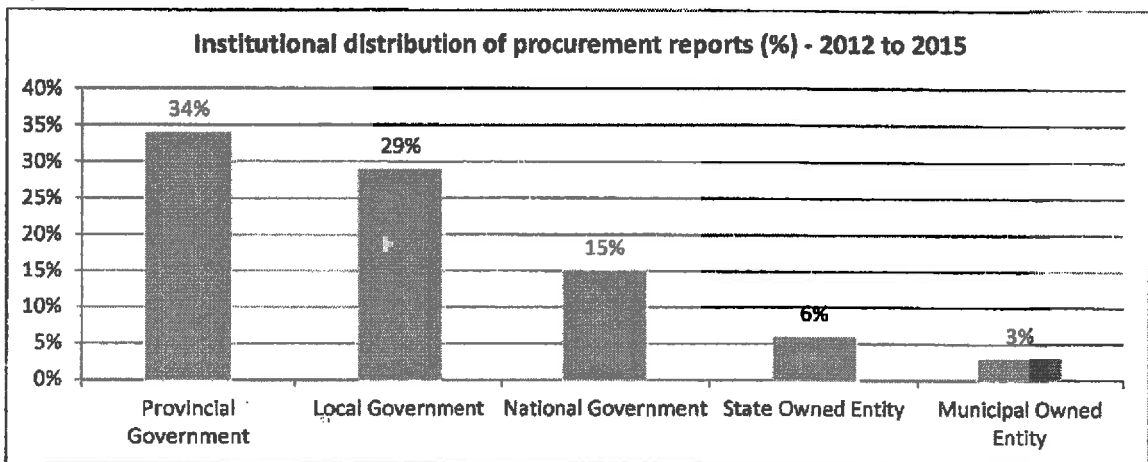


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The geographic distribution indicates a relatively even distribution amongst provinces outside the Gauteng province, with the exception of the Western and Northern Cape. In relation to general reporting trends, the amount of reports received from both the Eastern Cape and Free State are lower than general rates, with Gauteng remaining relatively consistent.

2. Distribution of reports across different tiers of government

Over a third of reports emanate from SCM processes within the provincial tier of government (34%). Given the mandate of provincial government and the number of tenders issued at this tier of government, this trend is unsurprising. In addition, Corruption Watch's focus on corruption within the education system since 2013, whereby the organisation solicited reports of corruption related to education, also contributes to this trend, as over a third of procurement reports emanating from provincial government are within the education departments. The graph below depicts the top five institutional tiers from which procurement reports emanate:



Reports from local government are also reflective of general rather than specific trends in procurement corruption. There are over 250 municipalities in South Africa, and each serve as a site of procurement. With around 210 procurement reports, it constitutes the second most cited tier at which procurement corruption has been experienced. Therefore these trends may be more reflective of number of SCM processes rather than vulnerability to corruption and irregularity. However, it should also be noted that Auditor General reports¹, and the Public Sector Supply Chain Management Review issued by National Treasury have indicated that in addition to the number of tenders put out by these tiers, capacity and related skills shortages do make these tiers of government particularly vulnerable to manipulation, non-compliance and ultimately corruption¹.

3. Types of corrupt activities

Where reporters provide enough information for detailed analysis, a variety of different activities that constitute corrupt or irregular processes within supply chain management are noted. These fall into three broad categories:

¹¹ Public Sector Supply Chain Management Review (National Treasury, Republic of South Africa) 2015, <http://www.treasury.gov.za/publications/other/SCMR%20REPORT%202015.pdf>

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- **Bribery**

These reports indicate that in certain instance fixed amounts are received by officials authorised to allocate contracts or who play an integral role in the selection of contractors. In certain instance officials are paid a percentage of the total tender. Where percentages are received, the tender is often artificially inflated to accommodate the bribes that are to be paid.

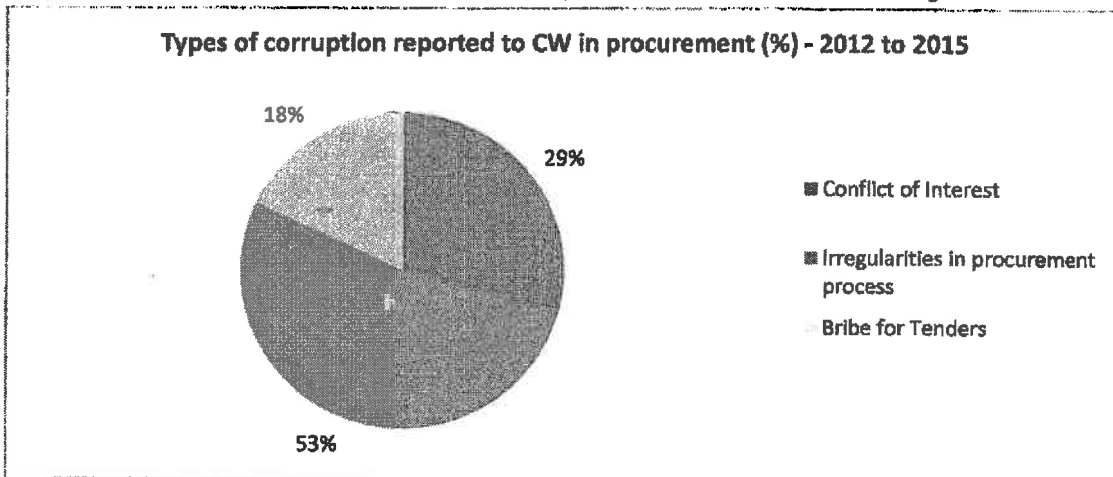
- **Irregularities**

The activities associated with these reports vary significantly, but entail non-compliance with supply chain management rules and regulations. Some of the main trends include: suppliers being allocated when the relevant committee have indicated a preference for an alternative supplier; advertisements for tenders not being circulated or the dates altered to accommodate certain suppliers where those suppliers who submitted after the official closing date are appointed; contracts being rolled over without cause, particularly when these suppliers have been unable to deliver the service; and appointment of suppliers whose scores do not reflect that they are the best applicants. These activities are often linked to a pre-existing relationship between procurement staff and suppliers, and there is reason to believe that these activities are inferential of corruption.

- **Conflict of Interest**

Reporters indicate that non-compliance with conflict of interest declaration practices, allows members of relevant committees or higher ranking officials to ensure that tenders are given to companies in which their family members, close associates or they have a stake. This might entail manipulation of SCM processes or scoring systems, although some have noted that higher ranking officials instruct lower ranking officials to flout decisions of various committees, and processes contracts in favour of specific bidders.

The graph below depicts the overall distribution of reports across these three broad categories:



Bribes are paid to different type of officials, depending on the context. These include lower ranking officials within the supply chain departments, and higher ranking officials that are able to instruct other officials to manipulate or deviate from standard processes in favour of a particular bidder. Some reporters have also

3 | Analysis of Procurement Reports

noted that higher ranking officials, such as municipal managers in the case of local government, refuse to sign off on relevant contracts unless specific bidders are appointed.

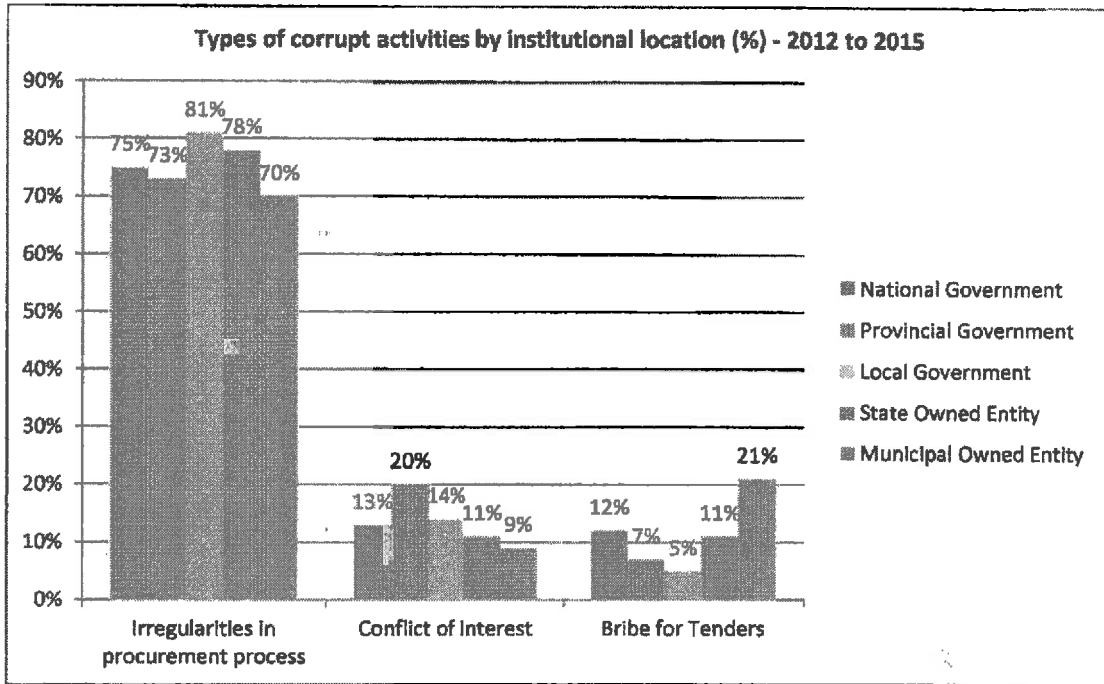
Procurement Reports at Different Levels

Different tiers of government are mandated with different functional areas, and hence SCM processes manifest in diverse ways. As has been noted above, this pertains to both the number of procurement processes the department engages in, to the size of the contracts. Reports received by the organisation indicate that health, education, human settlement and public works are sectors in which procurement corruption are particularly prevalent. The table below shows the top five sectors or departments (by tier of government) from which procurement reports are received.

Top five departments from which procurement reports emanate expressed as a percentage of reports at tier of government

National Government		Provincial Government		Local Government	
Department	% of National Government reports	Department	% of Provincial Government reports	Department	% of Local Government reports
Health	17%	Education	48%	Office of the municipal manager	17%
Higher Education & Training	9%	Health	15%	Public Works and Infrastructure Development	5%
Basic Education	8%	Human Settlement	9%	Housing and Human Settlement	4%
SA Police Service	7%	Public Works	6%	Office of the Executive	3%
Defence	6%	Social Development	2%	Financial Services	2%

Trends in the type of corrupt activities reported to the organisation are consistent across different tiers or institutional locations in government. As the graph below reflects, reporters most common cite irregularities within the SCM process with conflict of interest in relation to procurement is the second most commonly cited type of activity. Reporters indicate that processes are often flouted, with little or no explanation from relevant authorities. This is particularly true in relation to changing bid specification documents, lack of advertising, extension of deadlines and the extension of contracts without notice or justification.



The Public Sector Supply Chain Management Review issued by National Treasury notes that irregularities are common, but attributes this to a lack of skills or capacity to implement the prescribed processes. Although the Review does note that this leaves the system vulnerable to abuse and corruption, irregularities are seen as a consequence of a broader skills shortage rather than purposeful flouting of regulations. Reports received by Corruption Watch indicate that the latter is a more likely cause, noting that these irregularities are often coupled with contract being awarded to suppliers who lack the required qualification, or who are in some way connected to officials within the specific departments. This is particularly noteworthy at a local government tier, where reporters indicate that municipal managers instruct lower ranking officials to affect irregularities in favour of a particular supplier. Employees who do not comply are threatened with a loss of employment.

Conclusion

Reports of corruption that detail corruption within the procurement system indicate that procurement corruption is pervasive, irrespective of the size of the contract or the tier of government procuring goods. Despite irregularities being the most commonly reported type of activity, reporters are indicating that the consequences of these irregularities infer that corruption has taken place, whether in the form of bribery or other personal gratification. Across different provinces and different tiers of government, what reporters are saying, has remained largely the same. Officials alleged to be involved range from lower ranking officials within the SCM process to higher ranking officials. In local municipalities, officials like the municipal manager, wield huge influence over the procurement system, more so that what has been reported about higher ranking officials at national or provincial levels. Oversight mechanisms are largely ignored or sidelined in a manner that allows so called 'tenderpreneurs' to take advantage of the system. This fundamentally hampers the ability of government structures to provide services, but also impedes the use of procurement to fulfil broader socio-economic goals, such as diversification of the supplier base or the growth of small to medium enterprises. An estimated 40% of annual revenues allocated to rendering services make use of the SCM system to appoint suppliers, amounting to billions of rands being vulnerable to corruption.

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Your reference	Our reference	Date
	V Movshovich / P Dela / D Cron 3004484	21 October 2015

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 CR Davidson JH Davies ME Davis PM Deyo JHB de Lange DW de Villiers BEC Dickinson MA Diermont DA Dingley KZ Dlodlo G Driver HJ du Preez
 CP du Toit SK Edmondson AE Esterhuizen MJR Evans AA Faleis GA Fichardt JB Forman MM Gibson H Goolam CI Gouws JP Gouws PD Greeff
 A Hanley VW Harrison JM Harvey MH Hathorn JS Henning KR Hillie NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway HF Hurten
 AV Isaacs KA Jarvis ME Jarvis CH Jonker S Jacobs LA Kahn N Kennedy A Keyser MD Kota J Lamb PSG Leon PG Leyden L Marais S McCafferty
 MC McIntosh M McLaren SJ Makzer SM Mathuis CS Meyer AJ Mills JA Milner D Moko NP Mngomezulu LA Morphet VM Movshovich M Mtshali
 SP Ndlovu RA Nelson BP Npoape ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paliga AMT Pardini AS Parry S Patel GR Penfold SE Phajene
 MA Phillips C Pillay HK Potgieter S Rajah D Ramjetlan NJA Robb DC Rudman M Sader JW Schultz KE Shephard DMJ Simaan AJ Simpson J Simpson
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 JWL Westgate KL Williams K Woon RH Wilson M Yuddelen Chief Operating Officers: SA Boyd

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Dear Sirs

Request for consent for Intervention by Corruption Watch as *amicus curiae*: Economic Freedom Fighters' application (case no. CGT143/15) and Democratic Alliance application (case no. CCT171/15) ("the Applications")

1. We act on behalf of Corruption Watch (RF) NPC ("Corruption Watch").
2. Corruption Watch is a non-profit civil society organisation. It is independent, has no political or business alignment, and is governed by an independent board of directors. It acts in the public interest.
3. Corruption Watch seeks to expose and prevent malfeasance, impropriety in public administration, and the abuse by the state of its public powers.
4. One of the ways in which the abuse of public power is exposed and remedied is through the office of the Public Protector. In Corruption Watch's experience, the powers conferred on the Public Protector to investigate and remedy the abuse of public power are critical in the fight against the rising tide of corruption in South Africa.
5. As part of its mandate, Corruption Watch is authorised to litigate, including doing so as an *amicus curiae* in instances where it can meaningfully assist the courts.
6. Corruption Watch seeks leave to intervene in this capacity in the applications brought by the Economic Freedom Fighters and the Democratic Alliance (the Applications).
7. It seeks to intervene in these matters and to make oral and written submissions on interrelated issues, namely: (i) the status of the Public Protector's remedial directions, having regard to the critical constitutional role played by the Public Protector in safeguarding the public from state malfeasance and corruption; (ii) the scope of remedies which the Public Protector may order; and (iii) appropriate responses by organs of state and state officials to those remedial directions.
8. Corruption Watch has conducted extensive research into the incidence of maladministration and corruption in state affairs in South Africa, particularly in the sphere of public procurement, the implementation of remedial action prescribed by the Public Protector and other constitutional bodies, as well as the legal framework in South Africa and other jurisdictions to combat the scourge of malfeasance and prejudicial conduct in public office.



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9. Corruption Watch participated as an *amicus curiae* before the Supreme Court of Appeal in the matter of *South African Broadcasting Corporation SOC Limited & Others v Democratic Alliance & Others*.¹ It made submissions concerning the status of the Public Protector's powers, which submissions were accepted by the Court.
10. If it is granted leave to intervene in the present matters, Corruption Watch intends to make submissions in respect of the following issues:
- 10.1 Section 182(1)(c) of the Constitution empowers the Public Protector to take remedial action consequent upon a finding of impropriety or prejudice in the conduct of state affairs or public administration. This includes the power to direct an organ of state or state official to remedy any such impropriety or prejudice. Having regard to South Africa's constitutional framework and history, there is a constitutional imperative in affording the Public Protector substantial powers to hold public officials to account for malfeasance or maladministration in public office. It is in this context that the scope and effect of section 182(1)(c) must be understood. Corruption Watch intends to make submissions on how the rights of members of the public, and the state's duties, under the Bill of Rights and the requirements of good administration in section 195 of the Constitution, inform the interpretation of the Public Protector's powers under the Constitution.
- 10.2 The Public Protector's powers must be interpreted in a way which is complementary to, and not in conflict with, the powers of other constitutional bodies such as Parliament and the judiciary. The Public Protector's powers must be interpreted generously so as to add to, rather than foreclose, remedies available to members of the public and the state itself.
- 10.3 The remedial action taken by the Public Protector under s 182(1)(c) of the Constitution has legal effect. Thus, an organ of state or public official may not ignore the Public Protector's remedial directions and must implement them, subject to judicial review.
- 10.4 An organ of state or public official may engage other organs of state to assist in the implementation of the Public Protector's remedial directions. However, this does not mean that the organ of state or public official in question is at liberty to enlist other organs of state, state officials or third parties for purposes of determining whether or

¹ [2015] ZASCA 156 (8 October 2015)

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not to comply with remedial action directed by the Public Protector, or the extent to which compliance should be implemented. In this regard, Corruption Watch will make submissions in relation to the duties imposed by the Constitution on all other organs of state to support the proper implementation of remedial action ordered by the Public Protector.

11. Corruption Watch will argue that these submissions are supported by: (i) the meaning of the relevant constitutional provisions dealing specifically with the Public Protector; (ii) the important and reinforcing interrelationship between those provisions and the other provisions in the Constitution; (iii) the legislative history of the relevant portions of the Constitution; (iv) the scourge of corruption and maladministration in South Africa and the importance of effective and tailored remedies in this context; (v) court interpretations in relation to the relevant constitutional and statutory provisions, including by the Supreme Court of Appeal in the SABC case referred to above; and (vi) comparative learning, particularly in the developing world.
12. Given Corruption Watch's focus, experience and involvement in the SABC case, and having regard to the legal issues raised in both applications, Corruption Watch's submissions are likely to be different to those of any of the parties and raise new contentions which are important to the proper determination of these cases.
13. Please let us know, by 10:00 on Monday, 26 October 2015, whether your client consents to Corruption Watch being admitted as *amicus curiae* in the Applications.

Yours faithfully


WEBBER WENTZEL**V Movshovich**

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 A Harley VV Harrison JM Harvey MH Hahorn JS Henning KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hofeld PM Holloway HF Human
 AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser MD Kota J Lamb PSG Leon PG Leyden L Marais S McCafferty
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 manisha.mooloo@adamsadams.com

Your reference	Our reference	Date
	V Movshovich / P Dela / D Cron 3004494	23 October 2015

Dear Sirs

Request for consent for intervention by Corruption Watch as *amicus curiae*: Economic Freedom Fighters' application (case no. CCT143/15) and Democratic Alliance application (case no. CCT171/15) ("the Applications")

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¹ [2015] ZASCA 156 (8 October 2015)

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13. Please let us know, by 10:00 on Monday, 26 October 2015, whether your client consents to Corruption Watch being admitted as *amicus curiae* in the Applications.

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Yours faithfully



P.P.

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Our Ref: DEM16/0297/E JONKER | Your Ref: V Movshovich / P Dela / D Cron 3004494 | Date: 22 October 2015

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PER EMAIL: Vlad.movshovich@webberwentzel.com

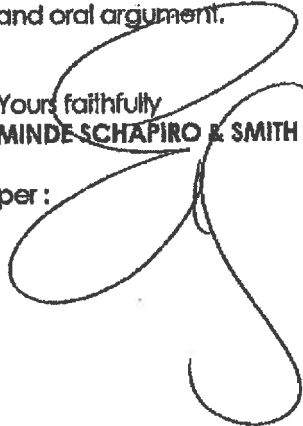
Dear Sir

REQUEST FOR CONSENT FOR ADMISSION BY CORRUPTION WATCH AS AMICUS CURIAE: DA APPLICATION UNDER CC CASE NO: 171/2015)

Pursuant to your letter dated 21 October 2015, we have taken instructions and our client hereby consents to your client's request for the admission as amicus curiae both in respect of written and oral argument.

Yours faithfully
MINDE SCHAPIRO & SMITH INC.

per:



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Our Ref: Case No 143/15

Your Ref:

Date: 26th October 2015

Webber Wentzel
 10 Fricker Road
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 Johannesburg
 2017

PER EMAIL

Dear Sir / Madam

**RE: Request for Consent for Intervention by Corruption Watch as amicus curiae:
 Economic Freedom Fighters' application (case no CCT143/15)**

We have received your correspondence dated 21st October 2015, the contents of which is noted.

Our client has no objection to your client's request and you may join the proceedings as you wish.

Yours truly

GODLA & PARTNERS ATTORNEYS

Per:

PP

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Our Reference: ANM/GKD/LT2681 &
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Your Reference: V Movshovich/ P Dela/ D
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Date: 26 October 2015

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WEBBER WENTZEL

Sandton

ATTENTION: VLAD MOVSHOVICH

Dear Sirs

**ECONOMIC FREEDOM FIGHTERS / THE SPEAKER OF THE NATIONAL ASSEMBLY &
PRESIDENT JACOB GEDLEYIHLEKISA ZUMA (CASE NO. CCT143/15)**

**DEMOCRATIC ALLIANCE / THE SPEAKER OF THE NATIONAL ASSEMBLY AND 3
OTHERS (CASE NO. CCT171/15)**

We refer to your letter of 23 October 2015 concerning the above matters.

Our client consents to your client being admitted as an *amicus curiae* in both matters.

Yours faithfully

ADAMS & ADAMS

A MOLVER

Checked and signed by author and sent electronically

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