

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 1/16

SCA Case No: 20781/2014

High Court Case No: 29677/2013

In the application of:

CORRUPTION WATCH

Applicant for admission
as an amicus curiae

In the matter between:

**NATIONAL SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS ("NSPCA")**

Applicant

and

**MINISTER OF JUSTICE
AND CONSTITUTIONAL DEVELOPMENT**

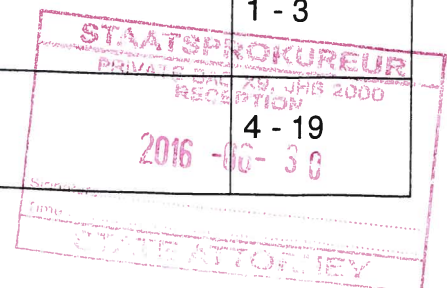
First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Respondent

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NOTICE OF MOTION

PLEASE TAKE NOTICE that Corruption Watch hereby makes an application for an order in the following terms:

1. Condonation for the late filing of this application is granted to the extent that it may be necessary.
2. The applicant is admitted as an amicus curiae.
3. The amicus curiae is granted the right to file written submissions and present oral submissions at the hearing of this matter.
4. If the application is opposed, any party opposing is ordered to pay the costs.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER that the attached affidavits of **DAVID HARRIS LEWIS, MORAY HATHORN** and **CARINA BOTHA** will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of Webber Wentzel (at the address set out below) as the address at which it will accept notice and service of all documents in these proceedings.

DATED AT JOHANNESBURG ON THIS THE 29th DAY OF JUNE 2016.



WEBBER WENTZEL
90 Rivonia Road
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Johannesburg 2196

PO Box 61771
Marshalltown, 2107
Tel: 011 530 5539
Fax: 011 530 6539

E-mail: moray.hathorn@webberwentzel.com

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO: MARSTON & TALJAARD

Attorneys for the Applicant
First Floor, The Bridle
Hunts End
38 Wierda Road West
Wierda Valley
JOHANNESBURG
Tel: 011 783 6775
Email: jane@marston.co.za
Ref: Ms Jane Marston

Received a copy hereof on this the
..... day of June 2016
.....
For: Applicant's Attorneys

AND TO: STATE ATTORNEY, PRETORIA

Attorneys for the Respondents
SALU Building, Ground Floor
Francis Baard Street (Corner Thabo Sehume Street)
PRETORIA
Tel: 012 309 1560 / 083 507 4221
Fax: 086 406 6382 / 086 406 6194
Email: szulu@justice.gov.za
Ref: 3364/13/Z76/fn

c/o STATE ATTORNEY, JOHANNESBURG

10th Floor, North State Building
95 Market Street
JOHANNESBURG
Tel: 011 330 7600
Fax: 011 333 0348
Ref: Mr K Lekabe

Received a copy hereof on this the
..... day of June 2016
.....
For: Respondents' Attorneys

STAATSPROKUREUR	
PRIVATE BAG X9, JHB 2000	
RECEPTION	
2016-06-30	
Signature.....
Time.....
STATE ATTORNEY	

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**Case No: CCT 1/16****SCA Case No: 20781/2014****High Court Case No: 29677/2013**

In the application of:

CORRUPTION WATCH

Applicant for admission
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In the matter between:

**NATIONAL SOCIETY FOR THE PREVENTION
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Applicant

and

**MINISTER OF JUSTICE
AND CONSTITUTIONAL DEVELOPMENT**

First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second 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 bring this application 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 make submissions of a legal nature I do so on the advice of Corruption Watch's legal representatives.

INTRODUCTION

- 5 Corruption Watch has brought this application in terms of rule 10 of this Court's Rules to intervene as an amicus curiae in these proceedings.
- 6 The admission of Corruption Watch is not opposed by any of the parties to this matter.
- 7 Corruption Watch requests leave to file written submissions, as well as to present oral argument at the hearing of this matter (which has been set down for 23 August 2016).

2 

8 The proceedings before this Court concern the question of whether and to what extent juristic persons can engage in private prosecutions under section 7(1) of the Criminal Procedure Act, 52 of 1977 ("the Act").

9 As set out in more detail below, Corruption Watch has a substantial interest in obtaining the right of juristic persons to bring private prosecutions because of its focus on ensuring that perpetrators of corrupt activities are held accountable for their actions and that this is done so in the public interest. The public interest is generally understood to be the welfare or well-being of the public. It is therefore in the interests of the South African public, which has a vested legal interest in seeing the eradication of corruption and the punishment of offenders. In this regard I underscore that:

9.1 Corruption Watch seeks to ensure that those who engage in corrupt activity are held accountable by developing and fostering tools for the public to report experiences of corruption. It investigates reports of corruption with the aim of exposing those who engage in corrupt activities, nepotism and abuse of public funds, in both the public and private sector. Part of Corruption Watch's mandate includes a commitment to strengthening the criminal justice system and significant efforts to tackle financial crime through legal, policy and other interventions. In suitable cases, this could include private prosecutions.

9.2 In light of the above and specifically, given Corruption Watch's focus on ensuring that perpetrators of corrupt activities are held accountable for



their actions, it has a substantial interest in obtaining the right of juristic persons to bring private prosecutions.

- 9.3 Corruption Watch is of the view that allowing juristic persons to engage in private prosecutions where the National Prosecuting Authority ("NPA") has declined to prosecute is a critical issue in combatting corruption and will serve the public interest. It increases the prospects of successful convictions for corruption. It also substantially reduces the incentive of those accused of corruption to seek to influence the NPA in an improper manner, as they will be aware that this will not preclude a prosecution taking place.

10 This affidavit is structured as follows:

- 10.1 First, I set out the attitude of the parties to Corruption Watch's request to be admitted as an amicus curiae.
- 10.2 Second, I provide relevant background information regarding Corruption Watch and its interest in this matter.
- 10.3 Third, I explain Corruption Watch's position in relation to the matter and detail the submissions that Corruption Watch will advance before this Court if it is admitted as an amicus curiae. I also explain why these submissions are relevant and distinct from those advanced by the other parties before this Court.
- 10.4 Finally, I request that - to the extent that it may be necessary - condonation be granted for the late filing of this application. The

application has been filed within five days of the respondent's written submissions being filed, but those written submissions were filed late by the respondents. As I explain below, Corruption Watch in fact sought to file this application before the respondents' written submissions were filed, but was told by the Registrar's office to await the filing of those written submissions.

THE ATTITUDE OF THE PARTIES

- 11 At the outset, I emphasise that there is no opposition to this application from either of the parties to this matter.
- 12 On 12 April 2016, Corruption Watch's attorneys (Webber Wentzel) sent a letter to the attorneys for the applicant (Marston & Taljaard) and the respondents (the State Attorney) requesting consent for Corruption Watch to be admitted as an amicus curiae. A copy of this letter is attached marked "DL 1". A confirmatory affidavit by Mr Moray Hathorn, a partner at Webber Wentzel, is filed together with this application.
- 13 As regards the applicant, on 14 April 2016 the applicant's attorneys sent a letter to Webber Wentzel stating that the applicant consented to Corruption Watch's admission as an amicus as it believes that Corruption Watch's views will be of assistance to this Court. A copy of this letter is annexed marked "DL 2".

- 14 As regards the respondents, Webber Wentzel received a letter, dated 26 April 2016, from the State Attorney (Mr Zulu) stating that his instructions were that Corruption Watch may proceed to apply in terms of Rule 10 of this Court's Rules to be admitted as an amicus curiae. This letter (which is annexed hereto marked "DL 3") makes plain that there is no opposition from the respondents to Corruption Watch's admission as an amicus, and that the respondents are, in essence, abiding the decision of this Court.

CORRUPTION WATCH'S BACKGROUND AND INTEREST

- 15 Corruption Watch is a non-profit civil society organisation. Corruption Watch is independent and it has no political or business alignment. Corruption Watch's ultimate objectives include fighting the rising tide of corruption and the abuse of public funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.
- 16 Corruption Watch is governed by an independent board of directors comprising: me (executive director), Adv. Adila Hassim, Ms Mary Metcalfe, Mr Mavuso Msimang, Archbishop Njongonkulu Ndungane, Adv. Vusi Pikoli, Ms Alice Brown, former Justice of this Court, Ms Kate O'Regan and Mr Zwelinzima Vavi.
- 17 Confronting corruption requires an active and engaged citizenry that is prepared to hold to account leaders who wield public power and control public resources, including those in the private sector who supply and distribute those resources.

- 18 To this end, Corruption Watch endeavours to discharge its mandate of exposing corruption and the abuse of public funds, seeking to ensure that those who engage in corruption are held accountable and by developing and, importantly, fostering tools which civil society can utilise to defend itself from *inter alia* the abuse of public resources intended for the use of millions of disadvantaged South Africans.
- 19 Corruption Watch does so in the following ways:
- 19.1 via communication platforms available to the public who are encouraged and enabled through Corruption Watch's platforms (which include a 'walk-in' office, traditional post, SMS, e-mail, fax and Facebook channels) to report corruption to Corruption Watch;
 - 19.2 through internal resources that are applied to investigate reports of corruption – which may entail Corruption Watch working with the Public Protector and various law enforcement agencies – and which are applied to analysing data that reflects patterns, trends and 'hotspots' of corruption;
 - 19.3 through 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 through fostering transparency and accountability of both public and private persons or entities.

- 20 In just over 4 years since Corruption Watch opened its doors, it has received over 12300 reports from the public, of which 6758, on average 4 reports per day (and 55% of the total reports received), relate to corruption.
- 21 Corruption bears a large measure of responsibility for poor service delivery of social services and basic public goods and has resulted in escalating social unrest in an increasing number of low-income communities. This is made clear by this Court's judgment in *Glenister v President of the Republic of South Africa and Others* (Helen Suzman Foundation as amicus curiae).¹ It thus results in harm and injury to ordinary members of the public.
- 22 In all the circumstances, Corruption Watch is of the view that allowing juristic persons to engage in private prosecutions where the NPA has declined to prosecute is a critical issue in combatting corruption. It increases the prospects of successful convictions for corruption. It also substantially reduces the incentive of those accused of corruption to seek to influence the NPA in an improper manner, as they will be aware that this will not preclude a prosecution taking place.
- 23 Accordingly, I submit that Corruption Watch's interest in the present proceedings is manifest as well as substantial. It is against this background that Corruption Watch wishes to make submissions as an amicus curiae.

¹ (CCT 48/10) [2011] ZACC 6, 2011 (3) SA 347 (CC) (17 March 2011)



CORRUPTION WATCH'S STANCE AND INTENDED SUBMISSIONS

- 24 Corruption Watch's intended submissions are, briefly, as follows.
- 25 As noted above, this matter concerns whether and to what extent juristic persons can engage in private prosecutions under the Criminal Procedure Act.
- 26 In dealing with this matter, the High Court and the Supreme Court of Appeal both held that there was effectively no right for juristic persons to bring a private prosecution in terms of section 7(1) of the Act.
- 27 In reaching this conclusion they relied on the pre-constitutional decision of the then Appellate Division regarding the section, in *Barclays Zimbabwe Nominees (Pvt) Limited v Black*.² The *Barclays Zimbabwe* decision was used as a basis both for interpreting the section narrowly as having no application to juristic persons and as a basis for dismissing the constitutional challenge.
- 28 Corruption Watch respectfully submits that the Supreme Court of Appeal erred in its reliance on the *Barclays Zimbabwe* decision for at least the following reasons:
- 28.1 that decision was a pre-constitutional decision which, of necessity, could not have taken into account the impact of the Bill of Rights;

² [1990] ZASCA 92; 1990 (4) SA 720 (A)

28.2 the Supreme Court of Appeal was therefore required by section 39(2) of the Constitution to consider whether the interpretation of section 7(1) of the Act was correct in the light of the relevant constitutional values and provisions. It did not do so.

28.3 Moreover, the principles enunciated in *Barclays Zimbabwe* could not be uncritically adopted as a basis for concluding that the statute was, even on the restrictive interpretation adopted, consistent with the Constitution. Yet this is precisely what the Supreme Court of Appeal purported to do.

29 The primary contention Corruption Watch wishes to advance before this Court is a matter of law. Corruption Watch wishes to contend that the interpretation of section 7(1) adopted by the Supreme Court of Appeal was not consistent with the Constitution. Rather, section 7(1) is reasonably capable of a more flexible and generous interpretation in relation to private prosecutions by juristic persons and that interpretation is more in keeping with constitutional values and also congruent with the public interest.

29.1 One of the key constitutional values in this regard is the right of equality before the law in section 9(1) of the Constitution, the issue raised by the NSPCA.

29.2 A further and critical constitutional value is that this Court has made clear that the Constitution involves a duty to take effective measures to prevent corruption. This was emphasised most recently in this Court's decision in *Helen Suzman Foundation v President of the Republic of*

South Africa and Others.³ As we have explained above – and as we will demonstrate more fully if Corruption Watch is admitted – allowing juristic persons to engage in private prosecutions significantly promotes this value.

30 In the alternative, and in the event that this Court should take the view that section 7(1) of the Act is not reasonably capable of such an interpretation, Corruption Watch would support the constitutional challenge brought by the NSPCA to the section. The submissions of Corruption Watch would focus on the impact on corruption in this regard.

31 Corruption Watch will argue that the above submissions are supported by:

31.1 An examination of the impugned provision in the light of the drastic increase in sophisticated financial crimes on a local and international level, which have a detrimental effect not only on individuals, but on society, the economy and the perception of South Africa as a participant in the global economy. In this regard, according to the African edition of the Global Corruption Barometer launched by Transparency International in 2015, 83% of South Africans believed that corruption was on the increase in South Africa. This is according to Afrobarometer, which spoke to 43143 respondents in 28 countries in Sub-Saharan Africa. This result made South Africa the worst performer among the 28 countries which formed part of the survey. In addition, 79% of South Africans believed that their government was

³ 2015 (2) SA 1 (CC)

doing badly at fighting corruption. An extract of the report is attached marked "**DL 4**".

- 31.2 The need to obtain sanctions to deter such crimes and the rate at which such sanctions are being obtained. In particular, the increase in the commission of financial crimes by juristic persons is of particular importance and has a bearing on whether section 7(1) unduly narrows or restricts the ability of juristic persons to access justice, both on behalf of such juristic person and individuals who may not have the resources or capacity to institute criminal proceedings on their own.
- 31.3 The limited potential for abuse of the impugned provision should it be amended to include juristic persons. In this regard, relevant factors include: the risk of adverse cost orders; the actual cost of proceedings; the requirement for security before pursuing a matter; and legal restrictions on malicious and vexatious proceedings.
- 31.4 Further comparative research which will include: a closer examination of those foreign jurisdictions that allow juristic persons to conduct private prosecutions; why it is deemed necessary and/or beneficial in such jurisdictions; as well as explaining the mechanisms which are in place to address any risks or harm which may arise from abuse of the relevant provisions.
- 31.5 The fact that the Minister responsible for the administration of the Act failed to provide any proper justification for the restrictive approach that the Supreme Court of Appeal held was inherent in section 7(1) of the Act.



32 I respectfully submit that the submissions Corruption Watch seeks to advance will be of assistance to this Court in considering a question of fundamental importance both to Corruption Watch and to the public at large.

33 It is plain that the submissions to be advanced by Corruption Watch will also not in any way repeat those advanced by the parties.

33.1 The submissions of the applicant do not deal with these issues at all.

33.2 The submissions of the respondents also do not deal with these issues directly. Indeed, Corruption Watch is of the respectful view that the submissions made demonstrate that the attempt by the respondent to defend the rationality of the provisions concerned is unsustainable.

CONDONATION (INSOFAR AS IT MAY BE NECESSARY)

34 This Court's directions, dated 2 March 2016, stipulated that written argument needed to be lodged by the applicant on or before 24 May 2016; and by the respondents on or before 31 May 2016.

35 This Court's Rules make clear that an amicus curiae should not repeat any of the submissions made by the parties. In order to ensure that this was so, Corruption Watch wanted to consider the respondents' written submissions prior to filing this application in order to ensure that there was no repetition.

36 Despite this, the respondents had not delivered their written submissions by 17 June 2016 when, on the advice of our legal representatives, I signed a founding affidavit for the admission of Corruption Watch as an amicus curiae.

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

37 Our legal representatives served that application on both the applicant and the respondents on 17 June 2016. On 20 June 2016, Ms Carina Botha, a candidate attorney in the employ of Webber Wentzel, attempted to file the said application. Ms Botha was, however, informed by Dunisani (an employee at the filing counter of this Court) that the filing of the application was not permissible prior to the filing of the respondents' written submissions. These were due to be filed on 31 May 2016.

38 I attach, marked "**DL 5**", Webber Wentzel's letter to the Registrar of this Honourable Court recording this sequence of events. A confirmatory affidavit by Ms Carina Botha, a candidate attorney at Webber Wentzel, is filed together with this application.

39 Eventually, on Thursday, 23 June 2016, were the respondents' written submissions lodged. We decided on legal advice, in light of the content of the respondents' written submissions, to revise and amend our founding affidavit.

40 In my submission, condonation is not required as this application is being filed within five days of the respondents' written submissions being filed, precisely as the Rules of this Court require.

41 However, to the extent that condonation may be said to be required, I respectfully submit that it must be granted. In this regard I emphasise that:

41.1 The delay was caused by the attempts of Corruption Watch to ensure that the submissions it seeks to make relate to the key issues between



the parties. I submit that this is a legitimate reason to wait for the respondents' submissions to be filed. Indeed, this is undoubtedly the precise rationale underlying Rule 10 of this Court's Rules.


41.2 The delay is relatively short and will not prejudice any of the parties or this Court.

41.3 The issues raised are of considerable public importance and complexity. I respectfully submit that this Court would derive assistance on these issues by admitting Corruption Watch and hearing its submissions.⁴

CONCLUSION

42 I submit, therefore, that Corruption Watch has satisfied the requirements for admission as an amicus curiae.

43 Accordingly, I pray for an order admitting Corruption Watch as an amicus curiae and permitting it to present written argument as well as oral argument at the hearing of this matter on 23 August 2016.



DAVID HARRIS LEWIS

⁴ See *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) at para 24, where the Court held:

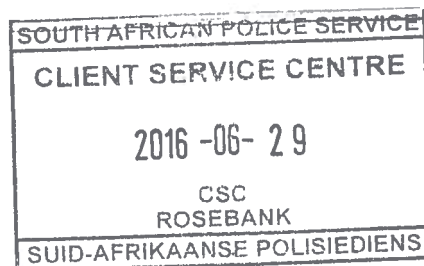
"It would not be in the interests of justice to refuse condonation in this case. This is a matter of great public importance, and we should be slow to refuse argument that might provide assistance on complex issues. The Minister did not object to the granting of condonation to any of the respondents, nor did she cite any prejudice suffered as a result of the respondents' delays. The applications for condonation are therefore granted."⁴



I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Rosebank SAPS on 29th June 2016, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

M. M. U. Nkomo
NKOMO M. M. U.

COMMISSIONER OF OATHS
 15 Sturdee Avenue
 Rosebank, 2196
 Tel (011) 778 4700



WEBBER WENTZEL

in alliance with > Linklaters



Marston & Taljaard

Applicant's attorney

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State Attorney

Attorney for the Respondents

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Your reference

Our reference

Date

Mr M Hathorn
3008106/C44

12 April 2016

Dear Sir/ Madam

Application for leave to appeal: *National Society for the Prevention of Cruelty to Animals ("NSPCA") / Minister of Justice and Constitutional Development (CCT: 01/2016)*

1. We act for Corruption Watch.
2. The attention of Corruption Watch has been drawn to the above application for leave to appeal, which is presently pending before the Constitutional Court ("the Court").
3. For the reasons that follow Corruption Watch considers the matter to be of considerable significance and seeks consent from all parties to be admitted as an amicus curiae in terms of rule 10 of the Constitutional Court Rules ("the Rules"). The different perspective Corruption Watch has on the matter, we consider would be of assistance to the Court.

THE INTEREST OF CORRUPTION WATCH

4. Corruption Watch is a non-profit civil society organisation. It is independent, it has no political or business alignment, and is governed by an independent board of directors.

9926453_3

Senior Partner: JCEls Managing Partner: SJ Hutton Partners: RB Africa NG Alp OA Ampofo-Anti RL Appelbaum AE Bennett DIHL Booyesen AR Bowley PG Bradshaw EG Brandt JL Brink S Browne MS Burger T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidow JH Davies ME Davis PM Daya L de Bruyn JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley K7 Dlothi G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt JB Forman MM Gibson H Goolam CI Gouws JP Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Hofeld PN Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston MD Kota J Lamb L Marais S McCafferty MC McIntosh M McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Nilo NP Mngomezulu VM Movshovich M Mtshali SP Naicker RA Nelson BP Ngope ZN Ntshona MB Nzimande L Odendaal GIP Olivier H Palge AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips HK Potgieter S Rajah D Ramjettan NJA Robb DC Rudman M Sadler JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda SE van der Molen M van der Walt N van Dyk A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

[Handwritten signature]

5. Corruption Watch seeks to ensure that those who engage in corrupt activity are held accountable by developing and fostering tools for the public to report experiences of corruption. It investigates reports of corruption with the aim of exposing those who engage in corrupt activities, nepotism and abuse of public funds, in both the public and private sector. Part of Corruption Watch's mandate includes a commitment to strengthening the criminal justice system and significant efforts to tackle financial crime through legal, policy and other interventions. In suitable cases, this could include private prosecutions.
6. In light of the above and specifically, given Corruption Watch's focus on ensuring that perpetrators of corrupt activities are held accountable for their actions, it has a substantial interest in obtaining the right of juristic persons to bring private prosecutions.
7. Corruption Watch is of the view that allowing juristic persons to engage in private prosecutions where the NPA has declined to prosecute is a critical issue in combatting corruption. It increases the prospects of successful convictions for corruption. It also substantially reduces the incentive of those accused of corruption to seek to influence the NPA in an improper manner, as they will be aware that this will not preclude a prosecution taking place.
8. It is against this background that Corruption Watch would wish to make submissions as an amicus curiae.

THE STANCE OF CORRUPTION WATCH ON THE NSPCA MATTER

9. The NSPCA matter concerns the question of whether and to what extent juristic persons can engage in private prosecutions in terms of section 7(1) of the Criminal Procedure Act, 52 of 1977 ("the Act").
10. In dealing with this matter, High Court and Supreme Court of Appeal both held that there was effectively no right on the juristic persons to bring a private prosecution in terms of section 7(1) of the Act. In reaching this conclusion they relied on the pre-constitutional decision of the then Appellate Division regarding the section, in *Barclays Zimbabwe Nominees (Pvt) Limited v Black* [1990] ZASCA 92; 1990 (4) SA 720 (A). The *Barclays Zimbabwe* decision was used as a basis both for interpreting the section narrowly as having no application to juristic persons and as a basis for dismissing the constitutional challenge.

11. However, we are of the respectful opinion that the Supreme Court of Appeal erred in its reliance on the *Barclays Zimbabwe* decision.
 - 11.1 That decision was a pre-constitutional decision which, of necessity, could not have taken into account the impact of a Bill of Rights.
 - 11.2 The SCA was therefore required by section 39(2) of the Constitution to consider whether the interpretation of section 7(1) of the Act was correct in light of the relevant constitutional values and provisions. It did not do so.
 - 11.3 Moreover, the principles enunciated in the *Barclays Zimbabwe* could not be uncritically adopted as a basis for concluding that the statute was, even on the restrictive interpretation adopted, consistent with the Constitution. Yet this is precisely what the SCA purported to do.
12. The primary contention Corruption Watch wishes to advance before this Court is a matter of law. Corruption Watch wishes to contend the interpretation of section 7(1) adopted by the SCA was not consistent with the Constitution. Rather, section 7(1) is reasonably capable of a more flexible and generous interpretation in relation to private prosecutions by juristic persons and that interpretation is more in keeping with constitutional values.
 - 12.1 One of the key constitutional values in this regard is the right of equality before the law in section 9(1), the issue raised by the NSPCA.
 - 12.2 A further and critical constitutional value is that this Court has made clear that the Constitution involves a duty to take effective measures to prevent corruption. This was made clear most recently in this Court's decision in *Helen Suzman Foundation v President of the Republic of South Africa and Others* 2015 (2) SA 1 (CC). As we have explained above, allowing juristic persons to engage in private prosecutions significantly promotes this value.
13. In the alternative, and in the event that section 7(1) of the Act is not reasonably capable of such an interpretation, Corruption Watch would support the constitutional challenge brought by the NSPCA to the section. The submissions of Corruption Watch would focus on the impact on corruption in this regard.



14. Corruption Watch will contend that the above submissions are supported by:
- 14.1 an examination of the impugned provision in light of the drastic increase in sophisticated financial crimes on a local and international level, which have a detrimental effect not only on individuals, but on society, the economy and the perception of South Africa as a participant in the global economy;
 - 14.2 the need to obtain sanctions to deter such crimes and the rate at which such sanctions are being obtained. In particular, the increase in the commission of financial crimes by juristic persons is of particular importance and has a bearing on whether section 7(1) unduly narrows or restricts the ability of juristic persons to access justice, both on behalf of such juristic person and individuals who may not have the resources or capacity to institute criminal proceedings on their own;
 - 14.3 further comparative research on foreign jurisdictions which will include a closer examination of those jurisdictions that allow juristic persons to conduct private prosecutions, why it was deemed necessary and the mechanisms which are in place to address any risks or harm which may arise from the abuse of the provision;
 - 14.4 the fact that the Minister responsible for the administration of the Act failed to provide any proper justification for the restrictive approach that the SCA held was inherent in section 7(1) of the Act.

CONCLUSION

- 15. In accordance with rule 10(1) of the Rules, Corruption Watch seeks your consent to its admission as an amicus curiae in this matter. In this regard, Corruption Watch seeks to present both oral and written arguments before the Court and will do so within the time periods prescribed by directives of the Court.
- 16. Corruption Watch has a clear interest in these proceedings and believes its submissions will be of material benefit to the Court. Its submissions will differ in substance from the submissions of the Applicant and the Respondents.
- 17. In terms of the directions issued by the Court (dated 2 March 2016), the written argument of the respondents' is due, on or before, Tuesday 31 May 2016. Given that Corruption Watch is required (in terms of rule 10(5) of the Rules) to submit its application for admission as amicus curiae within five (5) days of the lodging of the respondents' written

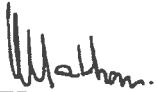
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Page 5

arguments, we kindly ask that you indicate whether or not you consent to their admission as amicus within 10 days of receipt of this letter.

Yours faithfully

**WEBBER WENTZEL**

Moray Hathorn

Partner

Direct tel: +27115305539

Direct fax: +27 11 530 6539

Email: moray.hathorn@webberwentzel.com

"DL2"



MARSTON & TALJAARD

Your ref/U Verw: Mr M Hathorn
3008106/C44
Our ref/Ons Verw: J Marston/rf
Date/Datum: 14 April 2016

Webber Wentzel
Per email: moray.hathorn@webberwentzel.com

Dear Sirs

**NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS ('NSPCA') // MINISTER OF JUSTICE AND
CONSITUTIONAL DEVELOPMENT (CCT:01/2016)**

We refer to your letter dated 12 April 2016., and have noted the contents thereof.

The Applicant in this matter, the NSPCA, consent to you joining the application as an *amicus curiae*, as we believe that your client's views in this regard will be of assistance to the Court.

Yours faithfully

MARSTON & TALJAARD

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26 APRIL 2016

Enquires MR S ZULU

My ref 3364/13/Z76

Email Szulu@justice.gov.za

Your ref Mr Hathorn3008106/C44

FAX: 011 530 6539

EMAIL: moray.hathorn@webberwentzrl.com

WEBBER WENTZEL ATTORNEYS

Dear Sir/Madam

RE: NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS / MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT AND DIRECTOR OF PUBLIC PROSECUTIONS

1. We refer to the above matter and your letter dated the 12th April 2016.
2. We kindly confirm that is our instructions to advise you that you may proceed to apply in terms of Rule 10 of the Constitutional Court Rules as *amicus curiae* on behalf of Corruption watch.
3. Trusting that the above will be in order.

Yours faithfully

MR S. ZULU
FOR: STATE ATTORNEY (PRETORIA)

Access to Justice for All

Always quote my reference number

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01 DECEMBER 2015

AFRO
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LET THE PEOPLE HAVE A SAY



**TRANSPARENCY
INTERNATIONAL**
the global coalition against corruption

PEOPLE AND CORRUPTION: AFRICA SURVEY 2015

Global Corruption Barometer

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<p>EMBARGOED UNTIL 10:00AM BERLIN TIME 01 DECEMBER 2015</p>

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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Afrobarometer is a pan-African, non-partisan research network that conducts public attitude surveys on democracy, governance, economic conditions, and related issues across more than 30 countries in Africa.

Afrobarometer surveys are implemented by national partners in surveyed countries, with coordination by the Center for Democratic Development (CDD) in Ghana, the Institute for Justice and Reconciliation (IJR) in South Africa, the Institute for Development Studies (IDS) at the University of Nairobi in Kenya, and the Institute for Empirical Research in Political Economy (IREEP) in Benin. Michigan State University (MSU) and the University of Cape Town (UCT) provide technical support to the network.

Afrobarometer publications from six survey rounds (1999-2015) are available at www.afrobarometer.org. To explore data on any survey question from any round, please visit Afrobarometer's online data analysis facility at www.afrobarometer.org/online-data-analysis.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of November 2015. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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EXECUTIVE SUMMARY

In many countries you can pay off police officers to ignore any crime, however horrific and devastating – it's just a matter of price. In Zimbabwe a nine-year old girl was raped on her way to school by a man who infected her with HIV. The police initially arrested her attacker, but then released him in secret. The reason: he paid a bribe. At Transparency International we hear stories like this every day.

That is why we publish research on what people say are the biggest sources of corruption in their lives, so that we can raise awareness of the scale of graft and to drive anti-corruption work to stop it. For the latest African edition of the Global Corruption Barometer, we partnered with the Afrobarometer, which spoke to 43,143 respondents across 28 countries in Sub-Saharan Africa between March 2014 and September 2015 to ask them about their experiences and perceptions of corruption in their country.¹

Shockingly, we estimate that nearly 75 million people² have paid a bribe in the past year – some of these to escape punishment by the police or courts, but many also forced to pay to get access to the basic services that they desperately need. A majority of Africans³ perceive corruption to be on the rise and think that their government is failing in its efforts to fight corruption; and many also feel disempowered as regards to taking action against corruption. In Sierra Leone, Nigeria, Liberia and Ghana⁴ citizens are the most negative about the scale of corruption in their country.

However, the results also highlight that there are a small number of countries in the region that are seen as doing quite well in addressing the scourge of corruption – where only a few people have to pay bribes or where citizens feel that they can contribute to stopping corruption. Citizens in Botswana, Lesotho, Senegal and Burkina Faso tend to have the most positive views compared with citizens from other countries in the region.

The main finding of this report is that there is a clear disparity between a few strong performing countries in regard to anti-corruption and the many weak performers on anti-corruption across the continent. This finding contains both a hopeful message, that addressing corruption is indeed possible, as well as a disappointing message, as most African countries have failed to make headway in stemming the tide of corruption. As corruption can be a major hindrance for development and economic growth, and as it weakens people's trust in government and the accountability of public institutions, this report calls on governments to act against the corruption which exists in their country.

¹ The Afrobarometer conducted the survey in 36 countries in total across the Africa region. Only the results from the following Sub-Saharan African countries are included in this report: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Cote d'Ivoire, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Namibia, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe. Results from North African countries will be included in a separate Middle East and North Africa report and results from three Sub-Saharan African countries – Mozambique, Gabon and São Tomé and Príncipe – had not been finalised when this report was being published but will be included in subsequent global releases of the results. The survey was carried out face to face. In each country the survey was sampled and weighted to be nationally representative of the adult population aged 18+. A full description of the methodology is contained in the annex.

² This estimate is made based on the approximate total number of adults aged 18+ living in each of the surveyed countries according to the most recent census or other available population data. See methodology for full details.

³ For the sake of readability, we use the terms "Africans" or "Africa" or "continent" even though the report includes only Sub-Saharan countries.

KEY FINDINGS

The main findings of this report are as follows:

1. **CORRUPTION SEEN TO BE ON THE RISE**
 The majority of Africans (58%) say that corruption has increased over the past year. This is particularly the case in South Africa where more than four-in-five citizens (83%) say they have seen corruption rise recently.
2. **MOST GOVERNMENTS ARE FAILING TO MEET CITIZENS' EXPECTATIONS IN REGARD TO FIGHTING CORRUPTION**
 There is no government which is rated positively on its anti-corruption efforts by a clear majority of its citizens. On the contrary, 18 out of 28 governments are seen as fully failing to address corruption by a large majority.
3. **POLICE AND PRIVATE SECTOR PERCEIVED AS MOST CORRUPT**
 The survey asked how much corruption there was in 10 key institutions and groups in society. Across the region, the police and business executives are seen to have the highest levels of corruption. While the police have regularly been rated as highly corrupt, the strongly negative assessment of business executives is new compared to previous Transparency International Global Corruption Barometer (GCB) survey rounds.ⁱⁱ
4. **BRIBERY AFFECTS MORE THAN ONE-IN-FIVE AFRICANSⁱⁱⁱ, AND DISPROPORTIONALLY AFFECTS THE POOR IN URBAN AREAS**
 22 per cent of people that have come into contact with a public service in the past 12 months in Sub-Saharan Africa have paid a bribe, but the situation is worst in Liberia where nearly seven-in-ten paid a bribe. Across the continent, poor people are twice as likely as rich people to have paid a bribe, and in urban areas they are even more likely to pay bribes.^{iv}
5. **POLICE AND THE COURTS HAVE THE HIGHEST RATE OF BRIBERY**
 Out of six key public services, people who come into contact with the police and the courts are the most likely to have paid a bribe. This is consistent with previous Transparency International surveys and highlights the lack of progress made in addressing bribery in these two institutions, which are crucial for citizen security and the rule of law.
6. **MANY PEOPLE FEEL UNABLE TO CONTRIBUTE TO HELPING FIGHT CORRUPTION**
 People in the region are divided as to whether ordinary people can make a difference in the fight against corruption – just over half of people think that they can (53 per cent), while 38 per cent think they cannot. Reporting incidences when they occur, or saying no when asked to pay a bribe, are seen as the most effective things people can do. However, only roughly one-in-ten people who paid a bribe actually reported it.
7. **DESPITE THIS, TURNING BACK CORRUPTION IS POSSIBLE**
 There are a few countries in which citizens see low levels of corruption in their public institutions and see corruption as on the wane in their own country. The views of citizens in Botswana, Lesotho, Senegal and Burkina Faso are particularly favourable.

RECOMMENDATIONS

CORRUPTION SEEN TO BE ON THE RISE

- Governments must finally deliver on their anti-corruption commitments made globally (the UN Convention against Corruption) and regionally (the African Union Convention on Combating Corruption).
- UN Convention signatory countries must actively support and use the results of the next Convention review cycle, which will look at related policies to prevent corruption and support asset recovery.
- The African Union and its members must provide the political will and financing needed to implement the review mechanism established for its anti-corruption convention.

MOST GOVERNMENTS ARE FAILING TO MEET CITIZENS' EXPECTATIONS IN REGARD TO FIGHTING CORRUPTION

- Governments must end impunity in their countries – whether in government, companies or organisations – by effectively investigating and prosecuting cases and eliminating the abuse of political immunity.
- Governments must strengthen and enforce legislation on politically-exposed persons and anti-money laundering to curb the high volume of illicit flows from the continent.
- Governments must end the secrecy around who owns and controls companies and other arrangements which enable collusion, self-dealing or deception in government processes, such as procurement.

POLICE AND PRIVATE SECTOR PERCEIVED AS MOST CORRUPT

- Governments must show a sustained and deep commitment to acting on police corruption at all levels by promoting reforms that combine punitive measures with structural changes over the short- and medium-term.^v
- Companies need to transparently report their operations, activities and revenues on a country-by-country basis to build public trust and dispel perceptions of corruption.

BRIBERY AFFECTS MORE THAN ONE-IN-FIVE AFRICANS, AND DISPROPORTIONALLY AFFECTS THE POOR IN URBAN AREAS

- Governments must effectively include anti-corruption measures and metrics as part of implementing and tracking progress on their Sustainable Development Goals (SDGs) strategies.

POLICE AND THE COURTS HAVE THE HIGHEST RATE OF BRIBERY

- Governments must invest in measures to strengthen access to justice and the rule of law in their countries, such as ensuring an objective and transparent process for appointing judges, protections for judicial salaries and working conditions, and clear criteria for case assignment.

MANY PEOPLE FEEL UNABLE TO CONTRIBUTE TO HELPING FIGHT CORRUPTION

- Governments must create safe and effective conditions for the involvement of civil society in anti-corruption efforts, including their de jure and de facto operational and physical freedom.
- Governments must establish right to information and whistle-blower protection legislation to facilitate the role of civil society in making public institutions more transparent, accountable and corruption-free.

THE STATE OF CORRUPTION IN AFRICA – CITIZENS' VIEWS

The Global Corruption Barometer seeks to put citizens' views front and centre in the corruption debate, and to make governments aware of what their citizens think of their actions in regard to fighting corruption. The survey, which was conducted by the Afrobarometer, found that while many Africans view corruption as being on the rise in their own country, and believe their government is not doing well in tackling the issue, there are a small number of countries that are seen to be quite effective in addressing public sector graft.

UP OR DOWN? HOW IS THE LEVEL OF NATIONAL CORRUPTION SEEN AS CHANGING OVER TIME?

The survey asked people how they thought corruption in their country had changed over the past year⁴ – whether it had increased, decreased or stayed the same – so that we could identify the corruption trend across the continent.

Across the region the survey found that the majority of citizens believe that corruption is on the rise. Over half of people (58 per cent) say that they think corruption has increased either somewhat or a great deal over the past year in their own country, while just under a quarter (22 per cent) think that it has decreased, and just 14 per cent think that it has stayed the same.

When comparing the results of the different countries that were surveyed, people living in South Africa, Ghana and Nigeria⁴ were the most likely to say that they think corruption has risen in the 12 months prior to when the survey was conducted. In these countries three-quarters or more of respondents said corruption has increased either somewhat or a lot. The three countries which had the smallest proportion of citizens saying corruption has risen were Burkina Faso, Cote D'Ivoire and Mali – less than one-third of respondents answered that corruption has increased in the past 12 months.

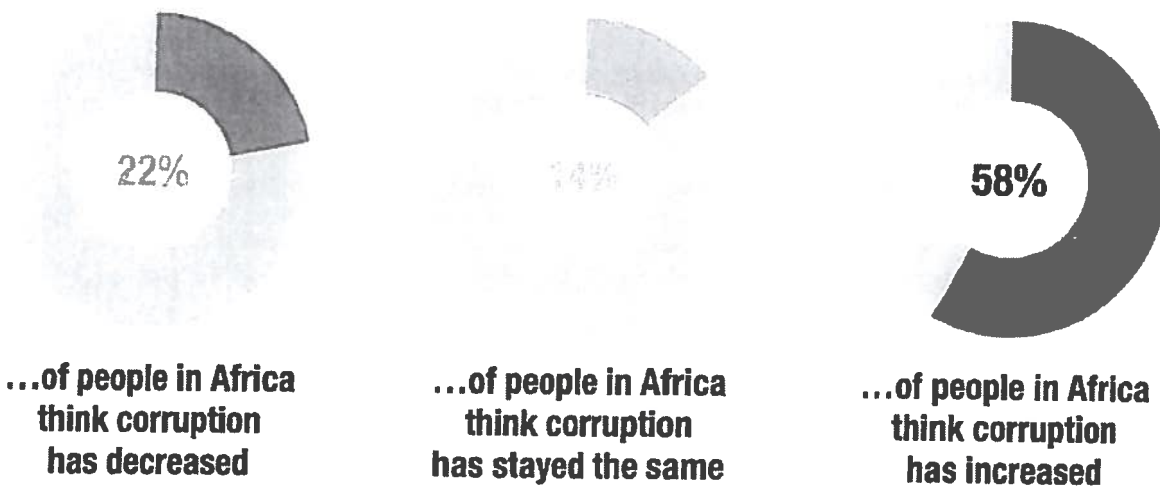
⁴ Respondents were asked "has the level of corruption in this country increased, decreased, or stayed the same?" in the 12 months prior to when the respondent took the survey. For a full list of fieldwork dates for each country, please see the annex.

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HOW CITIZENS IN SUB-SAHARAN AFRICA THINK CORRUPTION HAS CHANGED OVER THE LAST 12 MONTHS

Cape Verde



3 BEST PERFORMERS

Lowest percentage saying corruption has increased

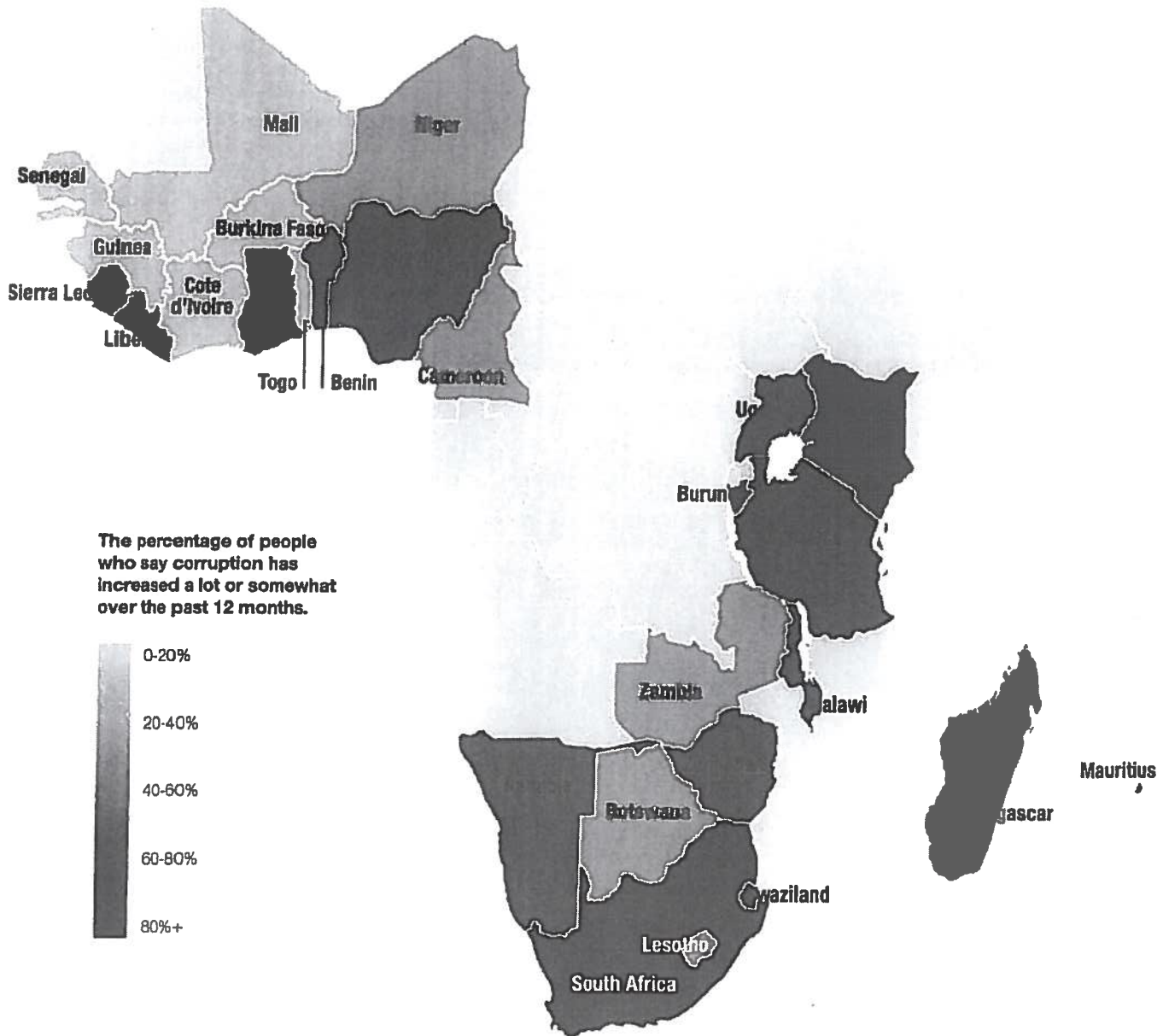
3 WORST PERFORMERS

Highest percentage saying corruption has increased

Burkina Faso	28%	South Africa	83%
Mali	31%	Ghana	76%
Cote D'Ivoire	32%	Nigeria	75%

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Q: In your opinion, over the past year, has the level of corruption in this country increased, decreased, or stayed the same?
% who say corruption had either increased somewhat or increased a lot.

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POLITICIANS, PUBLIC OFFICIALS OR BUSINESS EXECUTIVES – WHO IS SEEN AS MOST CORRUPT?

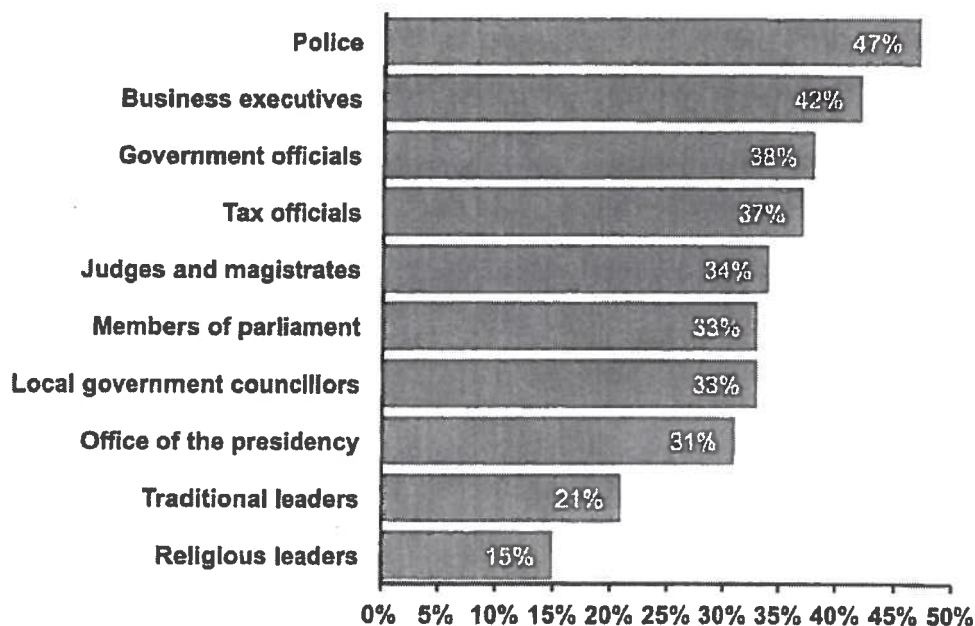
The survey asked respondents how much corruption there was in 10 different powerful groups in their country – the political and government elite (the president's office, members of parliament, government officials), public officials who work at the service level (tax officials, the police, judges and magistrates, local government councillors), and those who are not part of the public sector but who often wield strong influence (business executives, religious leaders and traditional leaders).

Looking at the results from across the region, the police are seen as the most corrupt group across the region, which is consistent with previous editions of the GCB. Almost half of respondents (47 per cent) say that they thought either most or all police officers are corrupt. The police are followed by business executives, which are seen as the second most corrupt group (42 per cent say most or all business executives are corrupt).

Government officials and tax officials rank as the third and fourth most corrupt groups (38 per cent and 37 per cent respectively). Judges and magistrates, members of parliament, local government councillors and the office of the presidency all score similarly, with around a third of people saying they are affected by high levels of corruption (between 31 and 34 per cent).

Traditional leaders and religious leaders are seen to be the least affected by corruption in the region, although 21 per cent and 15 per cent, respectively, say that most or all of these leaders are corrupt.

FIGURE 1. HOW CORRUPT ARE DIFFERENT INSTITUTIONS AND GROUPS IN SOCIETY?



Q. How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say? Base: All respondents, excluding missing responses. Chart shows percentage of respondents who answered either 'Most' or 'All of them' are corrupt.

When looking at the results from each country, large proportions of citizens in Benin, Ghana, Liberia, Nigeria and Sierra Leone think that their public sector institutions are affected by high levels of

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corruption. In these countries, on average across each of the public sector groups,⁵ half of the population or more said that they thought most or all are corrupt.

In contrast, citizens in Botswana, Cape Verde, Lesotho, Mauritius and Senegal perceive there to be very low levels of corruption in the public sector institutions. On average, less than a quarter of respondents said that most or all officials in these public sector institutions are corrupt.

Anti-corruption progress in Senegal

Since President Macky Sall came into office in Senegal in 2012 the country has passed a number of positive anti-corruption reforms, which may have contributed to Senegalese citizens being among some of the most positive in the region – with many saying corruption is on the decline, and people perceiving low levels of corruption across the public sector.

A Ministry for the "Promotion of Good Governance Responsible for Relations with the Institutions" has been created to promote good governance across various government institutions and in the private sector. A National Office for the Fight against Fraud and Corruption has also been established.^{vi} Subsequently, in July 2013 the Government adopted a National Strategy on Good Governance to improve the functioning of government and to improve transparency.^{vii} A national law was also passed in April 2014 which requires elected officials to declare their assets.^{ix}

More recently, there have been signs of effective enforcement of the law: in March 2015 Karim Wade, former cabinet minister and son of former President Abdoulaye Wade, was tried and convicted of illicit enrichment and sentenced to six years' imprisonment.^x

DOING WELL OR DOING BADLY? HOW AFRICANS RATE THEIR GOVERNMENTS' ANTI-CORRUPTION EFFORTS

Understanding how ordinary people think their government is doing in regard to addressing corruption allows us to assess whether governments are perceived to be making the right steps and if they are communicating these efforts effectively to their citizens.

Across the region the majority of people (64 per cent) think their government is doing a poor job at handling corruption, suggesting greater efforts need to be taken by governments to clean up the public sector and to punish officials for their corrupt actions. Only a third of people (32 per cent) think that their government was doing either fairly or very well at fighting corruption.

Looking specifically at the country-level results, few governments were rated as doing particularly well at cleaning up government. In only three countries did a slightly greater proportion of citizens

⁵ The public sector groups refer to the president's office, members of parliament, government officials, tax officials, the police, judges and magistrates and local government councillors. We took a simple average across these seven institutions of the percentage of respondents who said most or all of them are corrupt. See the full tables of results in the annex.

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say that their government was doing well than said they were doing badly – Botswana, Lesotho and Senegal.⁶

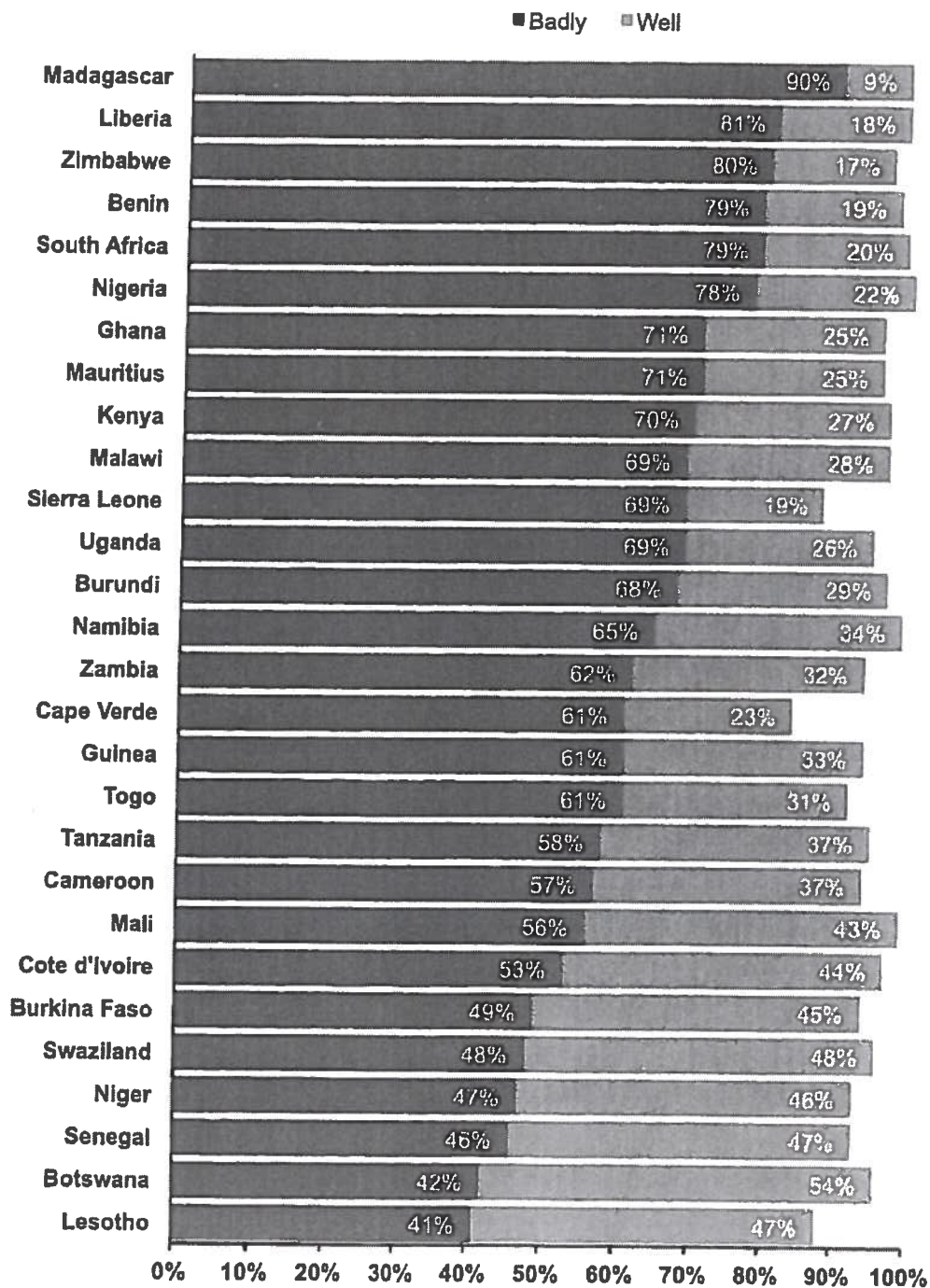
Many governments received very poor ratings on their achievements in stopping corruption but citizens in Madagascar were the most critical, with nine-in-ten (90 per cent) saying their government is doing either fairly or very badly. This result may in part be due to the revelation that as much as 40 per cent of the country's budget is lost to corruption.⁴ In Benin, Liberia, Nigeria, South Africa and Zimbabwe people think poorly of their governments' anti-corruption efforts with around four-in-five saying that their government is doing badly.

⁶ In Botswana 54% answered well, 42% badly; Lesotho 47% well, 41% badly; Senegal 47% well, 46% badly

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FIGURE 2: IS THE GOVERNMENT DOING WELL OR BADLY IN FIGHTING CORRUPTION



Q. How well or badly would you say the current government is handling the following matters, or haven't you heard enough to say? "Fighting corruption in government". Base: all respondents, excluding missing responses.

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The Registrar of the Constitutional Court

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Your reference
CCT 1/16

Our reference
Mr M Hathorn / Ms C Botha
3008106

Date
23 June 2016

Dear Sir / Madam

CCT 1/16: NSPCA / Minister of Justice and Constitutional Development & the National Director of Public Prosecutions

1. On 20 June 2016 Ms Botha, a candidate attorney in the employ of Webber Wentzel, attempted to file an application by Corruption Watch to intervene as an amicus curiae in the above proceedings at the Constitutional Court.
2. Ms Botha was, however, informed by Dunisani (an employee at the filing counter of the Constitutional Court) that the filing of the said application is not permissible prior to the filing of the Respondents' written submissions. These were due to be filed on 31 May 2016, but to date have not been filed.
3. We are accordingly awaiting the filing of the Respondents' written submissions in order to proceed with the filing of our application.

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Senior Partner: JC Els Managing Partner: SJ Hutton Partners: RB Africa NG Alp GA Ampofo-Anti RL Appelbaum AE Bennett DHL Booysen AR Bowley PG Bradshaw EG Brandt JL Brink S Browne MS Burger RI Carrim T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidow JH Davies ME Davis PM Daya L de Bruyn JHB de Lange DW de Villiers BEC Dickinson NA Diamont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt JB Forman MM Gibson SJ Gilmour H Goolam CI Gouws JP Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PH Kingston CJ Kok MD Kota J Lamb L Marais S McCafferty V McFarlane MC McIntosh SJ McKenzie M McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo HP Mngomezulu VM Movshovich M Mtshali SP Naicker RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips HK Putgiter S Rajah D Ramjettan GI Rapson NJA Robb DC Rudman M Sader JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson N Singh P Singh MP Spalding L Stein PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda SE van der Neulen M van der Walt N van Dyk A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DH Visagie J Watson KL Williams K Wilson RH Wilson J Moolman M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

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Yours faithfully

PP **WEBBER WENTZEL**

Moray Hathorn

Partner

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Ch. 6

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 1/16

SCA Case No: 20781/2014

High Court Case No: 29677/2013

In the application of:

CORRUPTION WATCHApplicant for admission
as an amicus curiae

In the matter between:

**NATIONAL SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS ("NSPCA")**

Applicant

and

**MINISTER OF JUSTICE
AND CONSTITUTIONAL DEVELOPMENT**

First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Respondent

CONFIRMATORY AFFIDAVIT

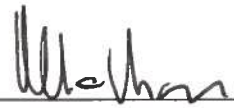
I, the undersigned,

MORAY HATHORN

do hereby make oath and state that:

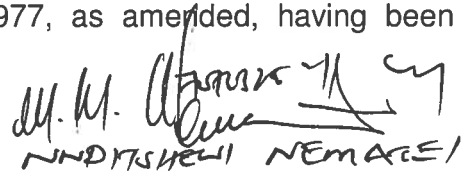


- 1 I am an attorney of the High Court of South Africa (Gauteng Division, Pretoria), practising as such as a partner at Webber Wentzel, currently at 90 Rivonia Road, Sandton, Johannesburg.
- 2 Unless otherwise indicated, the facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct.
- 3 I have read the Founding Affidavit of **DAVID HARRIS LEWIS** and confirm its contents insofar as it relates to me and Webber Wentzel.



MORAY HATHORN

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at ROSEBANK SKPS on 29th June 2016, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



NDIFISHELE NEMA

COMMISSIONER OF OATHS
 15 Shurdee Avenue
 Rosebank, 2196
 Tel (011) 778 4700



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 1/16

SCA Case No: 20781/2014

High Court Case No: 29677/2013

In the application of:

CORRUPTION WATCHApplicant for admission
as an amicus curiae

In the matter between:

**NATIONAL SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS ("NSPCA")**

Applicant

and

**MINISTER OF JUSTICE
AND CONSTITUTIONAL DEVELOPMENT**

First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

CARINA BOTHA

do hereby make oath and state that:

- 1 I am a candidate attorney at Webber Wentzel, currently at 90 Rivonia Road,
Sandton, Johannesburg.

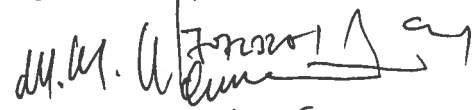

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- 2 Unless otherwise indicated, the facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct.
- 3 I have read the Founding Affidavit of **DAVID HARRIS LEWIS** and confirm its contents insofar as it relates to me and Webber Wentzel.



CARINA BOTHA

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at Rosebank SKPS on 29th June **2016**, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.


M.M. NNDITUMENI NEMATEI

COMMISSIONER OF OATHS
 15 Sturdee Avenue
 Rosebank, 2196
 Tel (011) 778 4700

