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Date

A Thakor / M Hathorn/ S Makara  
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18 July 2017

Dear Sirs

## CONSENT FOR LEAVE TO INTERVENE AS AMICUS CURIAE IN THE MATTER OF THE ECONOMIC FREEDOM FIGHTERS & OTHERS V THE SPEAKER OF THE NATIONAL ASSEMBLY & PRESIDENT JACOB ZUMA - CASE NO CCT 76/2017

1. We act for Corruption Watch NPC, a non-profit company incorporated in accordance with the Companies Act of 2008. Corruption Watch ("our client") requests to be admitted to the application as *amicus curiae*.
2. The matter raises important constitutional issues concerning parliamentary oversight over executive conduct and whether effective mechanisms exist to fulfil the constitutional obligations vested in the national assembly under section 42(3) and 55 (2) of the Constitution.

### About Corruption Watch

3. Corruption Watch was formed with, *inter alia*, the following objects:
  - 3.1 To ensure that the custodians of public resources act responsibly to advance the interests of the public, and to ensure that opportunities for entering corrupt relationships are reduced.

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**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman AE Bennett AP Blair DHL Booysen AR Bowley JL Brink S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn JJ Daniels CR Davidow JH Davies PM Daya L de Bruyn PU Dela JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI 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 PN Kingston J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie M McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale M Moloi J Moolman LE Mostert VM Movshovich 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 TC Phala MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew G Richards-Smith NJA Robb DC Rudman S Rugan M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson DP Wild KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

- 3.2 To engage in activities aimed at the combating of corruption in all forms in South Africa in order to ensure integrity and accountability in both the public and private sector in the conduct of their functions and operations.
4. In pursuing its objectives Corruption Watch has assisted the courts through *amicus curiae* submissions in a number of matters in the High Court, Supreme Court of Appeal and Constitutional Court in which the combatting of corruption and the protection of national institutions tasked with combatting corruption were at issue.

### **The interest of Corruption Watch in these proceedings**

5. Corruption Watch was involved as amicus in the matter of Economic Freedom Fighters v The Speaker of the National Assembly and others, 2016 (3) SA 580 (CC) in which judgement was handed down on 31 March 2016. In that matter, the Constitutional Court handed down a judgment which found, amongst others that:

*"The failure by the President to comply with the remedial action taken against him, by the Public Protector in her report of 19 March 2014, is inconsistent with his obligation to uphold, defend and respect the Constitution (s 83(b) )of the Constitution read with ss 181(3) and 182(1)(c) of the Constitution and is invalid."*

6. The Constitutional Court also found that the National Assembly has failed to hold the President accountable to the legislature by ensuring that he complies with the remedial action taken against him by the Public Protector. The Court found that such failure by the National Assembly was inconsistent with the constitutional obligations on the National Assembly found in sections 42(3), 55(2)(a) and (b), and 181(3) of the Constitution.
7. The current proceedings are a continuation of the unfortunate Nkandla debacle. The applicants have rightly approached the Constitutional Court for assistance in the face of a clear failure by the National Assembly to take any action to hold the President accountable for:
  - 7.1 His failure to comply with the Public Protectors report (which the Constitutional Court found to be inconsistent with his obligation to uphold, defend and respect the Constitution);
  - 7.2 His conduct which was found by the Public Protector to:
    - 7.2.1 Violate the Executive Ethics Code; and
    - 7.2.2 Be inconsistent with his office as a member of Cabinet.
8. Furthermore, the Public Protector's report raises the possibility of whether or not the President misled the National Assembly when he made statements about the Nkandla upgrades. The mere possibility that he may have done so necessitates further investigation.

9. It is evident from the above that this matter raises very serious issues which strike at the heart of our constitutional democracy. It implicates the core constitutional values of accountability, transparency responsiveness and openness which underpin a democratic system of government. These issues fall squarely within Corruption Watch's core mandate which is to monitor and address the abuse of state resources as well as the abuse of private and public power. As an accredited Transparency International Chapter in South Africa, the questions of transparency and accountability in respect of Parliament's exercise and performance of constitutional obligations are also central to our mandate.

**The submissions to be advanced by Corruption Watch**

10. Corruption Watch supports the application brought by the EFF and Cope. It contends that, properly distilled, there are three key questions which arise in this matter:
- 10.1 What exactly has the National Assembly done in response to the Constitutional Court's judgment in the Nkandla matter;
  - 10.2 What exactly has the National Assembly done in response to the findings and recommendations contained in the PP's Report;
  - 10.3 Whether this meets the obligations of the National Assembly under sections 42(3), 55(2)(a) and (b), and 181(3) of the Constitution.
11. In the face of these key questions, Corruption Watch seeks to make submissions on:
- 11.1 The nature of the obligations imposed on the National Assembly by sections 42(3), 55(2)(a) and (b), and 181(3) of the Constitution. In addressing this, Corruption Watch intends to address:
    - 11.1.1 What the Constitution provides, and how these provisions should be interpreted;
    - 11.1.2 How these obligations fit into our constitutional scheme and the democratic values and principles underlying the Constitution including an ethical, transparent and accountable Government.
  - 11.2 What constitutes '*effective oversight*' by the National Assembly. Corruption Watch intends to address:
    - 11.2.1 How oversight is catered for in the Constitution and the rules of Parliament;
    - 11.2.2 How this implicates the doctrine of separation of powers;
  - 11.3 Whether the National Assembly has complied with its obligations; and
  - 11.4 The question of appropriate relief.

12. Apart from relying on an interpretation of the Constitution and applicable statutes as well as the jurisprudence from the Constitutional Court in addressing these issues, Corruption Watch also intends to rely on foreign jurisprudence on the question of executive oversight. In this regard, the focus will be slightly different from that of the second and third applicants who have relied on foreign comparative jurisprudence to establish what constitutes '*global best practice*' when the head of state faces charges of impeachment.
13. Given Corruption Watch's ongoing work in accordance with its objects and purposes, it will be able to provide the court with a perspective on this matter that differs from and adds to the arguments to be made by the parties.
14. We request your written consent in accordance with Rule 10 (12) of the Rules of the Constitutional Court for the admission of Corruption Watch as *amicus curiae* in this matter in order to:
  - 14.1 file an affidavit in support of its submissions outlined in paragraph 7 above;
  - 14.2 make written legal submissions on the topics outlined above;
  - 14.3 present oral submissions at the hearing on the date on which the matter might be set down for hearing.
15. If such consent is given, kindly notify us in writing by 19 July 2017 so that we may comply with the time limits set out in the Rule. Such written consent can be sent to any of our addresses set out at the head of this letter including by email to [tshego.phala@webberwentzel.com](mailto:tshego.phala@webberwentzel.com) or by telefax (011) 530 6526.

Yours Faithfully



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