

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
(BLOEMFONTEIN)**

**APPEAL COURT CASE NO: 1186/2019**

**HIGH COURT CASE NO: 76755/18 (GLD)**

In application for leave to intervene as *amicus curiae*:

**SOUTHERN AFRICA LITIGATION CENTRE**

**Applicant for admission**

***as amicus curiae***

In the matter between:

**JOAO RODRIGUES**

**Appellant**

and

**THE NATIONAL DIRECTOR OF**

**First Respondent**

**PUBLIC PROSECUTIONS**

**THE MINISTER OF JUSTICE**

**Second Respondent**

**AND CORRECTIONAL SERVICES**

**THE MINISTER OF POLICE**

**Third Respondent**

**IMTIAZ AHMED CAJEE**

**Fourth Respondent**

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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE THAT** that the SOUTHERN AFRICA LITIGATION CENTRE (“SALC”) hereby makes application to the above Honourable Court for an Order in the following terms:

1. **THAT** SALC be and is hereby admitted as an *amicus curiae* in these proceedings, in terms of Rule 16 of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa (“the Rules”).
2. **THAT** the late filing of SALC’s application for admission as an *amicus curiae* is condoned.
3. **THAT** SALC is granted leave to:
  - 3.1. Submit written submissions; and
  - 3.2. Present oral argument at the hearing of the above matter.
4. **THAT** if this application is opposed, any party opposing it is ordered to pay SALC’s costs.
5. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the affidavit of **KAAJAL RAMJATHAN-KEOGH**, together with the annexures thereto, will be used in support of this application

**AND TAKE NOTICE FURTHER** that the Applicant has appointed **LAWYERS FOR HUMAN RIGHTS** as its attorneys of record, at the address set out below, where it will accept service of all further notices, documents and other processes in connection with these proceedings.

**KINDLY** place this application before the President to be dealt with in terms of Rule 16 of the Rules.

DATED AND SIGNED AT JOHANNESBURG ON THIS THE DAY 3<sup>rd</sup> DAY OF  
AUGUST 2020.



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**LAWYERS FOR HUMAN RIGHTS**  
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To:

**THE REGISTRAR**  
THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA  
Bloemfontein

**AND TO:**  
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**AND TO:**  
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**AND TO:**  
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**AND TO:**  
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THIRD RESPONDENT  
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**AND TO:**  
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**AND TO:**  
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Ref: Liette van Schalkwyk/bv/WEB6/0040

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
(BLOEMFONTEIN)

APPEAL COURT CASE NO: 1186/2019

HIGH COURT CASE NO: 76755/18 (GLD)

In application for leave to intervene as *amicus curiae*:

**SOUTHERN AFRICA LITIGATION CENTRE**      **Applicant for leave to intervene**  
**as *amicus curiae***

In the matter between:

**JOAO RODRIGUES**      **Appellant**

and

**THE NATIONAL DIRECTOR OF**      **First Respondent**  
**PUBLIC PROSECUTIONS**

**THE MINISTER OF JUSTICE**      **Second Respondent**  
**AND CORRECTIONAL SERVICES**

**THE MINISTER OF POLICE**      **Third Respondent**

**IMTIAZ AHMED CAJEE**      **Fourth Respondent**

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

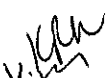
**KAAJAL RAMJATHAN-KEOGH**

do hereby make oath and state:

1. I am an adult female and the Executive Director of the Southern Africa Litigation Centre ("**SALC**"), a non-governmental organisation based in Johannesburg.
2. I am duly authorised to depose to this affidavit and bring this application on SALC's behalf. I attach the board resolution empowering me to do so as "**KRK1**".
3. SALC is a non-profit organisation that promotes and advances human rights and the rule of law in Southern Africa, with a particular focus on regional and international law. SALC uses strategic litigation, research, capacity building, training and advocacy as methodologies to achieve its objectives.
4. The facts contained in this affidavit are to the best of my knowledge true. Unless otherwise stated or indicated by the context, these facts are within my personal knowledge. I make legal submissions in this affidavit on the basis of advice received.

**INTRODUCTION**

5. This is an application in terms of Rule 16 of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa ("the Rules") to admit SALC as an *amicus curiae* in this matter.
6. In this affidavit I will address the following issues:



- 6.1 First: An overview of the steps SALC has taken in respect of compliance with Rule 16;
- 6.2 Second: SALC's request for condonation for its non-compliance with the time periods stipulated in Rule 16(5) of the Rules;
- 6.3 Third: SALC's interest in this matter;
- 6.4 Fourth: The position SALC will adopt if it is admitted as an *amicus curiae*;
- 6.5 Fifth: A brief overview of the submissions SALC will advance; and
- 6.6 Sixth: The relevance and usefulness of SALC's submissions to the Court, and why they are different from those of the other parties.

#### **OVERVIEW OF RULE 16 PROCEDURE**

7. On 16 July 2020, SALC's attorneys addressed a letter to the parties in this matter requesting consent to be admitted as an *amicus curiae* in these proceedings in terms of Rule 16 of the Rules. A copy of the letter is attached as annexure "KRK2".
8. The letter identified (i) SALC's interests in the matter; (ii) SALC's proposed contribution; (iii) SALC's proposed position if admitted as an *amicus curiae*; and (iv) the relevance and usefulness of SALC's proposed submissions.
9. On 22 July 2020, attorneys for the Fourth Respondent wrote to SALC's attorneys indicating that he consents to SALC intervening as an *amicus curiae* in the matter. A copy of this email is attached as annexure "KRK3".



10. The Appellant has consented to SALC's request to be admitted as an *amicus curiae*. The relevant correspondence is as follows:

10.1 On 23 July 2020 the Appellant's attorneys addressed a letter to SALC's attorneys indicating that SALC's intervention would "only serve to delay the proceedings without bringing any new arguments for consideration" ("the Appellant's initial letter"). A copy of the Appellant's initial letter is attached as annexure "KRK4". The Appellant's initial letter contained several errors, including the statement that SALC had not been admitted as *amicus curiae* in the proceedings before the High Court.

10.2 On 23 July 2020, SALC's attorneys addressed a letter to the Appellant's attorneys pointing out the errors and noting in particular that SALC had indeed intervened as *amicus curiae* in the proceedings before the High Court and had made both written and oral argument. A copy of this letter is attached as annexure "KRK5".

10.3 On 24 July 2020, the Appellant's attorneys wrote a second letter ("the Appellant's second letter" attached as annexure "KRK6") to SALC's attorneys:

10.3.1 Apologising for the errors in the Appellant's initial letter;

10.3.2 Acknowledging that SALC had in fact participated as an *amicus curiae* in the High Court; and

10.3.3 Indicating that the Appellant does not object to SALC's intervention as *amicus curiae* and that it would abide by the Court's ruling.

11. As of the date of the application, SALC has not received a response to its letter from the First, Second and Third Respondents. SALC's attorneys have followed up telephonically with the attorneys for the First, Second and Third Respondents, without success.
12. In light of the time constraints imposed by the Rules, SALC deemed it appropriate to bring this application without further delay. We therefore seek the consent of the Court for SALC's admission as an *amicus curiae* in these proceedings.

### **TIMING**

13. I respectfully request the Court to condone SALC's late application for intervention as an *amicus curiae* in this matter.
14. In terms of Rule 16(5), this application ought to have been submitted within one month after the record had been lodged with the registrar. The record was filed on the 17<sup>th</sup> of June 2020. This application was due on the 15<sup>th</sup> of July. Accordingly, this application is thirteen court days late.
15. The reasons for this delay are as follows:
  - 15.1 On 27 January 2020, the Honourable Court directed that the record be filed by 26 April 2020;
  - 15.2 On 10 June 2020, the Appellant applied for condonation for the late filing of the record;
  - 15.3 SALC was not informed of the date when the record was ultimately filed, which was on 17 June 2020;

- 15.4 SALC initiated the Rule 16(1) process on 16 July 2020. That is one day after the expiry of the one month period provided in Rule 16(5);
- 15.5 On 28 June, SALC's attorneys asked the Appellant's attorneys whether the record had been filed and, if so, when. The Appellant's attorneys informed SALC's attorneys that the record had been filed on 17 June 2020. This was the first time that SALC became aware of the fact that the record had been filed.
- 15.6 As soon as SALC became aware of the fact that the record had been filed, it expedited this application;
- 15.7 In its letter to the parties, SALC had requested that the parties respond by 22 July 2020. The final letter of consent by the Appellant was only received on 24 July 2020. As noted above, the First, Second and Third Respondents have still not replied to SALC's letter requesting consent. In the circumstances, SALC deemed it necessary to apply to this Honourable Court notwithstanding that we have not yet had a response.
16. I therefore submit respectfully that SALC's non-compliance was not due to dilatory behaviour but rather due to circumstances over which we have had little control.

#### **SALC'S INTEREST IN THIS MATTER**

17. One of SALC's principal objectives is to ensure that Southern African states, including South Africa, are fully aware of, and comply with, their obligations under domestic, regional and international law.

18. SALC's International Criminal Justice Programme monitors and promotes the investigation and prosecution of the most serious crimes under international law, namely crimes against humanity, genocide, war crimes and aggression.
19. In particular, SALC focuses on the implementation of international criminal law at the domestic level. It is through domestic courts that impunity for international crimes is overcome.
20. Specifically, SALC has initiated or intervened in the following proceedings between 2016 and 2018: *S v Okah*;<sup>1</sup> *Law Society of South Africa and others v President of the Republic of South Africa and others*;<sup>2</sup> *Democratic Alliance v Minister of International Relations and Cooperation (CASAC Intervening)*;<sup>3</sup> *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others*;<sup>4</sup> *National Commissioner of the South African Police v Southern Africa Litigation Centre and others*;<sup>5</sup> and *Consortium for Refugees and Migrants in South Africa v President of the Republic of South Africa & 11 Others*.<sup>6</sup>
21. SALC is therefore well-placed to provide expert input to the Court regarding: (i) the international nature of the crimes with which the Appellant has been charged; (ii) South Africa's international obligations to prosecute international crimes; and (iii) the legality of blanket amnesties under international and regional law.

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<sup>1</sup> 2018 (1) SACR 492 (CC).

<sup>2</sup> 2018 ZACC 51.

<sup>3</sup> 2017 (3) SA 212 (GP).

<sup>4</sup> 2016 (3) SA 317 (SCA).

<sup>5</sup> 2015 (1) SA 315 (CC).

<sup>6</sup> 2014 ZAGPPHC 753.

22. SALC was admitted as an *amicus curiae* in the proceedings held at the High Court of South Africa (Gauteng Division, Pretoria). It therefore has played a role in bringing the international criminal justice perspective to this matter since its inception.
23. On this basis, SALC has an interest in these proceedings, which raise several important issues of international criminal law.

### **SALC'S POSITION IF ADMITTED AS AN *AMICUS CURIAE***

24. SALC's position, if admitted as an *amicus curiae*, is that the murder of Mr Timol constitutes a crime against humanity and not only a common law crime. Therefore, this Honourable Court should assess the Appellant's request for a permanent stay of prosecution through the lens, not only of the Constitution, but also of international criminal law.
25. Crimes against humanity are international crimes and form part of customary international law which is binding on any state. Therefore, South Africa has an obligation under international law to prosecute such crimes.
26. It is trite that South Africa is constitutionally obliged to comply with its international obligations. Therefore, this triggers South Africa's international legal obligations to investigate, prosecute and, consequent upon a finding of guilt, punish all alleged perpetrators of crimes against humanity, including the Appellant.
27. The relevant international criminal law principles are such that:

27.1 The Appellant may not rely on the delay in instituting criminal proceedings against him as a basis for his request for a permanent stay of prosecution; and

27.2 The Appellant may not rely on the alleged amnesty.

28. Therefore, if South Africa is to comply with its international obligations, the Appellant's request for a permanent stay of prosecution must fail.

### **AN OVERVIEW OF SALC'S SUBMISSIONS SHOULD IT BE ADMITTED AS AN AMICUS CURIAE**

29. There are three main components to SALC's proposed submissions.

29.1 The first is an explication of the fact that the murder of Mr Timol constitutes a crime against humanity, which triggers the principles of international criminal law.

29.2 The second is that according to international criminal law, a delay in prosecuting crimes against humanity may not foreclose such prosecution.

29.3 The third is that blanket amnesties are not applicable with regard to the prosecution of international crimes such as crimes against humanity.

30. First: Mr Timol's murder constitutes a crime against humanity.

30.1 A crime against humanity includes an array of prohibited acts, such as apartheid, murder and political persecution, which are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

30.2 Mr Timol was murdered because he was an opponent of the apartheid state. Those involved in his murder were in the employ of the apartheid state's security branch, responsible for the implementation of the apartheid regime. The murder was therefore conducted as part of a systematic attack (widely understood) against the black South African population, with knowledge of that system.

30.3 The murder of Mr Timol thus becomes elevated to the status of an international crime. International criminal law therefore applies to the Appellant's request for a permanent stay of his prosecution.

31. Second: the delay in instituting criminal proceedings does not preclude the prosecution of international crimes.

31.1 As regards the Appellant's claim to have the trial 'begin and conclude without unreasonable delay,' international law is clear. The lapse of time cannot be a bar to the prosecution of international crimes.

31.2 In particular, international crimes of a customary international law character excludes the application of principles of limitation, including temporal limitations.

31.3 Therefore, international criminal law allows for a delay in bringing prosecutions for international crimes, in light of the fact that very often these cases are brought long after the occurrence of the alleged crime.

32. Third: the alleged amnesty does not apply to crimes against humanity.

- 32.1 The alleged amnesty would not justify a bar to prosecution under international law.
- 32.2 The alleged amnesty claimed by the Appellant would fall within the conceptualisation of a *blanket* amnesty. While there is no clear prohibition in international law against amnesties in general, the application of *blanket* amnesties in relation to international crimes such as crimes against humanity is unlawful.
- 32.3 Therefore, SALC will demonstrate that since the facts in this case qualify for the accused to be indicted of crimes against humanity, any application of a blanket amnesty in this matter is inconsistent with international, regional and South African law.

#### RELEVANCE AND USEFULNESS OF SALC'S SUBMISSIONS TO THE PROCEEDINGS

33. No other party has addressed regional and international law principles relating to the issue of international criminal law and South Africa's obligations in relation thereto. For this reason, I respectfully submit that SALC's expertise in this area of law would be of value in reaching a proper determination of the issues before this Court.
34. In addition, the *court a quo* briefly addressed international law in its judgment. It is necessary to explicate these principles and ensure that the Court has a thorough presentation of this area of law, which SALC, as experts in international law, is uniquely placed to do.



35. This information is relevant to the obligation of South African courts, as set out in section 39(b) of the Constitution, to consider international law when interpreting the Bill of Rights. SALC's specialised knowledge in this regard will therefore be useful to the Court and different from those of the other parties.

36. For these reasons, I respectfully request an order in the following terms:

36.1 SALC is granted leave to be admitted as *amicus curiae* in this matter;

36.2 SALC is directed to submit written argument by a date to be determined by the President of the Honourable Court; and

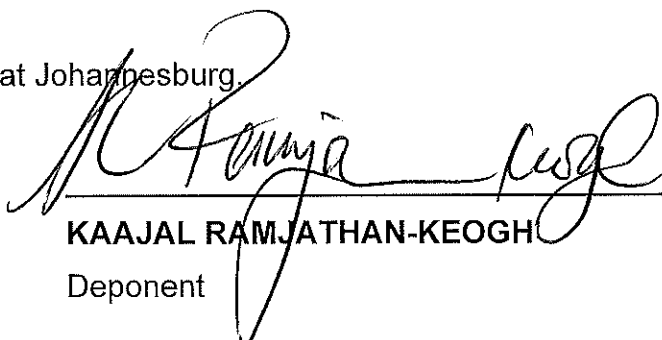
36.3 SALC is directed to make oral submissions at the hearing of this matter.

37. I undertake that SALC will not repeat any matter set forth in the argument of the other parties.

38. I further undertake that SALC will comply with any timelines established by this Honourable Court for the filing of SALC's written submissions.

**WHEREFORE**, SALC seeks the relief in the notice of motion to which this affidavit is attached.

Signed on the 3 of August 2020 at Johannesburg.

  
KAAJAL RAMJATHAN-KEOGH  
Deponent

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and shown to before me at Jozebeba on this the 03 day of August 2020, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.

*[Handwritten signature]*  
4891033-0 CT

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**COMMISSIONER OF OATHS**

Full Names: *Nemathohani*

Designation: *constable*

Address: *15 Sturdee Ave Rosebank*

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
03 AUG 2020
CSC ROSEBANK
SUID-AFRIKAANSE POLISIEDIENS

13  
*[Handwritten initials]*  
v. 6/7

KRK 1

# SOUTHERN AFRICA LITIGATION CENTRE

## RESOLUTION OF THE BOARD OF TRUSTEES OF THE SOUTHERN AFRICA LITIGATION CENTRE

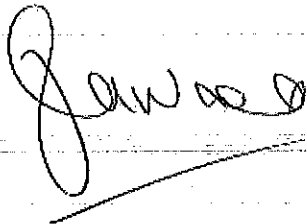
TRUST NAME: SOUTHERN AFRICAN HUMAN RIGHTS LITIGATION CENTRE TRUST  
Operating as the SOUTHERN AFRICA LITIGATION CENTRE

TRUST NO: IT 3935/05

Date of Resolution: 28 July 2020

It was resolved as follows:

The Board of Trustees agree to SALC's intervention before the Supreme Court of Appeal in the case of JOAO RODRIGUES v THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019). SALC seeks admission as an *amicus curiae* in its own name and brings the case in the public interest.



Chair of the Board of Trustees  
Zohra Dawood

KRK  
vms

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16 July 2020

- ATTN: Ben Minnaar Attorneys**  
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- ATTN: The State Attorney**  
Attorney for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents  
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Joint Attorneys for the 4<sup>th</sup> Respondent  
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Dear Madam / Sir

**REQUEST FOR CONSENT TO INTERVENE AS AN *AMICUS CURIAE* IN RE: JOAO RODRIGUES V THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019)**

- 1 We refer to the above matter and confirm that we act on behalf of the Southern African Litigation Centre (“SALC”). Our client seeks your written consent to be admitted as an amicus curiae in these proceedings in

Wayne Ncube LLB (NMMU) LLM (Wits);  
Jessica Lawrence LLB (UJ)

*W. Ncube*

terms of Rule 16 of the Rules regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa.

### **SALC's interest in this matter**

- 2 SALC is a non-profit organisation that promotes and advances human rights and the rule of law in Southern Africa, with a particular focus on regional and international law. SALC uses strategic litigation, research, capacity building, training and advocacy as methodologies to achieve its objectives.
- 3 One of SALC's principal objectives is to ensure that Southern African states, including South Africa, are fully aware of, and comply with, their obligations under domestic, regional and international law.
- 4 SALC specialises in several thematic areas. Of particular relevance to this matter is SALC's programmatic focus on international criminal justice. SALC's International Criminal Justice Programme monitors and promotes the investigation and prosecution of the most serious crimes under international law — namely crimes against humanity, genocide, war crimes and aggression — in Southern Africa and on the African continent. In particular, SALC focuses on the implementation of international criminal law at the domestic level.
- 5 SALC is therefore well-placed to provide expert input to the Court regarding: (i) South Africa's international obligations to prosecute international crimes and (ii) the legality of blanket amnesties under international and regional law relevant to this case.
- 6 SALC was admitted as an *amicus curiae* in the proceedings held at the High Court of South Africa (Gauteng Division, Pretoria). It therefore has played a role in bringing the international criminal justice perspective on this matter since its inception.
- 7 In view of the above, SALC is an interested party in these proceedings and wishes to act as an *amicus curia*.

## SALC's proposed contribution

8 SALC's proposed contribution will address:

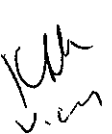
- 8.1 The Appellant's claim that the delay in prosecuting him violates his constitutional right to a speedy trial and, as such, the National Director of Public Prosecutions is foreclosed from prosecuting him;
- 8.2 The Appellant's claim that he has a right to a stay of prosecution because of an alleged amnesty granted to him prior to the end of apartheid and/or based on a de facto amnesty evidenced by the delay in the prosecution; and
- 8.3 South Africa's obligation under international criminal law to prosecute international crimes, including the crime of apartheid.

9 SALC's arguments will be premised on the following principles:

- 9.1 South Africa's constitutional obligations to comply with international law;
- 9.2 The fact that the crimes of which the Appellant has been accused amount to the crime against humanity of apartheid; and/or the crime against humanity of persecution on racial or political grounds; and/or the crime against humanity of murder;
- 9.3 The legality of blanket amnesties in international law; and
- 9.4 The extent to which the right to a speedy trial applies in cases of international criminal law in light of the fact that very often these cases are brought long after the occurrence of the alleged crime

**SALC's position if admitted as an *amicus curiae***

- 10 SALC will demonstrate, as submitted in the proceedings before the Court *a quo*, that since the facts in this case qualify for the Appellant to be indicted for crimes against humanity, any application of a blanket amnesty in this matter is inconsistent with international, regional and South African law.
- 11 SALC will provide an overview of the unlawfulness of applying blanket amnesties in relation to international crimes such as crimes against humanity and grave human rights violations.
- 12 SALC's submissions will:
  - 12.1 Demonstrate that the asserted amnesty by the Appellant constitutes a blanket amnesty and does not qualify as an amnesty under the Promotion of National Unity and Reconciliation Act 34 of 1995;
  - 12.2 Show that this Court has the power to review, invalidate and/or limit such amnesty as it is asserted by the Appellant;
  - 12.3 Demonstrate that, South Africa's obligations under international law to prosecute international crimes, preclude the Appellant from claiming that the prosecution against him violates his right to a speedy trial;
  - 12.4 Provide jurisprudence by international and regional courts regarding the unlawfulness of applying blanket amnesties to international crimes such as crimes against humanity and grave human rights violations; and
  - 12.5 Thereby show that if the asserted amnesty in this matter exists, that such amnesty cannot apply in relation to the crimes of which the Appellant has been accused.



## Relevance of SALC's submissions to the proceedings

- 13 No other party or *amicus curiae* has addressed regional and international law principles relating to the issue of blanket amnesties, international crimes and grave human rights violations, and South Africa's obligations in relation thereto.
- 14 In addition, the *court a quo* briefly addressed international law in its judgment. It is necessary to explicate these principles and ensure that the Court has a thorough presentation of this area of law, which SALC, as experts in international law, is uniquely placed to do.
- 15 This information is relevant to the obligation of South African courts, as set out in section 39(b) of the Constitution, to consider international law when interpreting the Bill of Rights. SALC's specialised knowledge in this regard will therefore be useful to the Court and different from those of the other parties.
- 16 SALC, therefore, requests written consent from your clients for it to be admitted as an *amicus curiae*.
- 17 If consent is given to our request, please notify us in writing as soon as possible, preferably by **22 July 2020**. If SALC is admitted as an amicus, it will seek permission to make written and oral submissions on the matters identified in paragraphs 10-12 above.
- 18 Please also ensure that all further notices, pleadings and documents filed with the Supreme Court of Appeal are served on Lawyers for Human Rights electronically. I further authorise service by email addressed to [charne@lhr.org.za](mailto:charne@lhr.org.za).
- 19 We look forward to hearing from you.

Yours sincerely,

**LAWYERS FOR HUMAN RIGHTS**



Per:



---

**Wayne Ncube**

Attorney

LHR (Johannesburg Law Clinic)

Heerengracht Building, 4<sup>th</sup> Floor

87 De Korte Street

Johannesburg

**TEL:** (011) 339 1960

**FAX:** (011) 339 2665

**EMAIL:** (please copy all emails to: [charne@lhr.org.za](mailto:charne@lhr.org.za))

**ENQ:** Charné Tracey



KRK 3

Thursday, July 30, 2020 at 09:51:45 South Africa Standard Time

**Subject:** FW: REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE IN RE: JOAO RODRIGUES V THE NATIONAL DI-RECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019)  
**Date:** Thursday, 23. July 2020 at 12:24:16 South Africa Standard Time  
**From:** Charne Tracey  
**To:** Suzgo Lungu, Atilla Kiska  
**CC:** Wayne Ncube  
**Category:** Timol  
**Attachments:** image002.jpg, image003.png, LHR letter dated 23 July 2020 BM Attorney.pdf

Dear Suzgo and Atilla,

The above bears reference.

Please see the response from Webber Wentzel below as well the attached correspondence from Ben Minaar Attorneys.

Best,

**Charné Tracey**

**Detention Monitoring Unit/Strategic Litigation Programme**

-----  
**Johannesburg Office & Law Clinic** Tel: (011) 339 1960  
4<sup>th</sup> Floor, South Point Building Fax: (011) 339 2665  
87 De Korte Street [www.lhr.org.za](http://www.lhr.org.za)  
Johannesburg 2001

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**From:** Moray Hathorn <moray.hathorn@webberwentzel.com>

**Sent:** Wednesday, 22 July 2020 21:54

**To:** Charne Tracey <Charne@lhr.org.za>

**Subject:** RE: REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE IN RE: JOAO RODRIGUES V THE NATIONAL DI-RECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019)

Dear Madam

Our client Mr Imtiaz Cajee consents to your client the Southern Africa Litigation Centre intervening as an amicus curiae in this matter.

Krk  
v.m

Yours sincerely

**Moray Hathorn | Consultant**

T: +27115305539 | M: +27630030640 | [moray.hathorn@webberwentzel.com](mailto:moray.hathorn@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

We have a dedicated [website page](#) to help our clients navigate through all of the legal & commercial challenges that arise from the COVID-19 outbreak, as well as government regulations to contain it.

**WEBBER WENTZEL**

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African Law Firm of the Year (African Legal Awards, 2019) & Legal DealMakers of the Decade (DealMakers, 2020)

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---

**From:** Charne Tracey [<mailto:Charne@lhr.org.za>]

**Sent:** 16 July 2020 11:34

**To:** [benjaminnaar@gmail.com](mailto:benjaminnaar@gmail.com); [gpseleka@gmail.com](mailto:gpseleka@gmail.com); [Lucien@lrc.org.za](mailto:Lucien@lrc.org.za); Moray Hathorn

**Cc:** Atila Kisla; Suzgo Lungu; Wayne Ncube; Kaajal Ramjathan-Keogh; [info@mkhontongwenyainc.co.za](mailto:info@mkhontongwenyainc.co.za); [munier@hrsattorneys.co.za](mailto:munier@hrsattorneys.co.za); [elsie@mchunu.co.za](mailto:elsie@mchunu.co.za)

**Subject:** REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE IN RE: JOAO RODRIGUES V THE NATIONAL DI-RECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019)

Dear All,

Please find the attached letter for your attention.

Best,

**Charné Tracey**

**Detention Monitoring Unit/Strategic Litigation Programme**

---

**Johannesburg Office & Law Clinic Tel: (011) 339 1960**

4<sup>th</sup> Floor, South Point Building

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87 De Korte Street

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Johannesburg 2001

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KRK 4

BEN MINNAAR ATTORNEYS

190 MELT MARAIS STREET

WONDERBOOM AH X 1

PO BOX 15774

SINOVILLE

0129

PRETORIA

Tel: 0824462644

23 July 2020

---

Enq: B MINNAAR

Our Ref: BM/01/09/18

Email: benjaminnaar@gmail.com

Your Ref: Unknown

---

e-mail: [charne@lhr.org.za](mailto:charne@lhr.org.za)

Attention: Wayne Ncube

Lawyers for Human Rights

87 De Korte Street

Braamfontein

Dear Sir,

**REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE: APPEAL J RODRIGUES TO SCA**

We received your request dated 16 July 2020 and considered your client's argument for intervention.

It should however be noted that your client already argued an application to intervene as *amicus curiae* before the trial court in this matter and after due consideration the honourable Moshi J refused the application to join the proceedings.

The arguments in your request are essentially what was previously argued by your client and we hold the view that it will not add any value to the case to be argued in the Supreme Court of Appeal.

There are four very competent counsel that will argue on behalf of the National Directorate of Public Prosecution and on behalf of the Minister of Justice. The above counsel will adequately present the interest of the State in these proceedings.

BENJAMIN MINNAAR, B PROC, UP

KRK  
V. min

The family of the late A Timol is also represented by two Counsel that have been involved in this inquest from the start and who are extremely well versed in the facts, as well as the legal position and who are competent to argue the matter on behalf of the family.

We therefore hold the view that your client's intervention will only serve to delay the proceedings without bringing any new arguments for consideration.

Regards

A handwritten signature in black ink, appearing to be 'B Minnaar', written in a cursive style.

B Minnaar

# LAWYERS FOR HUMAN RIGHTS

KRK5

Johannesburg Law Clinic  
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Braamfontein, 2001

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24 July 2020

- ATTN: Ben Minnaar Attorneys**  
Attorneys for the Applicants  
By email: [benjaminnaar@gmail.com](mailto:benjaminnaar@gmail.com)
- CC: The State Attorney**  
Attorney for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents  
By email: [gpseleka@gmail.com](mailto:gpseleka@gmail.com)
- CC: Legal Resources Centre**  
Attorneys for the 4<sup>th</sup> Respondent  
By email: [Lucien@lrc.org.za](mailto:Lucien@lrc.org.za)
- CC: Webber Wentzel**  
Joint Attorneys for the 4<sup>th</sup> Respondent  
By email: [moray.hathorn@webberwentzel.com](mailto:moray.hathorn@webberwentzel.com)
- CC: Mkhonto Ngwenya Inc.**  
By email: [info@mkhontongwenyainc.co.za](mailto:info@mkhontongwenyainc.co.za)
- CC: Haffagee Roskam Savage Partners**  
By email: [munier@hrsattorneys.co.za](mailto:munier@hrsattorneys.co.za)
- CC: Mchunu Attorneys**  
By email: [elsie@mchunu.co.za](mailto:elsie@mchunu.co.za)

Dear Madam / Sir

**RE: APPLICANT'S RESPONSE TO SOUTHERN AFRICA LITIGATION CENTRE'S REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE IN RE: JOAO RODRIGUES V THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS (APPEAL COURT CASE NUMBER: 1186/2019)**

Wayne Ncube LLB (NMMU) LLM (Wits);  
Jessica Lawrence LLB (UJ)

KRK  
v. 1186

- 1 We refer to your letter dated 23 July 2020 in which you hold the view that our client's intervention will only serve to delay the proceedings without bringing any new arguments for consideration before the proceedings at the Supreme Court of Appeal of South Africa ("SCA"). Based on the erroneous and unfounded grounds on which you withhold your consent, we are urged to respond and correct the inaccuracies in your letter.
- 2 The Southern Africa Litigation Centre ("SALC") did not apply to intervene at the "trial court" level and was never rejected as claimed in your letter. SALC requested to intervene in the court *a quo*, the High Court of South Africa (Gauteng Local Division, Johannesburg), and was admitted as the seventh *amicus curiae*. In addition, SALC made oral argument at the hearing before the court *a quo*.
- 3 Your letter further references a judge named "Moshi" as being involved in the proceedings before the court *a quo*. Please note that there was no judge involved in any of the related matters by the name of "Moshi". You appear to have erred in citing the name of Moshidi J, who was one of three judges who constituted the full bench in the court *a quo*. If this is the case, it is regrettable that you are unable to cite Moshidi J's name correctly. As set out, Moshidi J, together with Justices Opperman and Kollapen, not only admitted our client as an *amicus curiae* but thanked our client for its intervention. It may also be that you are mistakenly referring to the 2017 inquest before Mothle J in your letter dated 23 July 2020. SALC did not seek to participate in the inquest in any manner. Therefore, if you intended to refer to the inquest, it is simply wrong to state that SALC sought permission to intervene as an *amicus curiae* and was denied.
- 4 Your assertion that SALC's arguments were previously raised and therefore will not add any value to the case before the SCA is similarly incorrect. It is the very nature of the appeal process that arguments are rehearsed before the courts as a matter proceeds. Moreover, the applicant himself is, in fact, making an argument regarding an alleged blanket amnesty, which was only mentioned as an aside at the High Court proceedings. SALC's intervention would respond, inter alia, to that issue, making this submission by definition useful to the court. The summary of SALC's proposed submission is set out in our letter dated 16 July which you are purportedly responding to.
- 5 You further state that the interests of the state are competently represented by the counsel in these proceedings. SALC's submission does not seek to represent the interests of the state but to guide the court regarding the principles of international law, thereby fulfilling the mandate of an *amicus curiae* as envisaged in terms of rule 16 of the Rules regulating the Conduct of the Proceedings of the SCA ("Rules of the SCA").
- 6 In addition, an application in terms of rule 16 of the Rules of the SCA does not extend the time limits in the application process. Therefore, it is also incorrect to state that such an application would delay the proceedings.
- 7 Overall, it is clear that you withhold your consent on erroneous and unfounded grounds, which is regrettable. If admitted as *amicus curiae*, SALC's submissions will be useful to the court and are different from the submissions of the other parties.
- 8 We look forward to hearing from you.



Yours faithfully

**LAWYERS FOR HUMAN RIGHTS**

Per:



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**Wayne Ncube**

Attorney

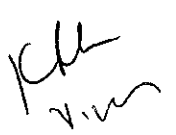
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**ENQ:** Charné Tracey





KRK 6

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24 July 2020

---

Enq: B MINNAAR

Ref:

Email: benjaminnaar@gmail.com

---

e-mail: [charne@lhr.org.za](mailto:charne@lhr.org.za)

Attention: Wayne Ncube

Lawyers for Human Rights

87 De Korte Street

Braamfontein

Dear Sir,

**REQUEST FOR CONSENT TO INTERVENE AS AN AMICUS CURIAE: APPEAL J RODRIGUES TO SCA**

I tender my apologies for the incorrect draft document that was forwarded to you, it was based on an incorrect reading of the judgement and had spelling mistakes.

It is in fact correct that your client was admitted as the seventh amicus and that its argument was presented in court.

We do not object to the application by your client and will abide by the Court's ruling in this regard.

We apologies for any inconvenience caused by this oversight.

Regards



B Minnaar

BENJAMIN MINNAAR, B PROC, UP

*Handwritten initials/signature*