

**COURT ONLINE COVER PAGE**

**IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Pretoria**

**CASE NO: 2025-005245**

In the matter between:

**LUKHANYO BRUCE MATTHEWS  
CALATA ,ALEGRIA KUTSAKA NYOKA  
,BONAKELE JACOBS ,FATIEMA  
HARONMASOET ,TRYPHINA  
NOMANDLOVU MOKGATLE ,KARL  
ANDREW WEBER ,KIM TURNER  
,LYNDENE PAGE ,MBUSO KHOZA  
,NEVILLE BELING ,NOMBUYISELO  
MHLAULI ,SARAH BIBI LALL  
,SIZAKELE ERNESTINA SIMELANE  
,SINDISWA ELIZABETH MKONTO  
,STEPHANS MBUTI MABELANE ,THULI  
KUBHEKA ,HLEKANI EDITH RIKHOTSO  
,TSHIDISO MOTASI ,NOMALI RITA  
GALELA ,PHUMEZA MANDISA HASHE  
,MKHONTOWESIZWE GODOLOZI  
,MOGAPI SOLOMON TLHAPI  
,FOUNDATION FOR HUMAN RIGHTS**

**Plaintiff / Applicant / Appellant**

and

**GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA,PRESIDENT OF THE  
REPUBLIC OF SOUTH  
AFRICA,MINISTER OF JUSTICE AND  
CONSTITUTIONAL  
DEVELOPMENT,NATIONAL DIRECTOR  
OF PUBLIC PROSECUTIONS,MINISTER  
OF POLICE,NATIONAL COMMISSIONER  
OF THE SOUTH AFRICAN POLICE  
SERVICE**

**Defendant / Respondent**

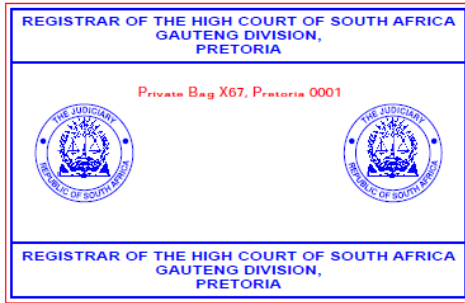
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**Founding Affidavit**

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Division,Pretoria**

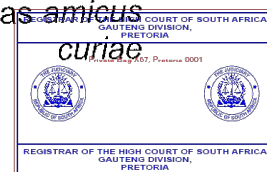
IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

Case No: 5245/25

In the application of:

**HELEN SUZMAN FOUNDATION**

Applicant for leave to  
intervene as *amicus*



In the matter between:

**LUKHANYO BRUCE MATTHEWS CALATA**

First Applicant

**ALEGRIA KUTSAKA NYOKA**

Second Applicant

**BONAKELE JACOBS**

Third Applicant

**FATIEMA HARON MASOET**

Fourth Applicant

**TRYPHINA NOMANDLOVU MOKGATLE**

Fifth Applicant

**KARL ANDREW WEBER**

Sixth Applicant

**KIM TURNER**

Seventh Applicant

**LYNDENE PAGE**

Eighth Applicant

**MBUSO KHOZA**

Ninth Applicant

**NEVILLE BELING**

Tenth Applicant

**NOMBUYISELO MHLAULI**

Eleventh Applicant

**SARAH BIBI LALL**

Twelfth Applicant

**SIZAKELE ERNESTINA SIMELANE**

Thirteenth Applicant

**SINDISWA ELIZABETH MKONTO**

Fourteenth Applicant

**STEPHANS MBUTI MABELANE**

Fifteenth Applicant

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**THULI KUBHEKA**

Sixteenth Applicant

**HLEKANI EDITH RIKHOTSO**

Seventeenth Applicant

**TSHIDISO MOTASI**

Eighteenth Applicant

**NOMALI RITA GALELA**

Nineteenth Applicant

**PHUMEZA MANDISA HASHE**

Twentieth Applicant

**MKHONTOWESIZWE GODOLOZI**

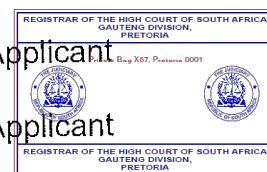
Twenty-First Applicant

**MOGAPI SOLOMON TLHAPI**

Twenty-Second Applicant

**FOUNDATION FOR HUMAN RIGHTS**

Twenty-Third Applicant



and

**GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

First Respondent

**AFRICA, PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Second Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

Third Respondent

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Fourth Respondent

**MINISTER OF POLICE**

Fifth Respondent

**NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Sixth Respondent

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**FOUNDING AFFIDAVIT**

**APPLICATION TO BE ADMITTED AS *AMICUS CURIAE***

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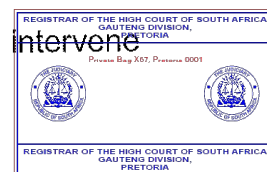
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I, the undersigned,

**NASEEMA FAKIR**

do hereby make oath and say that:

- 1 I am an adult and the Executive Director of the Helen Suzman Foundation, the applicant for admission as *amicus curiae* (**HSF**). I confirm that I am duly authorised to depose to this affidavit on behalf of HSF for leave to intervene as *amicus curiae*.



- 2 The facts contained in this affidavit are within my personal knowledge, save where the contrary appears from the context or it is otherwise stated, and are to the best of my belief true and correct.
- 3 Where I deal with questions of law, I do so on the advice of HSF's legal representatives.

**PARTIES**

- 4 The Applicant is the Helen Suzman Foundation a non-governmental organisation situated at North Block, La Val Office Park, 45 Jan Smuts Avenue, Westcliff, Gauteng. A resolution by HSF will be filed with the Court on request.
- 5 The parties in the main application are as set out in the founding affidavit to the main application.

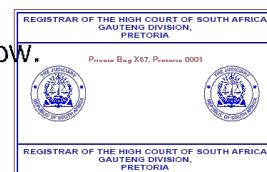
**OVERVIEW AND TIMING**

- 6 This is an application in terms of Rule 16A(6) of the Uniform Rules of Court (**Uniform Rules**), for the admission of HSF as *amicus curiae* in the main

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application. The main application has been brought by the family members of the victims of apartheid-era atrocities, together with the Foundation for Human Rights.

- 7 HSF believes that it is able to provide useful and novel submissions that will assist the Court in the main application, and wishes to intervene as *amicus curiae* to do so. It therefore seeks this Court's authorisation to make both written and oral submissions to the Court on the issues set out below.



*Timing of this amicus application*

- 8 I am advised that in terms of Rule 16A of the Uniform Rules, an applicant raising a constitutional issue in an application or action shall give notice thereof to the registrar at the time of filing of the application. The registrar is then required to place such notice on the notice board designated for that purpose. The main application was launched, together with a Notice in terms of Rule 16A(1), on 17 January 2025.
- 9 HSF directed a request for consent to intervene as *amicus curiae* to the applicants and the respondents on 14 February 2025, this being within the 20-day time frame provided for by Rule 16A(2). I attach a copy of this correspondence as **NF1**.
- 10 On 17 February 2025, the applicants consented to HSF's intervention. I annex the correspondence from their attorneys as **NF2**.
- 11 As at the date of deposing to this affidavit, HSF's attorneys are yet to receive any reply from the respondents. I do however note that whilst the respondents

had all initially filed notices of opposition through the offices of the State Attorney, I understand that all but the fourth respondent (the National Director of Public Prosecutions) have withdrawn their notices of opposition

- 12 I am advised that, in terms of Rule 16A(5) the Uniform Rules, if an applicant for admission as *amicus curiae* is unable to obtain the written consent contemplated in Rule 16A(2), the applicant may, within 5 days of the expiry of the 20-day period, apply to the court to be admitted as an *amicus curiae* in the proceedings. It is accordingly necessary for HSF to bring this application for its admission as *amicus curiae*.



- 13 On a strict reading of the Rule, HSF was required to have applied to the court to be admitted as an *amicus curiae* on 21 February 2025. The circumstances surrounding the delay are as follows:

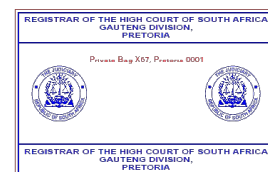
- 13.1 All but the fourth respondent withdrew their notices of opposition on 18 and 19 February 2025, respectively. I attach the notices of withdrawal as **NF3**.
- 13.2 The second respondent made public comments to the effect of the notices of withdrawal. I attach a copy of the news article, dated 26 February 2025, as **NF4**.
- 13.3 In light of the above factual developments, HSF was uncertain whether the matter was going to continue or whether the parties were going to consider a settlement.
- 13.4 Despite the uncertainty regarding the future of the case, HSF has decided to apply to intervene as *amicus* in order not to unduly delay the matter.

*P YW*

13.5 In summary, I submit that there is a reasonable explanation for HSF's failure to comply with Rule 16A and I pray that the delay in bringing this application be condoned.

13.6 The fourth respondent has not yet filed answering papers. In those circumstances, I respectfully submit that the parties to the application will not suffer any prejudice as a result of HSF's non-compliance with Rule 16A.

14 In what follows, I canvass:



14.1 HSF's locus standi and interest in this matter;

14.2 An overview of HSF's submissions, namely:

14.2.1 The right to truth;

14.2.2 The right to truth in customary international law;

14.2.3 Truth-seeking as a core component of the TRC;

14.2.4 The duty to prosecute crimes against humanity domestically.

14.3 The relief sought.

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

15 HSF is an independent and not-for-profit institute, dedicated to promoting constitutional democracy, human rights, and the rule of law in South Africa. HSF engages in various activities, including research, publications, litigation, and submissions to the South African Parliament. It advocates for policies and governmental action that will translate the aspirations of the South African



Constitution into reality for all who live in South Africa, emphasising the importance of good governance, transparency, and accountability.

- 16 HSF is not aligned with any political party but actively participates in public debates to uphold constitutional values. HSF's key focus areas include preservation of the rule of law, defence of Constitutional and international law rights, as well as the importance of truth seeking as a foundational value.

- 17 HSF regularly participates in public interest litigation both as a party as well as an *amicus curiae*. In this regard some of the recent matters in which HSF has participated include:



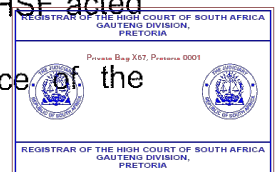
- 17.1 *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* (CCT 52/21) [2021] ZACC 28 where HSF intervened as *amicus curiae* regarding, inter alia, the public's right to the truth and the importance of the establishment of a commission of inquiry as part of the remedy of reparations for serious human rights violations.
- 17.2 *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 490, involving the withdrawal of the Zimbabwe Exemption Permit. HSF successfully litigated this matter as co-applicant through to the Constitutional Court.
- 17.3 *Helen Suzman Foundation v Judicial Service Commission* (CCT289/16) [2018] ZACC 8, concerning the disclosure of the record of deliberations by the JSC. HSF successfully litigated this matter in multiple *fora*, including the

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Constitutional Court highlighting important principles of truth and accountability.

17.4 *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* [2018] ZACC 23 where HSF acted as *amicus curiae* in the litigation concerning Mr Nxasana's removal as Director of the NDPP.

17.5 *McBride v Minister of Police and Another* [2016] ZACC 30 where HSF acted as *amicus curiae* in proceedings concerning the independence of the Independent Police Investigative Directorate.



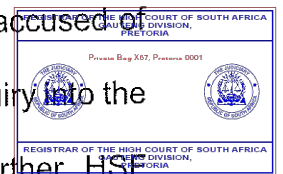
17.6 *Minister of Justice and Constitutional Development and others v Southern African Litigation Centre* [2016] 2 All SA 365 (SCA) where HSF acted as *amicus curiae* in the litigation concerning Mr Al Bashir's safe passage in and out of the country despite being subject of warrants of arrest issued by the International Criminal Court.

18 The litigation in the main application falls directly within HSF's mandate and areas of focus. HSF is well-equipped to deal with the issues raised and to provide valuable and unique assistance to the Court as *amicus curiae*.

19 HSF frequently acts in defence of constitutional and human rights, and the rule of law. In accordance with its mandate, it has focused on the need to foster deliberative, reasoned decision making by government and institutions in South Africa, and the importance of truth as a constitutional ideal. The main application impacts upon all of these issues.

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20 In particular, HSF has been deeply involved in the unfinished business of the the Truth and Reconciliation Commission (**TRC**). It seeks to intervene in the application in order to highlight the importance of completing the work of the TRC and to demonstrate that this is necessary to give effect *inter alia* to the public's right to the truth and the realisation of constitutional ideals around reconciliation and the recognition of the injustices of the past. This is achieved, HSF believes, through the investigation and prosecution of those accused of apartheid-era crimes and the establishment of a commission of inquiry into the failure of the State to investigate and prosecute these crimes. Further, HSF shall advance that it is critical that crimes against humanity, of which apartheid is an example, must be prosecuted domestically – this being a domestic obligation as well as an international law one.



- 21 Pursuant to its consideration of the papers filed to date, HSF is of the view that it can present a relevant but different perspective to that of the parties in the application, and thereby can assist the Court in the determination of the matter.
- 22 Consequently, HSF has met the requirements for admission as *amicus curiae*.

## OVERVIEW OF HSF'S PROPOSED SUBMISSIONS

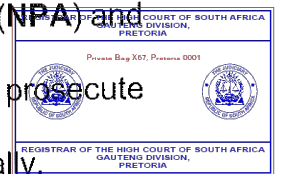
23 HSF wishes to advance the following broad submissions, against which it will submit the issues in the main application fall to be determined:

- 23.1 First, the right to truth is an essential component of constitutional rights and customary international law;

23.2 Second, the role of truth seeking is part of the core objectives of the *Promotion of National Unity and Reconciliation Act*, 1995 (the **TRC Act**);

23.3 Third the establishment of a commission of inquiry into the suppression of the investigation and prosecution of apartheid-era cases is necessary to give effect to the right to truth and the objects of the TRC Act;

23.4 Fourth, there is a duty resting on the National Prosecuting Authority (**NPA**) and the South Africa Police Service (**SAPS**) to investigate and prosecute international crimes, including Crimes Against Humanity, domestically.



23.5 Fifth, it is relevant to consider comparative state practices where truth and reconciliation commissions have recommended prosecutions.

24 I summarise in further detail below the content of each these submissions, which HSF intends to develop should it be permitted to intervene as *amicus curiae*.

**The first principle: The right to truth under the Constitution and customary international law**

*The right to truth under the Constitution*

25 The right to truth emerges from a number of Constitutional rights and values. In HSF's view these constitutional rights and values include:

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- 25.1 The values of accountability and openness enshrined in section 1(d) of the Constitution.<sup>1</sup>
- 25.2 The right to dignity enshrined in section 10 of the Constitution.<sup>2</sup> Denial of the truth in matters of public concern undermines the right to human dignity as it violates the moral agency of individuals in our society.
- 25.3 The right to freedom of thought, opinion and belief is enshrined in section 15 of the Constitution.<sup>3</sup> Access to the truth in matters of public concern is essential for the full enjoyment of this right.
- 25.4 The interlinked rights to freedom of expression, political choice and assembly enshrined in sections 16, 17 and 19 of the Constitution.<sup>4</sup> Access to the truth in matters of public concern is essential for the full enjoyment of these rights.
- 25.5 The right of access to information enshrined in section 32 of the Constitution,<sup>5</sup> which covers access to any information held by the state, and any information held by any person, provided it is needed for the exercise or protection of




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<sup>1</sup> Section 1(d) of the Constitution provides that the Republic is required to have "a multi-party system of democratic government, to ensure accountability, responsiveness and openness."

<sup>2</sup> Section 10 of the Constitution provides that "[e]veryone has inherent dignity and the right to have their dignity respected and protected."

<sup>3</sup> Section 15(1) of the Constitution provides that "[e]veryone has the right to freedom of conscience, religion, thought, belief and opinion."

<sup>4</sup> Section 19(1) of the Constitution provides:

"Every citizen is free to make political choices, which includes the right—

(a) to form a political party;

(b) to participate in the activities of, or recruit members for, a political party; and

(c) to campaign for a political party or cause."

<sup>5</sup> Section 32(1) of the Constitution provides everyone has the right of access to "any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights". This right is given effect to by the Promotion of Access to Information Act 2 of 2000.

rights. Denial of the truth in matters of public concern undermines the right of access to information.

25.6 The right to an effective remedy for any infringement or threat to any right in the Bill of Rights enshrined in section 38 of the Constitution.<sup>6</sup> Access to the truth in cases of rights violations is essential for the enjoyment of the right to an effective remedy. Without access to the truth, it may be impossible to pursue any remedy for a rights violation.



26 The true facts pertaining to apartheid-crimes that are central to the main application remain hidden, either because the perpetrators did not disclose fully and truthfully before the TRC, or because they did not seek amnesty at all. Whilst the SAPS and NPA could have secured access to the truth, the applicants have made it plain in the founding affidavit that the truth was intentionally suppressed (or not pursued) with the consequence that the true facts remain hidden and will likely remain that way, absent the intervention of this Court.

27 HSF will submit that the suppression of information and extreme delays in prosecution of apartheid crimes goes against the right to truth, the right to an effective remedy, and the right (where appropriate) to reparations. It has

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<sup>6</sup> In *Fose v Minister of Safety and Security* [1997] ZACC 6; 1997 (7) BCLR 851; 1997 (3) SA 786 at para 69, the Court said:

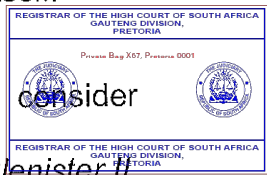
*"Given the historical context in which the interim Constitution was adopted and the extensive violation of fundamental rights which had preceded it, I have no doubt that this Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced."*

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resulted in a culture of impunity which is inconsistent with the foundational values of the Constitution in section 1(a) to (d).

*The right to truth in customary international law*

28 The right to truth is also bolstered by a consideration of South Africa's international law obligations. Together they conduce to an important principle: that failing to deal properly with historical injustice is an injustice in itself.

29 Section 39(1)(b) of the Constitution provides that courts *must* consider international law when interpreting the rights in the Bill of Rights. In *Glenister II*,the Court explained that the Constitution "*draws the obligations assumed by the State on the international plane deeply into its heart, by requiring the State to fulfil them in the domestic sphere*".<sup>7</sup> This includes customary international law, which has "*a higher rank in the international hierarchy than treaty law*".<sup>8</sup>

30 There is an emerging principle of customary international law that recognises a right to truth for serious human rights violations.<sup>9</sup>

31 While the contours of the right to truth under customary international law are still developing, a core of the right has crystallised.<sup>10</sup> This is that States have

<sup>7</sup> Sonke above n **Error! Bookmark not defined.** at para 45; citing *Glenister II* above n **Error! Bookmark not defined.** in at para 189.

<sup>8</sup> Sonke *ibid* at para 63; citing *Prosecutor v Anto Furundžija*, IT-95-17/1-T, § 153, ICTY 1998. Section 232 of the Constitution provides that "*customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament*."

<sup>9</sup> The right to truth falls under the umbrella right to know. See Groome "Principle 2: The Inalienable Right to Truth" in Handleman and Unger (eds) *United Nations Principles to Combat Impunity: A Commentary* (Oxford University Press, Oxford 2018) ("Groome") at 59. See further Groome, "The Right to Truth in the Fight Against Impunity" (2011) 29 *Berkeley Journal of International Law* 175 available at <http://scholarship.law.berkeley.edu/bjil/vol29/iss1/5>.

<sup>10</sup> Groome above at 59.

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an obligation to provide victims, those closely related to victims and the public with information about serious human rights violations.<sup>11</sup> The customary norm thus also recognises the right to truth as a collective right held by the public.<sup>12</sup> And, importantly, commissions of inquiry are considered a key mechanism for fulfilment of the obligation to provide the public with the truth.

- 32 An explicit recognition of the right to truth is found in the United Nations Principles on Impunity<sup>13</sup> (formulated in 1996) and the Updated Principles (updated in 2005).<sup>14</sup> The UN Principles on Impunity identify an inalienable right to the truth.<sup>15</sup> This was affirmed in the Updated Principles in Principle 2, which says:



*"Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise*

<sup>11</sup> See Naqvi "The right to the truth in international law: fact or fiction?" (2006) *International Review of the Red Cross* Volume 88 Number 862 ("Naqvi") at 260; and Groome *ibid* at 65.

<sup>12</sup> Naqvi *ibid*; and Groome *ibid*.

<sup>13</sup> Economic & Social Council (ECOSOC), Commission on Human Rights, The Administration of Justice and the Human Rights of Detainees, Annex 1 "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," U.N. Doc. E/CN.4/Sub.2/1996/18 (June 29, 1996) ("UN Principles on Impunity") available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/14/1/42/PDF/G9714142.pdf?OpenElement>.

<sup>14</sup> ECOSOC, Commission on Human Rights, Promotion and Protection of Human Rights: Impunity, Add. 1 "Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," Principle 2, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005) ("Updated Principles") available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

<sup>15</sup> Principle 1 provides: "Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through systematic, gross violations of human rights, to the perpetration of heinous crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of violations in the future."

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*of the right to the truth provides a vital safeguard against the recurrence of violations.” (emphasis added).*

- 33 Principle 2 explicitly recognises a collective right to truth held by the *public*, as distinguished from the right of victims to know the truth recognised in Principle 4. Moreover, Principle 5 of the Updated Principles provides that States must take effective measures to give effect to the right to truth. The same Principle specifies the use of commissions of inquiry to ascertain the truth in cases of massive or systemic human rights violations as an effective measure to give effect to the right to truth.



- 34 In a 2006 report on the right to truth, the Office of the UN High Commissioner for Human Rights,<sup>16</sup> concluded that:

*“[T]he right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations.” (our emphasis)*

- 35 There are also a number of UN resolutions that propound the right to truth and call for its protection. In 2005, the General Assembly of the United Nations passed a resolution on the Basic Principles on the Right to Reparation for

<sup>16</sup> Promotion and Protection of Human Rights: Study on the right to the truth. UN Doc E/CN.4/2006/91 (8 February 2006) (“UN study on the right to truth”) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement>.

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Victims.<sup>17</sup> The Resolution recognised a collective right to truth for human rights violations as a component part of the right to a remedy.<sup>18</sup>

36 In 2009, the Human Rights Council adopted a resolution on the right to truth, in which the Council recognised *"the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights"* and encouraged States to *"consider establishing specific judicial mechanisms and, where appropriate, truth and reconciliation commissions to complement the justice system, in order to investigate and address gross violations of human rights"*.<sup>19</sup> In 2013, the General Assembly adopted a resolution containing identical terms.<sup>20</sup>



37 In 2010, both the General Assembly and the Human Rights Council passed resolutions proclaiming an International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims.<sup>21</sup> And in 2011, the Human Rights Council passed a resolution establishing a Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence.<sup>22</sup>

<sup>17</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (16 December 2005) ("**Basic Principles on the Right to Reparation for Victims**") available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

<sup>18</sup> Ibid at paras 18, 22(b) and (e).

<sup>19</sup> Human Rights Council, Right to Truth, UN Doc A/HRC/12/L.27 (25 September 2009) at paras 1 and 4.

<sup>20</sup> General Assembly, Right to Truth, A/RES/68/165 (18 December 2013).

<sup>21</sup> General Assembly, Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims, A/RES/65/196 (21 December 2010); and Human Rights Council, Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims, A/HRC/RES/14/7 (17 June 2010).

<sup>22</sup> Human Rights Council, Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, UN Doc A/HRC/RES/18/7 (13 October 2011).

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- 38 These international law and soft law sources provide important evidence of the development of a customary norm. The crystallisation of a customary norm recognising a right to truth is further supported by the decisions of regional bodies and courts and by State practice at the national level.
- 39 At the regional level, the European Court of Human Rights has inferred a right to the truth as part of the prohibition against torture, the right to an effective remedy, and the right to an effective investigation.<sup>23</sup> The African Commission on Human and Peoples' Rights has similarly inferred a right to truth as part of the right to an effective remedy.<sup>24</sup>
- 40 The Inter-American Commission on Human Rights recognised a collective right to truth arising from the obligation to respect and ensure the enjoyment of the rights and freedoms recognised in the American Convention on Human Rights<sup>25</sup> and from the right to simple and prompt recourse for the protection of the rights enshrined in the Convention.<sup>26</sup> The Inter-American Commission has stated that "[e]very society has the inalienable right to know the truth about



<sup>23</sup> See Judgment of 25 May 1998, *Kurt v. Turkey*, Application No. 24276/94 at para 175, in which the ECtHR held that the authorities' failure to assist the applicant in establishing the truth about the whereabouts of her son violated the prohibition against torture enshrined in article 3 and the right to an effective remedy enshrined in article 13; Judgment of 14 November 2000, *Tas v. Turkey*, Application No. 24396/94 at paras 88-92, in which the ECtHR held that the authorities failure to conduct an investigation into the disappearance of the applicant's son in custody had violated the right to an effective remedy and the right to an effective investigation in terms of article 5 (right to liberty and security); and Judgment of 10 May 2001, *Cyprus v. Turkey*, Application No. 25781/94).

<sup>24</sup> African Commission on Human and Peoples' Rights "Principles and guidelines on the right to a fair trial and legal assistance in Africa" African Union Doc. DOC/OS(XXX)247, Principle C(b)(iii), available at <https://www.achpr.org/public/Document/file/English/achpr33guidefairtriallegalassistance2003eng.pdf>. Principle C(b)(iii) provides that the right to an effective remedy includes "access to the factual information concerning the violations".

<sup>25</sup> Organization of American States, American Convention on Human Rights, 22 November 1969.

<sup>26</sup> These rights are found in articles 1(1) and 25 of the American Convention on Human Rights. See Inter-American Commission, Report No. 1/99, of 27 January 1999, Case of *Lucio Parada et al. v. El Salvador*, at paras 148-158 available at <http://cidh.org/annualrep/98eng/Merits/ElSalvador%2010480.htm>.

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*past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future".<sup>27</sup> The Inter-American Court on Human Rights has also recognised a collective right to truth, stating that "[s]ociety has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future."<sup>28</sup>*

41 At the national level, an important indicator of the crystallisation of a customary norm is the establishment of truth commissions in numerous countries where systemic or mass human rights violations have been committed, to uncover the truth. As Professor Groome, a leading authority on the right to truth confirms, the proliferation of truth commissions demonstrates the "*near universal value*" placed on truth-seeking in respect of serious human rights violations.<sup>29</sup> South Africa, of course, has been at the forefront of these developments, with the TRC providing a model for truth commissions throughout the world.



42 Drawing on these principles, HSF intends to submit that our Constitution's commitment to truth-seeking is both confirmed and given deeper meaning by South Africa's international law commitments to the right to truth.

43 Moreover, section 233 of the Constitution enjoins the courts to interpret any legislation in a manner that is consistent with international law. In *Sonke*, this

<sup>27</sup> Inter-American Commission on Human Rights, annual Report 1985-1986, OEA/SER.L/V/II.68, Doc. 8 rev. 1, at 205 available at <http://www.cidh.oas.org/annualrep/85.86eng/toc.htm>.

<sup>28</sup> *Bámaca-Velásquez v. Guatemala* judgment of February 22, 2002 (Reparations and Costs) at para 77 available at <https://www.corteidh.or.cr/docs/casos/articulos/Serlec91ing.pdf>.

<sup>29</sup> Groome at 64.

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Court said: *"International law also offers useful interpretative guidance outside the sphere of Bill of Rights interpretation... Section 233 of the Constitution requires us, when interpreting any legislation, to prefer an interpretation that accords with international law."*<sup>30</sup> Therefore, the TRC Act itself must be interpreted in accordance with the customary right to truth.

### The second principle: Truth-seeking as a core component of the TRC

44 A core objective of the TRC Act, which established the TRC, was to create a complete picture of the nature and extent of the gross human rights violations committed during apartheid. Therefore, in its determination of the issues that arise in the main application, HSF will submit that the Court should consider the truth-seeking nature of the TRC, interpreted in the light of the constitutional and customary international law right to truth set out above.



45 The Preamble to the TRC Act provides that,

*"[I]t is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future"* (emphasis added)

46 The Preamble thus recognises a dual purpose to the TRC, namely the *establishment* of the truth, followed by the *publication* of the truth that is exposed. This vindicates the public's general right to know.

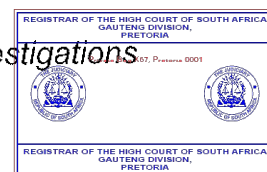
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<sup>30</sup> Sonke at para 70.

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47 The objectives of the TRC, as set out in section 3 of the TRC Act include:

47.1 *"establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings."*



47.2 *"facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act."*

47.3 *"establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them."*

(emphasis added)

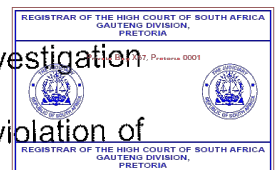
48 It can thus not be disputed that the core role and objective of the TRC is to investigate and establish the true facts pertaining to apartheid-era crimes. This is important not only for the victims and their families to have closure, but for the general public to have their right to know vindicated.

49 Axiomatically, where perpetrators of apartheid-era crimes do not seek amnesty, or do not disclose truthfully and fully, that key objective is thwarted.

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That is itself an injustice. However, the injustice is perpetuated and aggravated where the SAPS and the NPA fail to take steps, which they are empowered and required to do in law, to investigate and prosecute apartheid-era crimes. As a consequence, and given the absence of any viable civil law remedy, the truth is lost forever.

50 HSF intends to submit that the State has a duty to prosecute violations of human rights. Failure to prosecute individuals against whom an investigation has provided credible evidence of a violation, itself amounts to a violation of the 'right to truth' and 'right to know'. It also robs the victims or their families of access to an appropriate remedy and / or redress for such violations.



51 HSF further intends to advance that the investigation and prosecution of apartheid-era crimes is a continuum of the role and objectives of the TRC and not a process that stands separate from it. This view is consistent with the constitutional and international law submissions made above.

**The third principle: The importance of establishing a commission of inquiry to give effect to these principles**

52 In *Secretary of the Judicial Commission into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* 2021 (5) SA 1 (CC) the Constitutional Court held that:

*"In addition to the function of advising the President, a commission of inquiry may also serve the purpose of holding a public inquiry in respect of a matter of public concern. The purpose of a public hearing under those circumstances is to restore public confidence in the institution in which the matter that caused*

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concern arose. Here, the focus is not what the President decides to do with the findings and recommendations of a particular commission. Instead, the objective is to reveal the truth to the public pertaining to the matter that gave rise to public concern.”

53 One of the primary functions of a public commission of inquiry is fact-finding. They are convened in order to uncover the truth. In *Minister of Police and others v Premier of the Western Cape and Others*, the Constitutional Court held that in addition to advising the executive, a commission of inquiry serves this deeper public purpose. Most recently, the State Capture Commission has demonstrated that coercive powers of a commission of inquiry gives effect to constitutional rights and facilitates the uncovering of the truth.



54 HSF will submit that the establishment of a commission of inquiry is necessary to give effect to the right to the truth, in the light of the unfinished work of the TRC.

**The fourth principle: The duty to investigate and prosecute international law crimes domestically**

55 In respect of international law crimes and crimes against humanity (which include apartheid) there is a heightened obligation on the State to prosecute such crimes.

56 This principle was firmly established by the Constitutional Court in *National Commissioner of the South African Police Service v Southern African Human*



*Rights Litigation Centre and Another*<sup>31</sup> (“SAHRLC”). There the Court set out the following guiding principles:

56.1 South Africa was the first African state to domesticate the Rome Statute into national legislation. This was done in terms of section 231(4) of the Constitution through the enactment of the Implementation of the *Rome Statute of the International Criminal Court Act, 2002 (ICC Act)*. The international crimes over which the International Criminal Court (**ICC**) exercises jurisdiction, including the crimes against humanity of apartheid, are listed in schedule 1 to the ICC Act and have thus become statutory crimes in our domestic law.<sup>32</sup>



56.2 South Africa is under a heightened obligation to comply with its commitments in terms of the Rome Statute and the interpretation of the ICC Act must be consistent with that obligation.<sup>33</sup>

56.3 The international crimes of apartheid, even in the absence of binding international treaty law, require states to suppress such conduct because “*all states have an interest as they violate values that constitute the foundation of the world public order*”.<sup>34</sup>

56.4 Moreover,

*“The purpose of the power to prosecute international crimes in South Africa is to ensure that the perpetrators of such crimes do not go unpunished. In order*

<sup>31</sup> [2014] ZACC 30 (SAHRLC)

<sup>32</sup> SAHRLC at para 33.

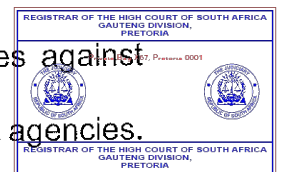
<sup>33</sup> *The Minister of Justice and Constitutional Development v The Southern African Litigation Centre* (867/15) [2016] ZASCA 17

<sup>34</sup> SAHRLC at para 37.

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*to achieve that purpose it is necessary for the National Director of Public Prosecutions to have the power not only to prosecute perpetrators before our Courts, but, to that end, to bring them before our Courts. This is also consistent with the constitutional requirement that the Implementation Act be construed in a way that gives effect to South Africa's international law obligations and the spirit, purport and objects of the Bill of Rights.*"<sup>35</sup>

56.5 South Africa's international law commitments to investigate crimes against humanity must be discharged through its domestic law-enforcement agencies.



56.6 SAPS's constitutional duties are outlined in section 205(3) of the Constitution which provides that:

*"The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."*

56.7 In *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC), the court held that *"it is equally clear that the national police service, amongst other security services, shoulders the duty to prevent, combat and investigate crime"*.

56.8 Section 16(1) of the *South African Police Service Act*, 1995 refers to crimes listed in section 16(2)(iA) that identifies national priority offences as the *"commission of any alleged offence mentioned in the Schedule"*. Item 4 of the schedule to the SAPS Act states that a national priority offence includes *"any*

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<sup>35</sup> Ibid, para 95

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offence referred to in Schedule 1 to the [ICC Act]". Item 1(f) of part 2 of schedule 1 to the ICC Act includes the crime against humanity of apartheid as a national priority offence that requires national prevention or investigation.<sup>36</sup>

56.9 The statutory designation of international crimes under the SAPS Act domesticated into our law by the ICC Act requires the SAPS to prioritise these types of crimes and indeed imposes a duty on it to do so.<sup>37</sup>

56.10 Therefore, SAPS has a duty to investigate crimes against humanity. That duty arises from the Constitution read with the ICC Act, which must be interpreted in relation to international law.<sup>38</sup>



57 HSF will submit that the findings of the Constitutional Court in SAHRLC apply with equal force to the present application and create a duty on the SAPS to take steps to investigate apartheid crimes.

58 In relation to the obligations on the NPA, section 179 of the Constitution establishes a single national prosecuting authority with the power to institute criminal proceedings on behalf of the State, and to carry out any necessary functions incidental to instituting criminal proceedings.<sup>39</sup> National legislation must be enacted to ensure that these functions are exercised without "*fear, favour or prejudice*".<sup>40</sup>

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<sup>36</sup> SAHRLC at para 54.

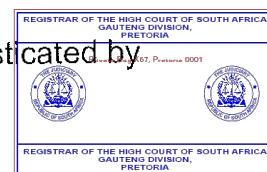
<sup>37</sup> SAHRLC at para 57.

<sup>38</sup> SAHRLC at para 55.

<sup>39</sup> Constitution, section 179(2)

<sup>40</sup> Constitution, section 179(4)

- 59 The national legislation in question is the *National Prosecuting Authority Act, 1998*. Considered holistically, the NPA Act obliges the prosecuting authority to prosecute crimes, including crimes against humanity. This is consistent with the principles set out above.
- 60 The failure by the State to investigate (through the SAPS) or to prosecute (through the NPA) is accordingly inconsistent with the Constitution, the NPA Act, as well as South Africa's international law obligations as domesticated by the ICC Act.
- 61 The important role which retrospective investigations play in preventing future violations has been recognised in United Nations Resolutions, such as that mandating the *Special Rapporteur on Summary Execution*, which reiterated that all States have an obligation to conduct exhaustive and impartial investigations... to identify and to bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent recurrence of such executions.<sup>41</sup>
- 62 The duty on the SAPS and the NPA is heightened by the nature of the crime of apartheid as a *jus cogens* norm entailing *erga omnes* obligations.

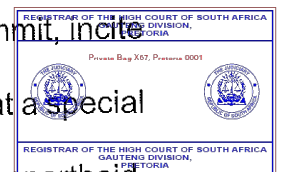



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<sup>41</sup> Human Rights Council Resolution 26/12 [HRC/res/26/12] (11 July 2014); See also: National Commissions of Inquiry in Africa; *Vehicles to Pursue Accountability for Violations of the Right to Life?* by Thomas Probert and Christof Heyns; Pretoria University Law Press 2020 at page 21.

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- 63 The Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 (**Apartheid Convention**) declares that apartheid is a crime against humanity and that “inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination” are international crimes (art. 1).<sup>42</sup> Under the Apartheid Convention, international criminal responsibility applies to individuals, members of organisations and representatives of the State who commit, incite or conspire to commit the crime of apartheid.<sup>43</sup> It was considered that a special international criminal court be established to try the crime of apartheid. However, in the end it was left to individual States to enact legislation that would enable them to prosecute apartheid criminals on the basis of a form of universal jurisdiction utilising their domestic law enforcement mechanisms.<sup>44</sup>
- 64 It is noted that no one was prosecuted for the crime of apartheid while apartheid lasted in South Africa and there have been no prosecutions of the leaders and/or agents of apartheid for the crime of apartheid.
- 65 Apartheid is codified in the Rome Statute as a crime against humanity. The prohibition of apartheid has reached an elevated status under international law which attracts universal obligations, through both its recognition as a *jus*



<sup>42</sup> John Dugard, "Convention on the Suppression and Punishment of the Crime of Apartheid", <https://legal.un.org/avl/pdf/ha/cspca/cspcae.pdf>. Apartheid Convention, article 1.

<sup>43</sup> Ibid. Apartheid Convention, article 3.

<sup>44</sup> Ibid. See articles 4 and 5 of the Apartheid Convention which allows State parties to prosecute non-nationals for a crime committed in the territory of a non-State party where the accused is physically within the jurisdiction of a State party.

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*cogens* norm, and a related obligation accruing to the international community (a norm *erga omnes*) in regard to racial discrimination generally.

66 The International Law Commission (the **Commission**) has viewed the prohibition of apartheid as a peremptory (*jus cogens*) norm of general international law and contended that the practice of apartheid would amount to “a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being”.<sup>45</sup> The Commission noted further that a general agreement is shared by States as to the peremptory character of the prohibition on apartheid and other norms at the Vienna Conference on the Law of Treaties and how apartheid has been prohibited by a treaty admitting of no exception.<sup>46</sup>



67 Accordingly, the prohibition on apartheid is widely considered to form part of customary international law and apartheid constitutes a “[f]lagrant violation of the purposes and principles of the [UN] Charter.”<sup>47</sup>

68 Despite its clear status as an international crime, the crime of apartheid has not been prosecuted at the international level.

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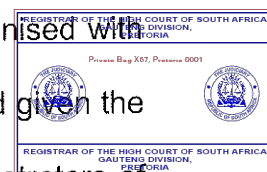
<sup>45</sup> See Responsibility of States for Internationally Wrongful Acts 2001, read with commentary on article 40 in the Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, *Yearbook of the International Law Commission* (2001) Vol. II, part two, pp. 112-113. See too the ILC’s work on Jus Cogens, GAOR, 74<sup>th</sup> session, Suppl.no 10 (A/74/10). <http://legal.un.org/ilc/reports/2019/english/Ch5pdf>.

<sup>46</sup> Ibid.

<sup>47</sup> *International Humanitarian Law Databases* (ICRC) (“ICRC Rules”), Rule 88; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep, § 131.

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69 Therefore, HSF will submit that prosecution must be accomplished at the domestic level. A remedy in the present context would require South Africa to prosecute individuals within its jurisdiction, including government officials, who have committed a serious breach of one of international law's most sacred norms – the prohibition of apartheid.<sup>48</sup> Such prosecutions would contribute to making full reparation for all the injury caused by apartheid's wrongful conduct, as the Truth and Reconciliation Commission of South Africa recognised with respect to apartheid in South Africa.<sup>49</sup> That obligation is heightened given the absence of an effective international law remedy against the perpetrators of apartheid-era crimes.



*The heightened obligations on account of the fact that certain apartheid-era crimes are “continuing crimes”*

70 A **continuing** international crime “is a violation of a primary obligation targeting a potentially ongoing situation that has been committed and then maintained”.<sup>50</sup>

71 Nissel employs the following, particularly relevant, analogy to distinguish between completed crimes and continuing crimes:<sup>51</sup>

<sup>48</sup> For a discussion of prosecution as a form of satisfaction, see Christina Hoss, “Satisfaction”, *Max Planck Encyclopedia of Public International Law* (2011), paras. 18-19. In South Africa, see in particular Catherine Jenkins, “After the Dry White Season: The Dilemmas of Reparation and Reconstruction in South Africa” *South African Journal on Human Rights* (15), 3, pp 415-485.

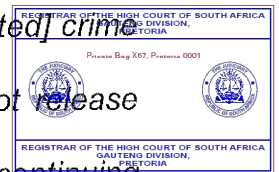
<sup>49</sup> Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (29 October 1998), Volume 5, p. 309.

<sup>50</sup> Alan Nissel, ‘Continuing Crimes in the Rome Statute’, 25 *Michigan Journal of International Law* (2004) 653, 661.

<sup>51</sup> *Ibid.*

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"To commit a continuing crime, the perpetrator must be in breach of a prohibition over a period of time. Enforced disappearance of persons, for example, takes time to commit - whether the disappearance is mere moments or endures for decades. *Thus, if a perpetrator kidnaps a victim, murders that victim secretly without revealing any information, (at least) two crimes were committed at the same time. The instant the victim was murdered, the perpetrator committed the [completed] crime of murder; additionally, so long as the perpetrator does not release information about the victim's whereabouts, the former is in continuing commission of the crime of enforced disappearance of persons.*"



72 As this example suggests, the crime of 'enforced disappearance' is the archetypal continuing crime. It involves not only the initial act of abducting, arresting or detaining a victim, rather, its defining feature is the continuing "refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts" of the victim.<sup>52</sup>

73 The continuing nature of 'enforced disappearances', and their devastating impact on both victims and their families, has been recognised by a number of international legal instruments, foreign courts and international human rights bodies.

73.1 In Article 17(1) of the 1992 Declaration on Enforced Disappearances, 'enforced disappearances' is "considered a continuing offence as long as the

<sup>52</sup> Schedule 1, Part 2, Paragraph 2(i), *Rome Statute Act* and Article 7(2)(i), *Rome Statute*



perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified”.

73.2 Article III of the Inter-American Convention on Forced Disappearance of Persons, states that the crime of ‘enforced disappearance’ “shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined”.

73.3 The 2006 International Convention on the Protection of All Persons from Enforced Disappearances takes note of the offence’s ‘continuous nature’ (article 8 and 24) in considering the issue of statutes of limitations.



74 Given that the crimes committed under apartheid included continuing crimes such as ‘enforced disappearances’ — the truth of which have never been revealed — HSF intends to submit that the obligations on the SAPS and the NPA are especially heightened.

#### **The fifth principle: learnings from comparative laws and state practices**

75 Finally, HSF will submit that the Court should consider comparative state practices where commissions have recommended prosecutions.

76 In this regard, section 39(1)(c) of the Constitution provides that when interpreting the Bill of Rights, a court “*may consider foreign law*”.<sup>53</sup>

77 Comparative practice demonstrates that commissions of inquiry may serve various purposes, including uncovering the truth, promoting national

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<sup>53</sup> See in this regard *S v Makwanyane* [1995] ZACC 3; 1995 3 SA 391 (CC) para 34.

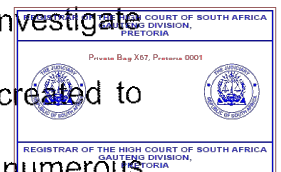
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reconciliation, and fostering accountability for past crimes. In addition, they provide vital evidence that supports prosecution, whether through national or international courts.

78 HSF may make reference *inter alia* to the following commissions:

78.1 The International Criminal Tribunal for Rwanda (ICTR),<sup>54</sup> 1994-2015:

Following the 1994 genocide, Rwanda established commissions to investigate the atrocities. The ICTR, supported by the United Nations, was created to prosecute those responsible for the genocide. The ICTR convicted numerous individuals involved in planning, executing, and inciting the genocide, including high-ranking officials. In addition to the ICTR, Rwanda's national courts also pursued prosecutions of genocide perpetrators.



78.2 The Truth and Reconciliation Commission in Sierra Leone, 2002-2004. Following the end of the civil war, a Truth and Reconciliation Commission was established in Sierra Leone to investigate war crimes and human rights violations committed during the conflict. The Report of the TRC led to the establishment of the Special Court for Sierra Leone<sup>55</sup> which prosecuted individuals responsible for atrocities.

78.3 In Argentina, the National Commission on the Disappearance of Persons (CONADEP) (1983–1984) was established after the end of Argentina's "Dirty War" which involved forced disappearances, torture and executions. The

<sup>54</sup> See ICTR Website: <https://unictr.irmct.org/>.

<sup>55</sup> See Special Court for Sierra Leone Website: <http://www.rscsl.org/>

Argentine government created CONADEP to investigate violations of human rights, resulting in the “Never Again” report. This report provided crucial evidence for the prosecution of military officers and others involved in forced disappearances.

78.4 Liberia’s Truth and Reconciliation Commission, 2006-2009,<sup>56</sup> investigated atrocities committed during its civil war, leading to the prosecution of persons involved in war crimes.



78.5 Following the end of the Pinochet dictatorship, Chile created the National Commission on Truth and Reconciliation to investigate human rights violations committed under the regime. The commission’s findings<sup>57</sup> provided important evidence that led to the prosecution of several former officials and military officers responsible for torture, extrajudicial killings, and other abuses during the dictatorship.

78.6 Guatemala established the Commission for Historical Clarification (1997-1999) to investigate violations of human rights during its civil war (1960–1996). The findings of the Commission<sup>58</sup> have played a significant role in the prosecution of individuals responsible for war crimes and genocide, including the genocide of the Maya people by the Guatemalan military.

<sup>56</sup> See <https://www.amnesty.org/fr/wp-content/uploads/2021/08/afr340072006en.pdf>.

<sup>57</sup> The Commission’s findings, known as the “Rettig Report” after its Chairperson, are available here: <https://www.usip.org/publications/1990/05/truth-commission-chile-90>.

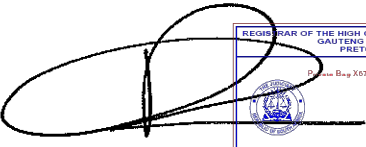
<sup>58</sup> See <https://www.cev.org.co/>.

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## CONCLUSION

79 Accordingly, HSF submits that it has satisfied the requirements for admission as *amicus curiae*.

80 I pray for the orders set out in the Notice of Motion to which this affidavit is attached.

  
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**NASEEMA FAKIR**  
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION,  
PRETORIA  
Practice Reg X57, Practising 0001

I certify that the deponent has acknowledged that she knows and understands the contents of this declaration and informed me that she does not have any objection to taking the oath and that she considers it to be binding on her conscience and that the deponent uttered the following words "I swear that the contents of this declaration are true, so help me God". I certify further that the provisions of Regulation R1258 of the 21st July 1972 (as amended) have been complied with.

Signed and sworn to before me at Johannesburg on this the 7<sup>th</sup> day of March 2025.

**YANN NGAMENI**  
Practicing Attorney  
45 Jan Smuts Avenue  
Johannesburg 2193  
Commissioner of Oaths  
Tel: 011 486 0242

  
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**COMMISSIONER OF OATHS**