



NAFISA DESAI (M4701)
Ex-officio MTP(SA)
Commissioner of Oaths (RSA)
13th Floor, Pheno House
73 Juta Street, Braamfontein


15/08/2013

CERTIFIED TRUE
COPY OF THE
ORIGINAL

"CMK1"041

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Braamfontein 2017
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e-mail: info@saha.org.za
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Former Women's Jail at Constitution Hill
Kotze Street, Johannesburg


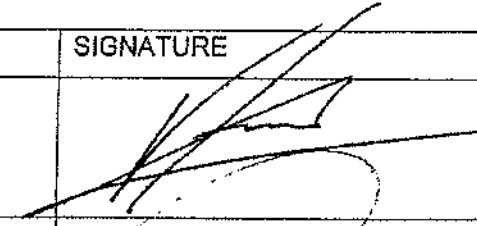

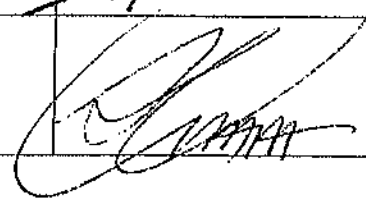
RESOLUTION BY THE TRUSTEES OF THE SOUTH AFRICAN HISTORY ARCHIVES TRUST (SAHA)

Pursuant to Clause 9.6 of the Deed of Trust

On 11 May 2013, it is authorised that:

1. The South African History Archives Trust ("SAHA") launch an application in the North Gauteng High Court with regard to the denial of a request for information in terms of section 75 of the Promotion of Access to Information Act¹ ("PAIA"). The information requested pertains broadly to the National Key Points Act² and more specifically to areas declared as National Key Points, Records of places and/or areas declared as National Key Points and bank statements of the special account for the safeguarding of National Key Points.
2. Attorneys Cliffe Dekker Hofmeyr Incorporated be appointed to represent SAHA in proceedings that will be instituted against the National Deputy Information Officer of the South African Police Service ("SAPS") and the Minister of Police in the North Gauteng High Court, and that the said attorneys be authorised to do all things necessary to represent SAHA as the applicant pursuant to litigation.
3. Catherine Kennedy be authorised to depose to an affidavit/application in the said pleadings on behalf of the trust and further that Catherine Kennedy be authorised to give such instructions from time to time as she may deem necessary to the attorneys appointed by SAHA in relation to the proceedings.

Signed on this the 11th day of May 2013.

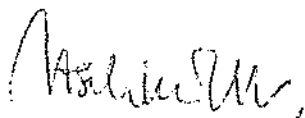

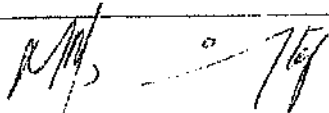
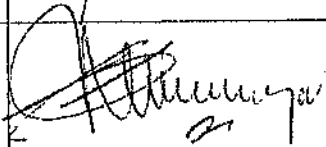

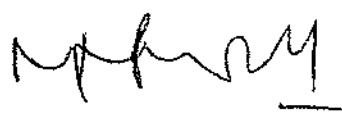
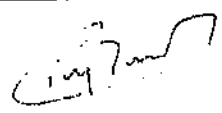
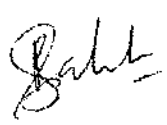
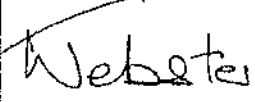
TRUSTEE	SIGNATURE	DATE OF SIGNATURE
VERNE HARRIS 		11/5/2013
SELLO HATANG 		11/5/2013

¹ No. 2 of 2000

² No. 102 of 1980

TRUSTEES: D Ntsebeza (Chairperson), H Kleinschmidt, L Callinicos, M Powell, R Saleh, C Rassool, MN Ntsebeza, V Harris, S Hatang, P Pigou, A Marlon (*ex officio*)

Non-Profit Organisation Registration No. 031-807-NPO
Non-Profit Trust No. 2522/93

TRUSTEE	SIGNATURE	DATE OF SIGNATURE
HORST KLEINSCHMIDT [REDACTED]		11.5.13
ANTHONY MANION [REDACTED]		11 - 05 - 2013
MN NIEFTAGODIEN [REDACTED]		11/05/13
DUMISA NTSEBEZA [REDACTED]		11/05/2013
PIERS PIGOU [REDACTED]		11/05/2013
MARLENE POWELL [REDACTED]		11/05/2013
CIRAJ RASSOOL [REDACTED]		11/05/2013
RAZIA SALEH [REDACTED]		11/05/2013
SPIRIDOULA WEBSTER (also known as Luli Callinicos) [REDACTED]		11.05.2013

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73 Juta Street, Braamfontein

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ORIGINAL

16/08/2013

TRUSTEES: D Ntsebeza (Chairperson), H Kleinschmidt, L Callinicos, M Powell, R Saleh, C Rassool,
MN Nieftagodien, V Harris, S Hatang, P Pigou, A Manion (ex officio)

Non-Profit Organisation Registration No. 031-807-NPO
Non-Profit Trust No. 2622/93

Draft NWG minutes: Friday 7 June 2013, 12h00

1. Attendance

PRESENT: Dale, Jane, Mishack, Hennie, Vini, Carina, Noshipho (Staff: Joanne, Mark, Bongani, Josie)
APPOLOGIES: , Alison, Murray, Zion, Nomvula (Nkwame, Tinashe)

We note that participation is a challenge, we had to wait 15 minutes to get quorum. As our meetings are fixed for 1st Friday of each month, at 12h00 all NWG members and staff should block the date.

2 Adoption of Minutes & Agenda

Minutes of 29 April 2013 were adopted on our email and circulated to structures.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

KNPA PAIA Request

Vini has secured pro-bono lawyers to act in a legal follow-up to our PAIA request with SAHA. The R2K National Working Group herewith resolves as follows:

- R2K will take legal action against the state, including the Ministry of Police and the South African Police Service, in relation to the refusal of R2K's request in terms of the Promotion of Access to Information Act.
- The R2K appoints as its attorneys Cliffe Dekker Hofmeyr, with due power and authority to act on behalf of R2K in relation to the legal action in terms of this PAIA request.
- Murray Hunter be authorized to depose to an affidavit/application in pleadings of the matter on behalf of the Campaign i.e to sign the affidavit on R2K's behalf. Further, that Vinayak Bhardwaj be authorized to give such instructions from time to time as they may deem necessary to the attorneys appointed by R2K in relation to the proceedings.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*This is a true copy of
the computer-generated
original version*

V. Bhardwaj

11/9/13

CONSTITUTION

of the

VOLUNTARY ASSOCIATION

known as

THE RIGHT2KNOW CAMPAIGN

(Abbreviation : The Right2Know/Right2Know/ R2K)

*This is a true copy of
the computer-generated
original version.*

V. Bhargava ✓ 1

29/8/13

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WHEREAS

- A. The Constitution of the Republic of South Africa (the Constitution) includes within its Bill of Rights, an entrenched Right of Access to Information, for which the Promotion of Access to Information Act No. 2 of 2000, as amended, makes detailed provision. The Constitution also contains a Right to Freedom of Expression.
- B. The Object of such rights is the right to know, which includes the right to transparency, accountability, a free and diverse media, effective governance affecting both public and private bodies, and the promotion of a human rights culture and social justice in South Africa.
- C. The Founder Members have resolved to establish an Association to advance the public interest in the achievement of this Object, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THE FOUNDERS HEREBY RESOLVE AND AGREE AS FOLLOWS:-

1. NAME

- 1.1 The name of the Association shall be:

**THE RIGHT2KNOW CAMPAIGN
(Abbreviation : The Right2Know/Right2Know/R2K)**

- 1.2 The Association shall have power at any time to change its name (and/or the acronyms "the, Right2Know and R2K") as may be deemed appropriate, subject to compliance with the formalities contemplated by clause 15 hereunder.

2. LEGAL STRUCTURE

- 2.1 The Association is constituted as a juristic person or body corporate, which is separate and distinct from its members and officers-bearers, and which shall continue to exist through "perpetual succession", notwithstanding periodic changes which may occur in the composition of its membership and/or the

identity of its officer-bearers.

- 2.2 The Association shall have the capacity to acquire rights, including ownership of assets; and to incur duties and liabilities; and enter into contracts, apart from its members and officers; with the right to sue and be sued in its own name.
- 2.3 As a duly constituted Non-Profit Organisation ("NPO"), the Association shall do all such things as may be necessary to procure its registration in terms of the Non-Profit Organisations Act, No. 71 of 1997, as amended. It shall also seek approval by the Commissioner for SA Revenue Service (SARS) for the fiscal status of a "Public Benefit Organisation" ("PBO"), as contemplated by Section 30 of the Income Tax Act, No. 58 of 1962, as amended; and for purposes of Section 18A of that Act.
- 2.4 As a Registered NPO and Approved PBO, the Association shall ensure that its income and property (including rights and assets), however derived, shall be applied solely towards the promotion of its Sole or Principal Object which constitutes a "Public Benefit Activity"; and no portion thereof shall be paid, transferred, or distributed, directly or indirectly, by way of dividend, bonus, or otherwise to its Members or Office-Bearers – provided that this provision shall not preclude the payment in good faith of reasonable remuneration to any such Member or Office-Bearer in return for services rendered. Save as aforesaid, no Member or Office Bearer shall have any right or interest in the property, assets, or interests of the Association by virtue of their Membership or Office.

3. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context clearly otherwise indicates:

- | | | |
|-----|------------------|---|
| 3.1 | "Association" | means this Voluntary Association, namely the Association which will be described as the "The Right2Know Campaign" |
| 3.3 | "Commissioner" | means the Commissioner for The South African Revenue Service ("SARS"). |
| 3.5 | "Income Tax Act" | means The Income Tax Act No. 58 of 1962, as amended. |
| 3.6 | "Minister" | means The Minister of Finance. |

- 3.7 "National Working Group" or "NWG" means the governance structure of the Association, which is to be constituted in accordance with clause 6, in order to exercise overall responsibility for the affairs of the Association, directly or indirectly by delegation to one or more of the Provincial Working Groups.
- 3.8 "National Summit" means the Annual General Meeting of the Association, which is to be convened from year to year, in accordance with Clause 10.
- 3.9 "National Membership" means those persons who are admitted to membership by being invited to attend the National Summit by the current NWG, in recognition of their concern and commitment to support the objects of the Association, and at the nomination of the relevant PWG. Such national membership shall be valid until the next national summit.
- 3.10 "Ninth Schedule" means the Ninth Schedule to the Income Tax Act, in terms of which "Public Benefit Activities" are listed and defined for purposes of section 30, and for purposes of section 18A of the Act; subject in each instance, to any such amendments or additions thereto as may from time to time be enacted or prescribed
- 3.11 "Nonprofit Organisations" means The Nonprofit Organisations Act, No. 71 of Act" 1997, as amended.
- 3.12 "Prescribed Fiscal in Conditions" means the provisions prescribed from time to time in terms of sections 30 and 18A of the Income Tax Act, as being applicable to Public Benefit Organisations approved by the Commissioner for purposes of exemption from income tax in terms of Section 10(1)(cN); and for purposes of the tax deductibility of grants and donations in terms of section 18A of the Act. Such provisions as are presently applicable as at the date of adoption of this Constitution being set forth in Schedule "B"

hereto; but being subject to any amendments or additions thereto as may from time to time be enacted or prescribed.

- 3.13 "Provincial Working Group" or "PWG" means a provincial governance structure of the Association, which is to be constituted from time to time in accordance with the provisions of clause 9, in order to exercise responsibility for the affairs of the Association in terms of its delegated mandate within the area of such delegation.
- 3.14 "Public Benefit Activities" means the activities designated as such in terms of the Ninth Schedule to the Income Tax Act and/or pursuant to a determination by the Minister in terms of section 30(1) of the Act.
- 3.15 "Public Benefit the Organisation" means an Organisation duly approved as such by Commissioner in terms of section 30 of the Income Tax Act.
- 3.16 "The Republic" means the Republic of South Africa.
- 3.17 The singular shall include the plural; and terms referring to persons shall include juristic persons; and *vice versa* in each instance.
- 3.18 Any reference to the Income Tax Act; the Nonprofit Organisations Act; or any other Statute mentioned or referred to hereunder, including the Schedules and Regulations applicable thereto, shall be deemed to denote such Statutes, Schedules, and Regulations, as they may be amended from time to time, including any legislation constituting a re-enactment or substitution thereof.

4. OBJECT, VISION AND PURPOSE

The Association shall be established for the following Object, Vision and Purpose, viz:-

4.1 Object

To promote human rights and democracy by advocating for the right to know – that is to be free to access and to share information. The organisation shall do so, inter alia by:

- Campaigning for laws, policies and practices consistent with the right to know;
- Campaigning for a media that is free and diverse;
- Campaigning for and assisting communities to access information held by government or the private sector that is necessary for the social, economic and environmental justice they need; and
- Campaigning for and supporting whistleblowers who act so that the public can exercise the right to know.

4.2 Vision

"We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity."

4.3 Purpose

- ☒ *To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.*
- ☒ *To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.*
- ☒
- ☒ *To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.*

- ☒ *To propagate our vision throughout society.*
- ☒ *To engage those with political and economic power where necessary.*
- ☒ *To act in concert and solidarity with like-minded people and organisations locally and internationally.*

5. MEMBERSHIP

- 5.1 The Membership of the Association shall consist of National Membership;
- 5.2 The persons admitted initially to Membership shall be those whose names are reflected accordingly on the relevant Membership Schedules attached to this Constitution.
- 5.3 Further Members in the categories of National Membership may be admitted from time to time at the sole and absolute discretion of the National Working Group (which may include the requirement for Membership Fee) that may be determined from time to time with respect to such category of membership.
- 5.4 For the avoidance of doubt, it is confirmed that the National Working Group shall have a complete and unfettered discretion with regard to the acceptance or rejection of applications for membership, or the suspension or termination of membership, as they may deem appropriate and in the best interests of the Association. Such decisions shall be taken as set out below.

6. NATIONAL WORKING GROUP

- 6.1 The ultimate authority and responsibility for the exercise of the powers of the Association; including power to determine policy, values, and strategy; and for authorising and mandating the establishment (or dis-establishment) of Provincial Working Groups, and for determining their operating conditions (with an ancillary right to review such decisions and actions), shall vest in a body to be known as the National Working Group, which shall be constituted from year to year by election; co-option, or *ex officio*, as the case may be, in terms of the succeeding provisions.
- 6.2 The National Working Group shall comprise a minimum of Seven (7) and a

- maximum of Fifteen (15) persons, who shall be designated by election of the National Summit as the Association's NWG, by the National Membership. Other Office-Bearers may also be appointed by the National Working Group, as it may deem desirable from time to time, including:
 - 6.2.1 A Chairperson and/or
 - 6.2.2 A Vice-Chairperson; and/or
 - 6.2.3
 - 6.2.4 A Secretary; and/or
 - 6.2.5
 - 6.2.6 A Treasurer.
- 6.3 The persons serving initially on the National Working Group, and the initial Office-Bearers, shall be those whose names are reflected on the Schedule to this Constitution. Such persons shall hold office until the first National Summit, but shall be eligible for re-appointment thereafter.
- 6.4 The National Working Group may itself co-opt up to Three (3) persons to serve as additional Members of the National Working Group, and any such co-opted persons shall likewise hold office until the next-occurring National Summit, and shall be eligible for re-cooption or election thereafter, as the case may be.
- 6.5 By Resolution adopted by no less than Seventy-Five (75%) of its members at the relevant time (excluding the person concerned), the National Working Group shall be entitled to remove or suspend from office any person elected or appointed to the National Working Group.
- 6.6 If any member of the National Working Group misses three meetings of the National Working Group without tendering their apologies, a motion must be tabled by the Chairperson calling for their removal at the next NWG meeting, and must be duly considered by the meeting, and voted on.

7. VACATING OFFICE

Persons appointed to the National Working Group shall vacate office in the event that any such person:-

- 7.1 completes the term of office for which she/he was appointed, without subsequent re-election or co-option; or
- 7.2 dies, or tenders her/his resignation in writing; or

- 7.3 becomes of unsound mind; or otherwise unfit or incapable of acting in this capacity;
- 7.4 becomes disqualified in terms of either the Trust Property Control Act, or the Companies Act, or any legislation substituted therefor, from acting as a Trustee, Director, or in any other fiduciary capacity; or
- 7.5 is removed from Office, in terms of a Resolution duly passed in accordance with the provisions of clause 6.6 above.

8. PROCEDURE AT NATIONAL WORKING GROUP MEETINGS

The National Working Group shall conduct its meetings, and regulate its proceedings, as it may find convenient from time to time, provided that:

- 8.1 The members of the National Working Group shall elect a Chairperson for that meeting.
- 8.2 The Chairperson or Vice-Chairperson, if any, may at any time convene a meeting of the National Working Group; but shall be obliged to do so, if so requested in writing by any Three (3) Members of the National Working Group.
- 8.3 The quorum necessary for the transaction of any business by the National Working Group shall require the participation of at least Five (5) of its Members.
- 8.4 At all meetings of the National Working Group each member shall have ONE (1) vote.
- 8.5 All questions arising shall be decided by consensus. Failing consensus, all questions arising shall be decided by a majority of votes, provided that in the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 8.6 Proper minutes shall be kept of all proceedings of the National Working

Group, including a record of all persons present at each meeting. Minutes shall be signed by the members of the National Working Group in Cape Town, and shall be available for inspection or copying by any National Member or Provincial Member of the association.

- 8.7 The National Working Group shall be entitled to delegate any of its powers and prerogatives to one or more of its Members, or to a Special Purpose Committee (which may include persons who are not members of the National Working Group), or to an employee or agent for the Association, as it deems appropriate. The person/s to whom any such delegation is made shall, in the exercise of delegated powers and prerogatives, conform to any directions or procedures that may be stipulated by the National Working Group with regard thereto.

9. PROVINCIAL WORKING GROUP

- 9.1 The Provincial Working Groups may be established from time to time by decision, and at the discretion of the National Members in a province; and in that event shall be mandated to undertake such activities and pursue such purposes as are consonant with the Objects, Vision and Purpose of the Association, within the area in respect of which it has been mandated.
- 9.2 The Provincial Working Group shall only have such powers and prerogatives as may be delegated at the discretion of the National Working Group; and it shall conform to any such directions, conditions and procedures as may be stipulated by the National Working Group from time to time.
- 9.3 The Provincial Working Group shall nominate those persons who should attend the National Summit, in numbers agreed by the NWG. The NWG shall invite those persons nominated by the PWG to the Annual Summit, at which invitation they will become national members.
- 9.4 Save insofar as the context may clearly otherwise indicate, the provisions of this Constitution which have reference to the National Working Group shall also apply mutatis mutandis with respect to the conduct of the affairs of a Provincial Working Group, within the designated area of this mandate.

10. NATIONAL SUMMIT

10.1 The National Summit will constitute the Annual General Meeting of the Association, and shall be held initially within a period of Fifteen (15) months after the adoption of this Constitution; and thereafter from year to year, within a period not exceeding Three (3) months after the end of each Financial Year.

10.2 The business of a National summit shall include, *inter alia*:

10.2.1 the presentation and adoption of the Annual Report;

10.2.2 the consideration of the Annual Financial Statements;

10.2.3 the consideration of an annual Budget for the ensuing year;

10.2.4 the election of persons who shall serve on the National Working Group for the ensuing year;

10.2.5 the appointment of Auditors;

10.2.6 such other matters as may be considered appropriate by the Meeting.

10.3 Other National General Meetings

Other General Meetings of the National Membership may be convened from time to time as may be considered necessary at the request of:

10.3.1 The National Working Group;

10.3.2 the Chairperson or Vice-Chairperson, if any; or

10.3.3 any Two (2) or more Provincial Working Groups.

10.4 General Meeting Notices

Not less than fourteen (14) business days' prior written notice of each such general meeting shall be given to all National Members of the Association, and to each Provincial Working Group. Such notices shall state in broad terms the business to be transacted at the Meeting: provided that should the Chairperson, having been duly requested, fail to give such notice within Ten (10) business days of written request, the persons entitled to request the Meeting shall themselves be entitled to give notice of, and to convene the Meeting.

10.5.1 At all National General Meetings, a resolution put to the vote shall be decided by a show of hands, or by a poll – if the Chairperson shall so determine. A poll shall be taken as directed by the Chairperson, and the result of the poll shall constitute the resolution of the Meeting.

10.5.2 Each member present or represented shall be entitled to One (1) vote, and all matters arising shall be determined by consensus, if possible; but in the absence of consensus, then by decision of majority of the Voting Members present or represented at the meeting. The Chairperson shall be entitled to a second or casting vote, in the event of an equality of votes.

10.6 Quorum

A quorum in respect of any National General Meeting of the Association shall require the participation of at least a majority of the National Members entitled to attend and vote.

10.7 Adjournment

In the event of any National General Meeting being convened but no quorum being present, such Meeting shall stand adjourned to another twenty-one (21) business days thereafter, as may be determined by the National Working Group. Written notice reflecting such adjournment shall be given to all persons entitled to attend and exercise a vote at such meeting. At such reconvened National General Meeting, the Members then present or represented shall be deemed to constitute a quorum.

11. **POWERS AND DISCRETIONS**

Subject to the **Prescribed Fiscal Conditions** referred to in clause 18, the National Working Group, or any Provincial Working Group (to the extent that it may be so delegated) shall be vested with the undermentioned powers and discretions, viz :

11.1 The power to administer and generally conduct the affairs of the Association.

11.2 The power to initiate and determine activities of the Association, within the ambit of what are statutorily defined as "Public Benefit Activities"; and generally the manner and terms upon which the resources of the

Association shall be invested, utilised and appropriated from time to time; including the power to determine how the funds of the Association shall be invested, with the intent and purpose that all such funds shall be held, invested, and appropriated by the National Working Group, as it may deem appropriate in its sole discretion from time to time.

- 11.3 The General Investment and Administrative Powers, set forth in Schedule "A" hereto, within the ambit of the overriding Prescribed Fiscal Conditions referred to in clause 16.
- 11.4 Any such further powers and discretions as may be found necessary to execute its fiduciary responsibilities hereunder, and to promote the best interests and advance the purposes of the Association, and exercise due responsibility with respect to its affairs.

12. NOTICES

- 12.1 Notices of Meetings shall be delivered to each Member entitled thereto, either personally, electronically, by prepaid registered post, or in any such other manner, as may be deemed appropriate by the Chairperson (or Vice-Chairperson, if any); and such Notices shall be directed to the last address known to and recorded with the Association in respect of the person concerned.
- 12.2 The inadvertent, but *bona fide*, omission to address notices to any person entitled thereto shall not invalidate the proceedings of the ensuing meeting.
- 12.3 If delivered personally, notices shall be deemed to have been received on the date of proven delivery.
- 12.4 If despatched electronically, notices shall be deemed to have been received twenty-four (24) hours after proven data transmission.
- 12.5 If despatched by prepaid registered post to an address in the Republic, notices shall be deemed to have been received five (5) days after the proven date of despatch.

13. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS

- 13.1 The Annual Financial Year of the Association shall be as from 1 January in each year to 31 December in the succeeding year.
- 13.2 The National Working Group, and the Provincial Working Groups shall ensure that the Association keeps proper books of account. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in South Africa, and shall clearly reflect the affairs of the Association. The books of account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant, or in such other manner by a competent disinterested person, as may be deemed appropriate by the National Working Group.
- 13.3 A copy of the Annual Financial Statements shall be made available to each National and Provincial Member of the Association as soon as possible after the close of the financial year.

14. BANKING ACCOUNT AND SIGNATURES

- 14.1 The Association's banking and financial affairs shall be conducted through one or more banking accounts.
- 14.2 All cheques, promissory notes, and other documents requiring signature on behalf of the Association shall be signed by such persons as may be duly authorised by the National Working Group from time to time.

15. AMENDMENTS TO CONSTITUTION AND DISSOLUTION

- 15.1 By decision of the National Members at a specially convened National General Meeting:
- 15.1.1 the name of the Association may be changed; and/or
- 15.1.2 the terms of this Constitution may be amended; and/or
- 15.1.3 the Association may be dissolved;

provided that written notice of the proposed resolution is given to all National

Members not less than Twenty-One (21) business days prior to the date of the meeting at which it is to be considered; and provided further that such notice duly states the nature of the resolution to be proposed.

Any such resolution shall be deemed to have been duly adopted if it is supported by no less than Two-thirds ($\frac{2}{3}$) of all the National Members of the Association at the relevant time.

- 15.2 Notwithstanding anything to the contrary contained in this Constitution, it is confirmed that a resolution signed by all the National Members of the Association, shall be valid as if passed at a duly convened General Meeting of the Association.
- 15.3 A copy of any amending Deed, or Resolution, as the case may be, shall be submitted following its adoption, to the Commissioner, and to the Director appointed in terms of the Nonprofit Organisations Act.
- 15.4 In the event of the dissolution of the Association, any net residue of funds remaining after provision for all its liabilities and expenses, shall be given or transferred to one or more other Approved Public Benefit Organisations, or other eligible beneficiary institutions, as may be determined by the National Working Group at its discretion; provided that any such portion of the net residue as may arise in consequence of donations made by taxpayers to whom receipts have been issued in terms of section 18A of the Income Tax Act, must be given or transferred to some other beneficiary institution eligible for purposes of section 18A, as may be approved by the Commissioner in terms of the Income Tax Act.

16. INDEMNITY

- 16.1 Subject to the limitations of any relevant Statute, each member of the National or Provincial Working Groups, and all their office bearers, shall be indemnified by the Association for the consequences of acts done and decisions taken in good faith, on the Association's behalf; and it shall be the duty of the Association to pay all costs and expenses which any such person may incur, or become liable for, as a result of contracts entered into, or acts or deeds done in her/his capacity, and with the authority of the relevant Working Group.
- 16.2 Subject to the provisions of any relevant statute, no member of the National or Provincial Working Groups or other office bearer of the Association shall be

liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of the duties of her or his office or in relation thereto, unless it arises in consequence of her or his dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

17. AMBIT OF DISCRETIONS

Where discretions are vested in the National Working Group, Provincial Working Group, and/or a General Meeting of members of the Association in terms of this Constitution, such discretions, except where expressly limited, shall be complete and absolute.

18. PRESCRIBED FISCAL CONDITIONS

- 18.1 Anything to the contrary hereinbefore contained or implied notwithstanding, the powers of the Association, shall be subject to due compliance with all conditions stipulated from time to time in respect of Public Benefit Organisations in terms of section 30 of the Income Tax Act, as read with the Ninth Schedule thereto, in order thereby to ensure that the Association both establishes and retains its tax-exempt status in terms of section 10(1)(cN) of the Act, and the further fiscal benefits envisaged by section 18A of the Act. The Prescribed Fiscal Conditions applicable to the Association at the time of adoption of the Constitution shall be such as are set forth in Schedule "B" to this Constitution, but remain subject to any amendments thereto as may be enacted or prescribed at any time
- 18.2 In furtherance of its Purpose and Sole Object, the Association may accept donations in support of its Public Benefit Activities, as identified from time to time in terms of Part II of the Ninth Schedule; and with the authority of the Commissioner it may issue receipts in terms of section 18A of such Act, for the benefit of South African taxpaying donors. The National Working Group and Provincial Working Groups shall ensure full compliance by the Association

with the special conditions prescribed by the Income Tax Act with respect to such tax deductible donations, including any new conditions that may be imposed by regulation, or by the exercise of the statutory powers and discretions vested in the Minister and/or the Commissioner, as the case may be.

19. REGISTRATION: NONPROFIT ORGANISATIONS ACT

The Association shall take all such steps as may be necessary to procure and retain registration in terms of the Non-Profit Organisation's Act, No. 71 of 1997. Accordingly, having regard to the mandatory requirements of the relevant legislation, it is hereby recorded with respect to the Association (described as "the Organisation"), as follows:

- 19.1 The Organisation's name shall be as stated in clause 1.1;
- 19.2 The Organisation's Purpose and Sole Object shall be as stated in clause 4;
- 19.3 The Organisation's income and property shall not be distributable to members or office-bearers as stated, or in terms of clause 2.4, save insofar as they may be reimbursed for reasonable out of pocket expenses incurred in the execution of their duties,
- 19.4 The Organisation shall be deemed to be a body corporate, and shall have an identity separate and distinct from its Members, as envisaged by clause 2.1;
- 19.5 The Organisation shall continue to exist notwithstanding periodic changes that may occur in the composition of its Membership, its governing structures, or its Office-Bearers, as envisaged by clause 2.1;
- 19.6 The Members or Office-Bearers shall have no rights in the property or other assets of the Organisation by virtue of their membership or office, as stated in clause 2.4;
- 19.7 The powers of the Organisation shall be as set forth in this Constitution, including clauses 11 and 17, as read with Schedules "A" and "B";
- 19.8 The organisational structure and mechanisms for the Organisation's governance shall be as set forth in this Constitution, including clauses 6, 9, and 10;

- 19.9 The rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings, shall be as stated in clauses 10 and 20;
- 19.10 The manner in which decisions are to be made shall be as stated in clauses 6, 8, 9, and 10;
- 19.11 The Organisation's financial transactions must be conducted by means of a banking account, as stated in clause 14.1;
- 19.12 The date for the end of the Organisation's financial year shall be as stated in clause 13.1;
- 19.13 The procedure for changing the constitution shall be as stated in clause 15;
- 19.14 The procedure by which the Organisation may be wound up or dissolved shall be as stated in clause 15;
- 19.15 If the Organisation is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to some other eligible Nonprofit Organisation or institution, having the same or similar objectives, as stated in clause 15.4, as read with clause 9 of Schedule "B".

20. FURTHER MEETING FORMALITIES

- 20.1 A "round robin" resolution – that is a resolution in writing, supported and signed unanimously by all persons eligible to vote thereon – shall be as valid as if passed at a duly convened meeting; and, unless stated to the contrary, shall be deemed to have been passed as at the date of the last signature thereto. Any such "round robin" Resolution may be recorded in a single document, or in several documents, as may be found convenient.
- 20.2 For the avoidance of doubt, it is further stipulated that Meetings of the National Working Group and the Provincial Working Group may be held at any time or times, and at any place or places, subject to due notice having been given thereof; and such meetings may be held simultaneously in more than one place, provided that all persons involved are linked to each other by telephone, video, teleconference or other facilities, whereby they may communicate and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present together at the same time and place.

FOUNDER MEMBERSHIP

066

FULL NAMES OF FOUNDER MEMBER

SIGNATURE

DATE

PROVINCIAL MEMBERSHIP

067

PROVINCE :

FULL NAMES OF MEMBER

SIGNATURE

DATE

INITIAL PROVINCIAL WORKING GROUPS

068

FULL NAMES OF MEMBER

SIGNATURE

DATE

FULL NAMES OF MEMBER

SIGNATURE

DATE

GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

Subject to the limitations set forth in the **Prescribed Fiscal Conditions** (Annexure "B"), the ASSOCIATION, shall have the following **General Investment and Administrative Powers**, in addition to those special powers and discretions as are set forth in the Constitution to which this Schedule is annexed, viz:

1. To invest and reinvest the funds of the ASSOCIATION in a manner permitted by law, as they may deem appropriate, in their sole and absolute discretion; which may include, if deemed appropriate, the transfer and investment of funds off-shore.
2. To retain, or take over assets and investments constituting the subject matter of donations made to the ASSOCIATION, and to retain them in the form in which they are received, or realise and re-invest the proceeds thereof.
3. To realise or vary any investments from time to time forming part of the funds of the ASSOCIATION, and re-invest the proceeds thereof in any authorised investments.
4. To allow investments forming part of the funds of the ASSOCIATION to remain uninvested, or in their original state of investment upon acquisition by the ASSOCIATION.
5. Lend money to the ASSOCIATION, with or without security, and with or without provision for interest, as may be deemed appropriate.
6. To borrow on such terms and conditions as The Board may consider fit for any of the purposes of the ASSOCIATION; including the payment of liabilities of the ASSOCIATION; the payment of capital to any other permitted beneficiary; the making of any loan in furtherance of the Sole Object of the ASSOCIATION; the preserving or acquiring of any assets or investments; the subscription of any shares with powers from time to time to consent to any alteration or variation in the terms applicable thereto; and as security for any moneys so borrowed, The Board shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the funds of the ASSOCIATION, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace such borrowings or security.

7. To guarantee (either gratuitously or for a consideration) the performance of contracts or obligations of any third party in order to promote the sole object of the ASSOCIATION, upon such conditions, and with or without security, as The Board in its sole and absolute discretion may deem fit; provided that such transaction is entered into for the benefit of the ASSOCIATION.
8. To exercise the voting power attached to any shares forming part of the funds of the ASSOCIATION, as The Board may consider appropriate in the best interests of the ASSOCIATION; and to enter into arrangements as it may consider necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any company of whose capital the shares shall form portion.
9. To deal with, and turn to account, any of the assets forming part of the funds of the ASSOCIATION, by way of exchange, sale, lease or otherwise and in exercising any powers of sale, The Board shall be entitled to cause such sale to be effected by public auction, tender, or private treaty as it may consider appropriate.
10. To purchase or acquire both movable and immovable property for use by the ASSOCIATION itself in the conduct of its affairs, and in furtherance of the Specified Activities.
11. In respect of any immovable property donated to, or forming part of the funds of the ASSOCIATION, at any time:
 - 11.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
 - 11.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document and to obtain copies of deeds, bonds or documents for any purposes and generally to do or cause to be done any act whatsoever in any such Registry or office.

12. To transfer shares or other assets into the name of any nominee/s for the ASSOCIATION, or into the name/s of any one or more of The Board.
13. To cause any Company to be incorporated, or any Trust, Foundation, or Association not for Gain, to be established, which is owned or controlled, directly or indirectly by the ASSOCIATION; for the purpose of holding specific assets or undertaking specified activities which serve to promote the Sole Object of this ASSOCIATION, in the Republic or elsewhere, in accordance with the provisions of this Constitution.
14. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the ASSOCIATION, and bring sequestration, liquidation or judicial management proceedings against any person.
15. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the ASSOCIATION and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
16. To attend meetings of creditors of any person indebted to the ASSOCIATION whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors and generally exercise all rights of a creditor.
17. To exercise the voting power attaching to any share, stock, debenture or unit, in such manner as The Board may deem fit, for the purpose of amalgamation, merger or compromise, in any Company or Trust in which any such share, stock, debenture or unit is held.
18. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture or unit forming part of the assets of the ASSOCIATION.
19. To engage employees in a part-time or full-time capacity; determine their remuneration; and terms of employment, and delegate to them such duties as The Board may determine; and to dismiss them.

20. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
21. To treat as income any periodic receipts although received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
22. To determine in such manner as The Board may consider fit what shall be treated as income and what shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the TRUST; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as The Board may consider fit.
23. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business of whatever nature required to be done pursuant to this Constitution, and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees, or for any loss occasioned by their employment.
24. To exercise all such management and executive powers as are normally vested in the Board of Directors of a Company with regard to the affairs of the ASSOCIATION.
25. To exercise any of such powers and authorities not only in the Republic, but also in any other part of the world.
26. Generally, to deal with assets or investments forming part of the funds of the ASSOCIATION, in such manner as The Board may deem advisable; and to this end it shall be vested with any such additional powers and authorities as it may require to enable it to do so.

* * * * *

SCHEDULE "B"**PRESCRIBED FISCAL CONDITIONS****[In terms of sections 18A and 30 of the Income Tax Act]**

Once approved by the Commissioner for the South African Revenue Service (SARS) as a "Public Benefit Organisation" in terms of Section 30 (and, insofar as it may be applicable, also for purposes of Section 18A) of the Income Tax Act, No. 58 of 1962, as amended, this Constitution shall be deemed also to include the following provisions prescribed in terms of the Income Tax Act, which shall in that event become binding upon and applicable to the ASSOCIATION, in accordance with the requirements of that Act, viz;

1 As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act, the Company shall :

- 1.1 Ensure that any eligible donations actually paid or transferred to the ASSOCIATION, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiary organisations, institutions, boards or bodies to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include the Government itself, and any provincial administration or local authority contemplated in section 10(1)(a) or (b) of the Income Tax Act.
- 1.2 Ensure that during each year of assessment preceding the year of assessment of the ASSOCIATION during which a qualifying donation is received, it distributes or incurs the obligation to distribute at least Seventy-Five Percent (75%) of the funds so received by or accrued to it by way of donations which qualify for a deduction in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(1)(b)(ii) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.
- 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including

any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.

- 1.4 Ensure that an audit certificate is provided upon submission by the ASSOCIATION to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the ASSOCIATION in that year, in respect of which section 18A receipts were issued by the ASSOCIATION, were utilised in the manner contemplated by that section.

2 As a Public Benefit Organisation approved by the Commissioner for purposes of section 30 of the Income Tax Act, the ASSOCIATION shall:

- 2.1 Carry on the public benefit activities of the ASSOCIATION in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the ASSOCIATION, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Take reasonable steps to ensure that each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups)
- 2.4 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the ASSOCIATION are directed in the furtherance of its objects.
- 2.5 Submit to the Commissioner a copy of the Constitution, Will or other written instrument under which it has been established.
- 2.6 Be required in terms of such Constitution, to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the ASSOCIATION, and that no single person directly or indirectly controls the decision making powers of the ASSOCIATION.
- 2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit

activity) and be required to utilise its funds solely for the objects for which it has been established.

- 2.8 Be required on dissolution to transfer its assets to :
 - 2.8.1 any Public Benefit Organisation which has been approved in terms of section 30(3) of the Income Tax Act;
 - 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
 - 2.8.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act.
- 2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the Constitution, Will or other written instrument under which it was established.
- 2.11 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the

sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.

- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.15 Shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the ASSOCIATION, for a period of at least four years after the date of the last entry in any such book; or
 - 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the ASSOCIATION, for a period of four years after the completion of the transaction, act or operation to which they relate.

U. Bhargava

29/8/13

Right2Know Campaign Supporting Organisations

List of organisations that have endorsed the broader scope of the Right2Know Campaign

(as of July 2013)

- | | |
|---|--|
| 1. Abahlali baseMjondolo (Kwazulu Natal) | 43. Grace Chapel |
| 2. Abahlali basemjondolo (Western Cape) | 44. Grahamstown Cathedral |
| 3. Academic Enrichment Centre | 45. Greenpeace Africa |
| 4. Alternative Information Development Centre | 46. Greenwood Park Community |
| 5. Amabhungane | 47. Grocotts Mail |
| 6. ASP Cast | 48. Groundworks |
| 7. Association of Progressive Communicators | 49. Gugulethu backyarders |
| 8. Benchmarks Foundation | 50. Gun Free South Africa |
| 9. Bird Club Port Natal | 51. HighwayAfrica/Rhodes |
| 10. Blekkiesdorp Concerned Residents | 52. Housing Assembly |
| 11. Bluff Ratepayers Association | 53. Ilizwi Lama Fama |
| 12. Botanical Society (Kwazulu Natal) | 54. Isipingo Ratepayers Association |
| 13. Cape Town TV | 55. Ithemba Lempilo |
| 14. CASSAWU | 56. Keep Left |
| 15. Cell-Life | 57. Khulumani Support Group |
| 16. Chatsworth Anti-Drug Forum | 58. Kliptown Concerned Residents |
| 17. Children Resource Centre | 59. Koeberg Action Alert |
| 18. CIVICUS | 60. Kuyasa Backyarders |
| 19. Clairwood Social Movement | 61. KwaNtu |
| 20. Concerned Education Forum | 62. KZN Refugee Council |
| 21. COPAC | 63. KZN Violence Monitor |
| 22. Corruption Watch | 64. Landless People Movement |
| 23. CRCC | 65. Lawyers for Human Rights |
| 24. Delft Integrated Network | 66. Leaders Forum |
| 25. Democracy Development Programme | 67. Mandela Park Backyarders |
| 26. Democratic Left Front | 68. Manenberg Development Structure |
| 27. Democratic Socialist Movement | 69. Masifunde |
| 28. Diakonia Council of Churches | 70. Mawubuye |
| 29. DUT | 71. Mdantsane FM |
| 30. Earthlife Africa | 72. Media Monitoring Africa |
| 31. EarthLife eThekwini | 73. Merebank Ratepayers Association |
| 32. Eastern Cape Communicators Forum | 74. Migrant Community |
| 33. Eastern Cape Sanef. | 75. Mokuwuse Concern Forum |
| 34. EcoPeace | 76. Mostwaledi Concern Resident |
| 35. Embo | 77. New Women's Movement |
| 36. Enkangala | 78. Nkuzi Development Association |
| 37. Equal Education | 79. One Million Climate Jobs Campaign |
| 38. Everton West Crisis Committee | 80. Open Democracy Access Centre |
| 39. Freedom of Expression Institute | 81. Open Society Foundation (South Africa) |
| 40. Freedom of Expression Network | 82. Orange Farm Water Crisis Committee |
| 41. GAP | 83. Peace (Dalton) Hostel Dwellers |
| 42. Gauteng Concern Residents | 84. Peoples Health Movement |
| | Phoenix Social Forum |
| | 85. Poor Flat Dwellers Movement |
| | 86. Progressive Youth Movement |

87. Public South African Monitoring Accountability
88. Qadi Nyuswa Resource
89. Radio Grahamstown
90. Reservoir Hills Community Policing Forum
91. Reservoir Hills Ratepayers
92. Revelation Legal Assistance
93. Rhodes Department of history and politics
94. Rural Peoples Movement
95. SA History Archive
96. SA Soccer Legends
97. Sakhuluntu Cultural Group
98. Seaview Community Watch
99. Seaview Conservation Group
100. Section 27
101. Sikhula Sonke
102. Social Justice Coalition
103. SOS- Support Public Broadcasting Campaign
104. South African NGO Network (SANGONeT)
105. South Durban Community Environmental Alliance
106. Soweto Concern Resident
107. Soweto Electricity Crisis Committee
108. Sowug
109. St John the Divine Anglican Church
110. StateLive News
111. Students Against Secrecy
112. Students for Social Justice
113. Studies in poverty & Inequality Institute
114. Sydenham Community Policing Forum
115. Tafelsig Development Forum
116. Tafelsig Women in Development
117. Thembelihle Crisis Committee
118. Thembisa Residents Association
119. Treatment Action Campaign
120. Tri Continental Film Festival
121. Trust for Community Outreach and Education
122. Truth Movement
123. UKZN Centre for Civil Society
124. Umbilo Action Group
125. Umbilo Churches in Communities
126. Umbilo Congregational Church
127. Unemployed Peoples Movement (EC)
128. Unemployed Peoples Movement (Umlazi)
129. Voice of the poor concern resident
130. Walter Sisulu Journalism
131. WESSA
132. Western Cape Religious
133. WomensNet
134. Workers World Media Productions
135. Wynburg Concerned Residents.
136. Youth In Action

SECRET

State of the Nation 2013



Addressing SA's climate of secrecy

2013 will be a critical year for the right to know, with signs of increasing secrecy in our politics and daily lives – and opportunities to tackle it

In last week's State of the Nation Address, the President made no commitments towards openness, access to information, or freedom of expression. His address only once mentions the Bill of Rights – and this was to assure South Africans that violent protests would be more aggressively policed. Leaving aside the growing concerns that aggressive and militarised policing has itself led to tragic and outrageous abuses of protestor's rights, the President failed to acknowledge that many of the laws governing the right to assembly in South Africa – including the Regulations of Gatherings Act and National Key Point Acts – often do more to restrict this right than to enable it.

This was not the only omission in the State of the Nation Address.

The Right2Know Campaign's 2013 Secret State of the Nation Report shines a light on the existing climate of secrecy in South Africa, and the need to tackle ugly practice of individuals and elements in the State security sector and private corporations who favour secrecy as a means to ensure that they enjoy a greater hold on power.

Secrecy robs us all equally of the opportunity for real social justice. Some secrets might be necessary – the criminal justice system and the state-security cluster do indeed keep secrets that save lives. However, far too much information is withheld from public view by individuals who, with increased frequency, fail to live up to the values enshrined in our Constitution.

In this report we highlight three upwards trends in secrecy:

- The use of the apartheid-era national security law, the **National Key Points Act**, has risen by more than 50% over the past five years. The secrets hidden in the expenditure on the President's private homestead in Nkandla may be indicative of a much wider abuse of national-security secrecy.
- Secret **political party funding** from private donors has boomed in the past decade and

is likely to double in the period 1998-2014. It buys influence for the powerful in selected corporations, foreign governments and shadowy organised crime, and is a legalised form of bribery favoured by almost all political parties.

- The **over-classifying of government documents** since 1996 will come to a head this year with the passing of the Secrecy Bill. A huge body of secret documents (all classified under the 1996 Minimum Information Security Standards, which has no legal standing) will come under extraordinary new protection this year, despite containing a mix of genuine national-security documents with the minutes of board meetings, financial disclosure forms, and salary reports. An analysis of all available data on the extent of documents classified in a single year shows that vast numbers of documents have been classified without proper oversight or restriction, and in defiance of the public's right to know.

Finally, early this year the President is likely to be presented the **Protection of State Information Bill** (the Secrecy Bill) for signature. Few laws have so focused the public mind on the problem of secrecy in our society and the increasing power and influence of the country's securocrats in our politics and daily lives.

Should he choose to exercise his powers to refer the Bill to the Constitutional Court, the President would affirm to the nation his commitment to building a progressive society characterised by openness, and to tackling the creeping culture of secrecy currently facing South Africa.

Should he choose to pass this Bill into law, however, he will strengthen the growing public resolve to stop the unjustifiable secrecy, to stop the grab for power by securocrats and their cronies, to stop the lies.

– The Right2Know Campaign



How they fared

South African Police Service: of ten PAIA requests, 7 were successful, 3 were refused.

Department of Basic Education: of four PAIA requests, all were successful.

Office of the Presidency: of eleven PAIA requests, 1 was successful, 10 were refused.

City of Johannesburg: of eighteen PAIA requests, 2 were partially successful, 16 were refused.

Source: South African History Archive (SAHA), compiled 2012 PAIA compliance stats.

Ordinary people, ordinary secrets

South Africa's access-to-information provisions appear to be failing, as 2 out of 3 formal requests for information are refused

THE PROBLEM

If compliance with the Promotion of Access to Information Act (PAIA) is a litmus test for the state of government and corporate accountability, the signs are worrying. In 2012, the South African History Archive (SAHA) surveyed all the PAIA requests that they had administered in the past year: of **159** requests for information held by various public and private bodies, **102** were either outright refused or simply received no answer (which is a deemed refusal under the law) - or 64 percent. This suggests a genuine crisis in the mechanisms that are meant to ensure the public's right to know.

As a mark of the long and costly process of forcing better compliance with the provisions of PAIA, on the same day as the State of the Nation Address last week, the Mail&Guardian finally won a court battle to access a report to then-President Mbeki on the 2002 Zimbabwean elections - four years after their PAIA application was refused.

However, 2013 will see the passing of an amendment to PAIA gives new recourse to people seeking access, in the form of an Information Commissioner that will have legal powers to force

bodies to comply with PAIA requests.

But this is not enough, if the underlying problem is a lack of commitment to openness on the side of information holders. Information should be released proactively, in an open and accessible form, and PAIA should only be a last resort.

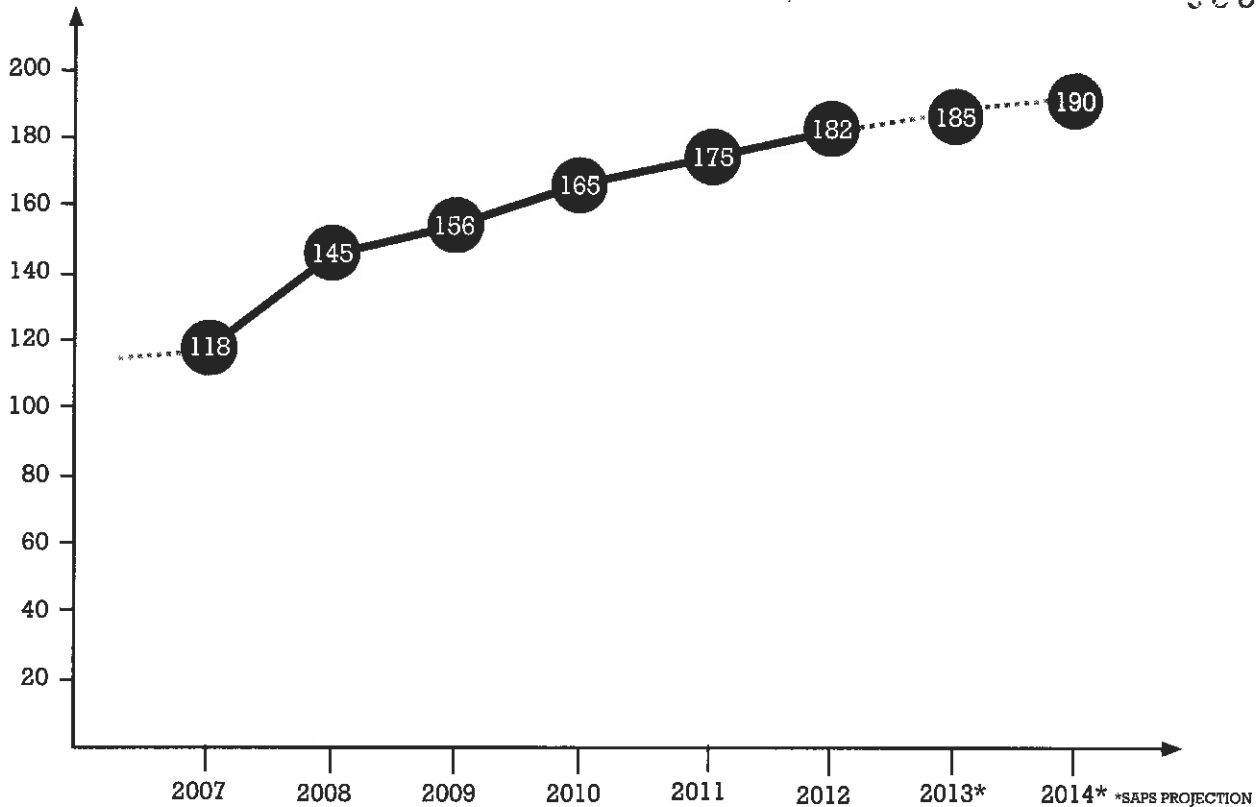
While the 'big ticket' secrets get much attention, many South African are denied much more basic information that they need in their daily lives and struggles. From data related to housing lists, to the water licenses of all mining operations, many civic organisations and community groups are seeking information that should already be available online and in every municipal office.

HOW TO FIX IT

- Government and the private sector must commit to proactive release of open data, and ensure all officials comply with the letter and spirit of access-to-information laws.
- Find out more at www.r2k.org.za/info-access-now

Number of National Key Points in South Africa

Source: SAPS Annual Performance Plan, 2012/13



The number of secret 'Key Points' is rising

*In the last 5 years, there's been a **54% increase** in the number of 'national key points' across the country – but we still don't have a list of them.*

THE PROBLEM

The National Key Points Act empowers the Minister of Police (or anyone to whom he delegates the power) to declare any building a 'national key point' – a place that is so important to national security that it needs extra security, extra protection, and extra secrecy. The National Key Points Act restricts access to certain kinds of information about these places, and prohibits people's right to assemble or protest there..

Although it's an apartheid-era national security law, R2K has drawn together data that suggests it is still being used widely today – the number of national key points has grown by more than 54%

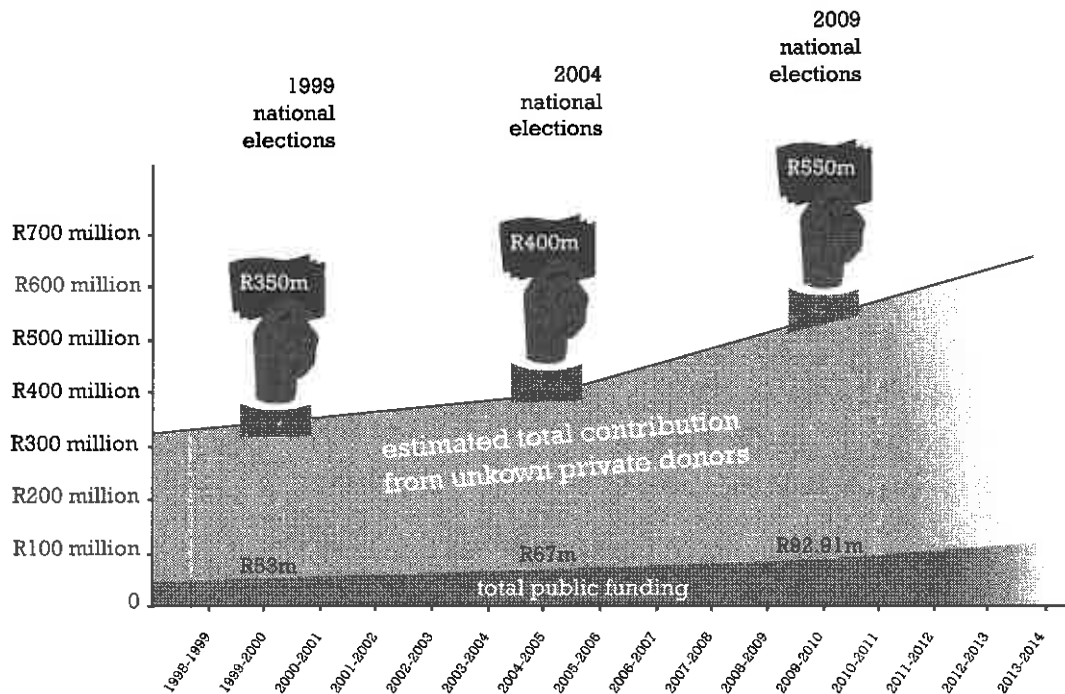
in the past 5 years.

Any site can be named a key point, from our airports and factories to our power stations and presidential residences – yet the public doesn't even know which buildings now fall under the Act. This means that you could be breaking the law without even knowing it, by staging a protest at a national key point or even photographing it.

R2K has called for SAPS to make the list of national key points public, using the Promotion of Access to Information Act. SAPS initially refused this application, but we have appealed, and a response is due at the end of February.

HOW TO FIX IT

- SAPS must release the list of South Africa's national key points
- Parliament must take steps to repeal the National Key Points Act
- Find out more at www.r2k.org.za/national-key-points



Secret party funding set to increase

As South Africa heads for its most expensive elections ever, citizens still don't know who is bankrolling our country's political parties.

THE PROBLEM

The funding by private donors of South African political parties is a secret which all major political parties refuse to disclose. It subverts the will of the people and buys influence for powerful corporations, foreign governments and shady organised crime figures. Influence has the potential to buy tenders, subvert justice, and shift public policy from a path that favours the poor, to one that benefits the rich and well-connected.

The status quo allows parties to establish private companies that benefit from state contracts – pushing up costs and potentially lowering services. It is the poor who pay.

The amount of money raised by parties for elections now runs into hundreds of millions of rand, and is set to rise further – meaning more secrets, scandals and lies. These stretch from funding allegedly received by the ANC from the murderous kleptocrat Mohammed Suharto in the 1990s to the DA's recent 'don't ask, don't tell' scandal involving the Guptas.

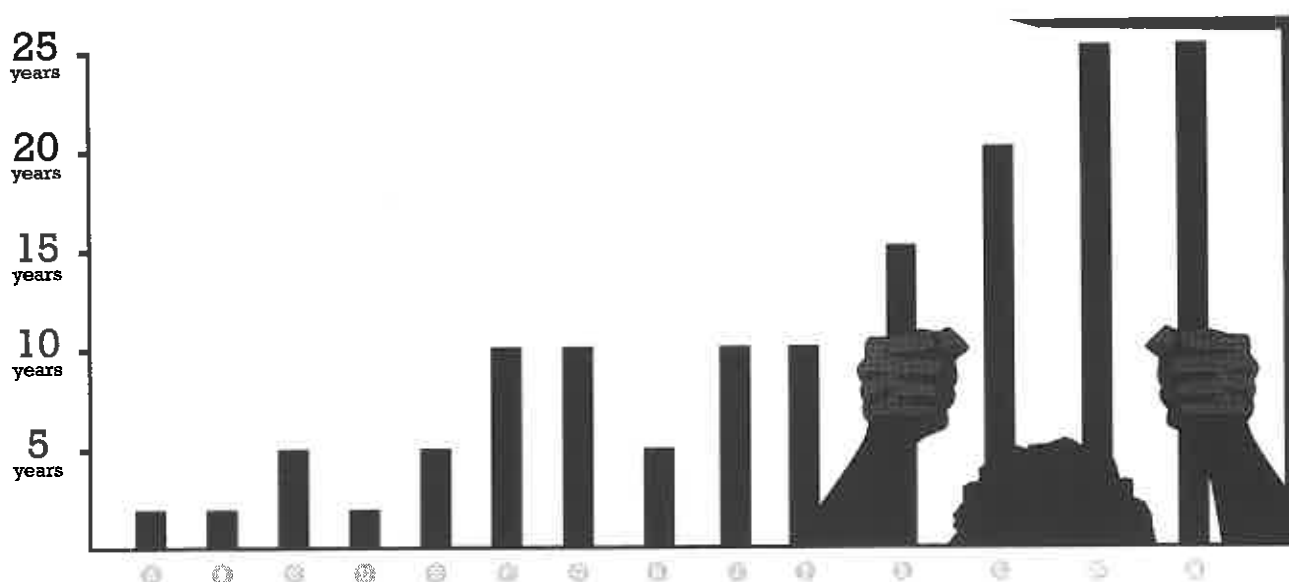
We welcome the ANC's Mangaung resolutions

to create legislation to regulate party funding, and the DA's somewhat reluctant commitment to do the same. However, political parties are quick to talk and slow to act when it comes to the secrets of mega-funding.

As we approach the 2014 national elections, and funding is set to continue sky-rocketing, it is time to shine a light on the secrets which empower the rich and politically connected at the expense of everyone else.

HOW TO FIX IT

- Parliament must pass a comprehensive law requiring parties to disclose their private funding before the 2014 elections!
- The law must be based on broad public engagement and cannot become a new set of bad rules brokered by party hacks in closed rooms.
- Find out more at www.osf.org.za/programmes/money-and-politics-project and www.myvotecounts.org.za



Secrecy Bill set to become law

THE PROBLEM

After more than two years of protest, and despite a number of progressive changes, the Protection of State Information Bill remains a threat to South Africa's right to know.

As the newly amended Secrecy Bill heads for its final hurdle in the National Assembly, its provisions would criminalise the public for possessing information that has already been leaked, and place severe restrictions on civil

servants, journalists and members of the public seeking to expose unjust secrets. Though a limited public interest defence has been introduced in one provision, prosecutors can easily bypass it by charging you under different provisions of the Bill.

It now seems inevitable that the National Assembly will rubberstamp this Bill and pass it to the President to be signed into law.

HOW TO FIX IT

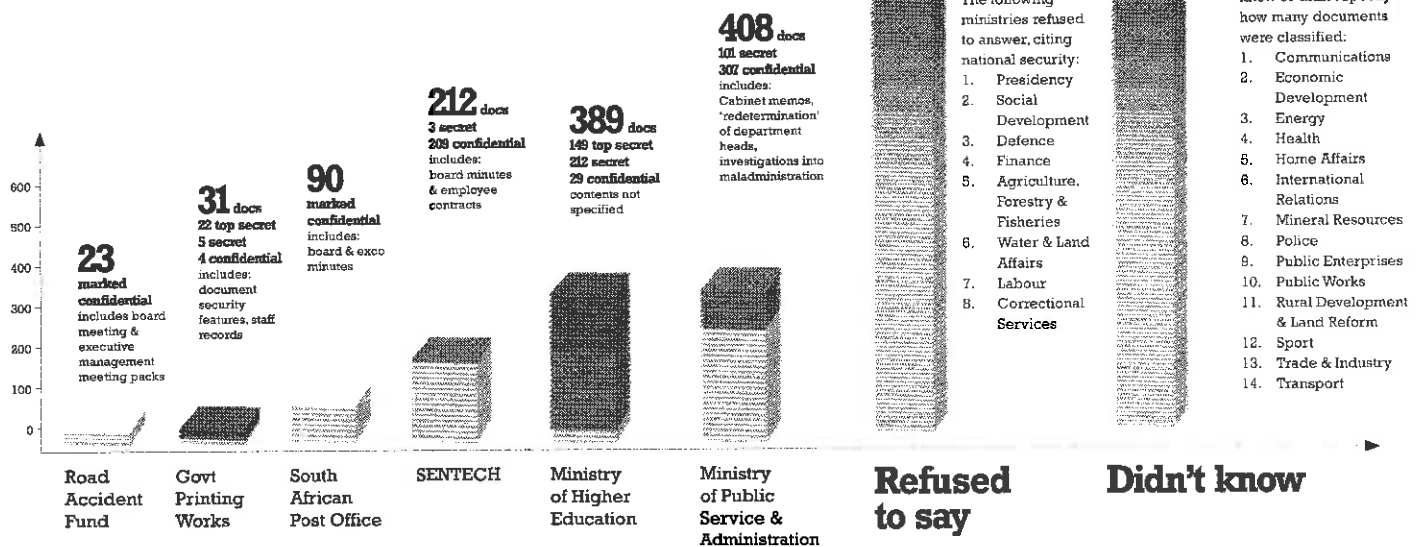
- Parliament must produce a truly just classification law which promotes openness over secrecy and meets the 7-Point Freedom Test, failing which the President must refer it to the Constitutional Court
- Find out more at www.r2k.org.za/secrecy-bill

Offences & penalties in the Protection of State Information Bill

- Failing to comply with the provisions of the Act if you are an official or the head of an organ of state.
- Intentionally destroying, removing, altering or erasing "valuable information".
- Intentionally providing false information to a national intelligence structure.
- Gaining unauthorised access to any computer which belongs to the State.
- Modifying the contents of any computer which belongs to the State with the intention of impairing the operation of any computer, programme or data.
- Modifying or destroying classified information or otherwise rendering it ineffective.
- Producing, selling, designing, distributing or possessing any device which is designed to overcome security measures for the protection of state information, OR using such a device to overcome security measures designed to protect state information.
- Intentionally intercepting any (electronically communicated) classified information without authority. **No public interest defence.**
- Classifying state information for ulterior motives, including to conceal corruption, incompetence, inefficiency or administrative error, or to prevent embarrassment. **No public interest defence.**
- 'Espionage': Communicating classified state information which you know, or ought reasonably to have known, would directly or indirectly benefit a foreign state. **No public interest defence.**

How many documents did each department classify in a single year (2009/10)?

Source: 2011 Parliamentary answers, available at pmg.org.za



Secrecy Bill will protect vast body of existing secrets - even unjust ones

THE PROBLEM

Since 1996, the making and keeping of government secrets has been guided by a policy called the Minimum Information Security Standards, which has no legal standing.

In 2011, the Parliamentary opposition wrote to all government departments asking how many documents were classified the previous year. Some of the most prominent government departments (including Presidency, Defence, Finance and Water & Land Affairs) refused to answer for national security reasons, saying the number of secret documents was itself a secret. The majority of the remaining bodies said they simply did not know how many documents they had classified.

However, the few detailed responses provided by the remaining departments and agencies were indicative of serious inconsistencies in policy.

Some documents clearly fell under genuine security concerns – such as the Government Printing Works' documents which detail the security features that are built into passports, or docu-

ments revealing the identities of whistleblowers in internal corruption investigations managed by the Public Service Commission. However, other documents' security relevance is questionable, including the minutes of board meetings, and 7,584 financial disclosures forms being held by the Public Service Commission. And the justification of 389 documents classified by the Ministry of Higher Education remains unknown. (However, it is probable that those departments that provided detailed, if in some cases shocking answers are generally better practitioners of openness than those departments who could not or would not say how many secrets they harboured.)

When the Secrecy Bill becomes law, this vast body of existing secrets will have extraordinary new protection – even if the classification was unjustified or wouldn't even be allowed by the Secrecy Bill itself. The Secrecy Bill provides that all these documents should be reviewed by a special panel, but does not provide any timeframe.

The following bodies reported that they had not classified any documents: Ministry of Tourism, ACSA, Air Travel & Navigation Services, Cross-Border Road Transport Agency, SA Civil Aviation Authority, SA Maritime Safety Authority, SA National Roads Agency, Railway Safety Regulator, Road Traffic Infringement Agency, Road Traffic Management Corporation, Ports Regulator of SA, ICASA, NEMISA, SABCA, Film & Publications Board

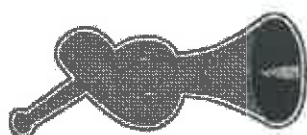
SECRECY

IS FOR

SKELMS

DEMAND FREE INFORMATION, FULL INCLUSION, FAIR PROCESS!

1. View R2K's Secret State of the Nation Report at www.r2k.org.za
2. Find **Right 2 Know** on Facebook
3. Follow **@r2kcampaign** on Twitter



RIGHT 2 KNOW

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
NOTE: This list is a working draft ONLY. Wherever possible these sites are supported with documentary evidence but should be treated with caution.	If you would like to discuss this list further, or have any comments on a particular submission listed here, email murray@r2k.org.za		Note on "Strategic Installations" - according to the recent announcement by Minister Radebe, Waterkloof Airbase is not a national key point, it is a strategic installation. A number of other sites listed here may be categorised as Strategic Installations rather than NKPs but so far we haven't seen any official guidance on how the two kinds of site may differ. There are 248 strategic installations in SA (SAPS Annual Performance Report 2012/13). Very little is publically known about them, and they do not seem to be defined in law. However, they appear to have the same functions as National Key Points. It has been speculated that Strategic Installations are military sites, while National Key Points are non-military sites but this has not been confirmed.	
5/8/2013 18:18:53	Waterkloof Airforce base	Centurion, Gauteng	http://finweek.com/2013/05/03/the-curious-case-of-the-waterkloof-base/	
5/8/2013 18:22:08	Reserve Bank building	Pretoria	http://www.r2k.org.za/2012/10/04/how-the-national-key-points-act-undermines-the-publics-right-to-know/	
5/8/2013 18:25:15	OR Tambo airport	Johannesburg	http://www.acsa.co.za/Nersa/Documents/Chapter%201%20-%20General%20Information.pdf	
5/8/2013 18:25:33	King Shaka airport	Durban	http://www.acsa.co.za/Nersa/Documents/Chapter%201%20-%20General%20Information.pdf	
5/8/2013 18:25:50	Cape Town international airport	Cape Town	http://www.acsa.co.za/Nersa/Documents/Chapter%201%20-%20General%20Information.pdf	
5/9/2013 10:58:44	Nkandla Residence of President Zuma	Nkandla, KZN	http://mg.co.za/article/2012-11-30-00-apartheid-law-protects-zuma	
5/9/2013 10:59:34	Union Buildings	Pretoria	http://mg.co.za/article/2012-11-30-00-apartheid-law-protects-zuma	
5/9/2013 11:02:17	Pelindaba Nuclear research Facility	Hartebeespoort	http://mg.co.za/article/2012-11-30-00-apartheid-law-protects-zuma	
5/9/2013 11:03:30	Government Printing Works	Pretoria	http://www.pmg.org.za/node/29274	
5/9/2013 11:05:39	Onderstepoort Biological Products	Pretoria	http://mg.co.za/article/2012-11-30-00-apartheid-law-protects-zuma	
5/9/2013 11:08:27	Eastern Cape provincial legislature	Bhisho	http://www.treasury.gov.za/documents/provincial%20budget/2013/4.%20Estimates%20of%20Prov%20Rev%20and%20Exp/EC/2.%20Estimates%20of%20Prov%20Rev%20and%20Exp/EC%20-%20Vote%2002%20-%20Eastern%20Cape%20Legislature.pdf	
5/9/2013 15:17:20	Onderstepoort Biological Products Limited	?	http://www.pmg.org.za/docs/2009/OBPAnnualReport.pdf	
5/9/2013 15:21:42	State Information Technology Agency	Pretoria	http://www.sita.co.za/docs/SITA_AR_2012_web.pdf	
5/9/2013 15:23:27	NCP Chlorchem (Pty)	?	http://www.saflii.org/za/cases/ZACT/2010/32.pdf	
5/9/2013 15:24:31	Western Cape Provincial Parliament	Cape Town	http://www.wcpp.gov.za/public/attachments/FromTheSpeaker/Docs/SPEECH%20BY%20SPEAKER%20SHAHID%20ESAU%20version%203.pdf	
5/9/2013 15:29:01	North West Provincial Legislature		http://www.treasury.gov.za/documents/provincial%20budget/2012/4.%20Estimates%20of%20Prov%20Rev%20and%20Exp/NW/2.%20Estimates%20of%20Prov%20Rev%20and%20Exp/NW%20-%20Vote%2002%20-%20Provincial%20Legislature.pdf	
5/9/2013 15:30:37	Limpopo Legislature ('pilot project')		http://www.treasury.gov.za/documents/provincial%20budget/2013/4.%20Estimates%20of%20Prov%20Rev%20and%20Exp/LIM/2.%20Estimates%20of%20Prov%20Rev%20and%20Exp/LIM%20-%20Vote%2002%20-%20Limpopo%20Legislature.pdf	
5/9/2013 15:32:28	AECI Modderfontein	Gauteng	http://www.aeci.co.za/Financial/2009_annual_report/revops_heartland_review.html	
5/9/2013 15:33:15	AECI Umbogintwini	KwaZulu-Natal	http://www.aeci.co.za/Financial/2009_annual_report/revops_heartland_review.html	

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
5/9/2013 15:34:44	Riverside Government Complex	Mpumalanga	http://www.ziwaphi.com/ziwaphi/ZIWAPHI_%E2%80%A2_VOL_4_NO_7_%E2%80%A2_9_-_22_APRIL_2_files/vol%204%20no%207.pdf	
5/9/2013 17:17:38	SABC office, Seapoint, Cape Town	Cape Town	It says so on the sign	
5/10/2013 9:22:09	National Energy Regulator of SA (NERSA) offices	Pretoria	http://www.r2k.org.za/2013/02/26/r2-in-solidarity-with-numsa-in-opposing-the-key-points-act/	
5/10/2013 9:40:07	Hillbrow Tower	Hillbrow	known for years and told by official	
5/10/2013 9:46:22	Bryntirion Estate (ministerial complex)	Pretoria	http://www.secalec.co.za/projects/project2.htm	
5/10/2013 9:55:43	Naval Command Centre	Silvermine, Cape Town	http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=365694&sn=Detail&pid=71656	
5/10/2013 9:59:47	Makhado Airbase	Louis Trichardt, Limpopo	http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=30417:security-apparently-breached-at-another-national-key-point&catid=111:sa-defence&Itemid=242	
5/10/2013 10:34:32	Koeberg Nuclear Power Station	Koeberg, Western Cape	http://www.eskom.co.za/content/DEIR%20AppE27%20Site%20Access%20Control%20pp%200-13.pdf?Src=Item+4011	
5/10/2013 12:17:42	Council for Scientific and Industrial Research (CSIR) headquarters	Pretoria	http://www.csir.co.za/docs/CSIRoverviewJan2010.pdf	
5/10/2013 12:23:28	Denel site (Irene)	Centurion, Gauteng	http://www.denelproperties.co.za/profile.html	
5/10/2013 12:24:01	Denel site (Kempton Park)	Kempton Park, Gauteng	http://www.denelproperties.co.za/profile.html	
5/10/2013 12:40:06	Natref refinery (Sasol & Total SA)	Sasolburg, Free State	https://sasol.ats.hrsmart.com/cgi-bin/a/highlightjob.cgi?jobid=6748	
5/10/2013 12:43:19	SABC Offices Kimberly	37 New Main Street Kimberly	There's a sign that says "National Key Point" above the entrance	
5/10/2013 12:56:04	Cutler Complex / Island View petrochemical storage complex	Durban	http://cutlerfund.co.za/default.html	
5/10/2013 14:38:57	Parliament of the Republic of South Africa	Cape Town	http://webcache.googleusercontent.com/search?q=cache:-wzErS_bdEIJ:www.parliament.gov.za/live/content.php%3FItem_ID%3D1320+&cd=1&hl=en&ct=clnk&gl=za	
5/10/2013 15:04:48	Gauteng Provincial Legislature	Johannesburg, Gauteng	Legislature Identified as a National Key Point when stating requirements of security officers working there: http://www.careerjunction.co.za/jobs/director-operational-support-services-in-johannesburg-cbd-1393730	
5/10/2013 15:40:50	Reserve Bank Bloemfontein branch	Hoffman Square, Bloemfontein	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 15:40:50	Reserve Bank Johannesburg branch	57 Ntomi Piliso Street, Johannesburg	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 15:43:22	Reserve Bank Cape Town branch	25 Burg Street, Cape Town	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 15:44:04	Reserve Bank Durban branch	8 Dr A B Xuma Street, Durban	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 15:44:51	Reserve Bank East London branch	c/o Cambridge & Union Street, East London	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 15:45:29	Reserve Bank Port Elizabeth branch	Market Square North Union Street, Port Elizabeth	All Reserve Bank branches are National Key Points: http://www.info.gov.za/view/DownloadFileAction?id=94534	
5/10/2013 16:21:43	SENTECH Brixton Tower	Brixton, Johannesburg	Confirmed by former senior Sentechn official	

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
5/10/2013 16:23:09	Vaal Barrage	Barrage	Sign at bridge, and security guards with NKPA training required at Vaal Dam http://www.dwa.gov.za/vacancies/Adverts%20for%2030%20June%202010.pdf	
5/10/2013 16:30:40	Lukasraad Tower (telecommunications)	Lukasraad, Pretoria	http://www.moneyweb.co.za/moneyweb-article-detail/telkom-lights-up-jozis-night-skyline?sn=Daily%20news%20detail	
5/10/2013 16:32:32	Matimba Power Station	Ellisras, Limpopo	http://www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2009/11/09/000020953_2	
5/10/2013 21:03:22	SABC offices, Johannesburg	Auckland Park, Johannesburg	sign at entrance	
5/10/2013 22:51:13	Chevron (formerly Caltex) oil refinery	Milnerton, Cape Town	http://www.iol.co.za/news/south-africa/gulls-nesting-site-sets-cats-among-pigeons-1.271040?ot=inmsa.ArticlePrintPageLayout.ot	
5/10/2013 22:59:02	Engen Oil Refinery	Durban	http://lists.fahamu.org/pipermail/debate-list/2008-April/011856.html	
5/10/2013 23:01:51	Sapref refinery	Prospecton, Durban	http://lists.topica.com/lists/oilrefine-act@igc.topica.com/read/message.html?sort=a&mid=804210249	
5/10/2013 23:03:49	PetroSA	Mossel Bay	http://www.sasda.co.za/opportunities.html	
5/10/2013 23:12:21	Eskom National Control Center	Possibly near Germiston	http://www.iol.co.za/news/south-africa/no-jokes-about-eskom-please-1.387083?ot=inmsa.ArticlePrintPageLayout.ot and http://www.iol.co.za/blogs/karen-bliksem-1.2507/my-sanity-is-in-the-palsied-hands-of-a-bozo-1.628076?tag=anc#UY1iLiv8-kl	
5/10/2013 23:13:45	Rustenburg Magistrate's Court	Rustenburg	http://www.iol.co.za/news/special-features/mining-crisis/xstrata-miners-arrested-1.1424464#UY1eHiv8-kl	<< Interestingly, the official response quoted in this article never specifies that the Magistrate's Court itself is a National Key Point. It could be that a building near the Magistrate's Court is a National Key Point, and this was used to justify invoking the NKPA (as sometimes happens)
5/10/2013 23:18:36	Department of Justice	Cape Town	http://www.iol.co.za/news/south-africa/cape-refugees-arrested-1.411061?ot=inmsa.ArticlePrintPageLayout.ot	
5/10/2013 23:24:08	Denel	Philippi	http://www.iol.co.za/news/south-africa/thieves-snatch-denel-defonators-1.379833#UY1k1Sv8-kl	
5/10/2013 23:25:12	Denel Munitions Plant	Swartklip	http://www.iol.co.za/news/south-africa/denel-beef-up-security-1.376185#UY1k4yv8-kl	
5/10/2013 23:26:49	Engen Refinery	Wentworth	http://www.iol.co.za/news/south-africa/engen-faces-class-action-threat-1.362165#UY1k8yv8-kl	
5/10/2013 23:31:31	Denel Land Systems	368 Selborne Ave, Lyttelton, Centurion, 0140, South Africa	http://www.denellandsystems.co.za/risk_management.html	

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
5/10/2013 23:32:45	Denel's Pretoria Metal Pressings (PMP) plant	Pretoria West	http://www.news24.com/SouthAfrica/News/Cops-arrest-Denel-man-20051111	
5/10/2013 23:43:04	Port of Cape Town	Cape Town	http://www.navy.mil.za/archive/0910/091008_capt_Oshea/article.htm	<<- Not sure about this one. This is the only clear reference I could find online to the Port of Cape Town as a possible NKP, but it's not clear if it is still registered as NKP today
5/11/2013 0:08:33	New Cooperation Building (Home Affairs)	Pretoria	http://allafrica.com/stories/200202210464.html << paywall	
5/11/2013 0:12:26	Transnet Fuel Pipeline	KZN to Gauteng	http://webcache.googleusercontent.com/search?q=cache:knejoPpnPPoJ:mg.co.za/print/2010-12-08-transnet-pipeline-to-cost-r234billion+&cd=1&hl=en&ct=clnk&gl=za	
5/11/2013 0:15:47	Mandela's rural home	Qunu, EC	http://www.telegraph.co.uk/news/worldnews/nelson-mandela/8959759/Media-outlets-charged-for-setting-up-surveillance-cameras-outside-Nelson-Mandelas-home.html	
5/11/2013 14:42:46	Square Kilometre Array (SKA)	Northern Cape	http://www.info.gov.za/aboutgovt/programmes/ska/	
5/11/2013 17:50:19	Saldanha Bay Terminal	Saldanha	http://www.procurement.petrosa.com/Minutes/E3974%20Minutes%20Site%20Inspection.pdf	
5/11/2013 20:47:37	Satellite Applications Centre (CSIR)	Krugersdorp	http://www.omegasol.com/?p=895	
5/11/2013 21:17:19	Gourikwa Power Station	Mossel Bay	http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 21:26:09	Arnot Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 21:29:42	Duvha Power Station (Eskom)	Mpumalanga	http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:08:29	Hendrina Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:13:21	Kendal Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:15:32	Kriel Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:15:32	Lethabo Power Station (Eskom)	Gauteng	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
5/11/2013 22:15:50	Maluba Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:16:11	Matla Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/11/2013 22:17:23	Tutuka Power Station (Eskom)	Mpumalanga	Though this station is not named specifically, apparently all Eskom power stations are National Key Points: http://eskomtest0.ensightnetworkscluster0.com/content/Gourikwa_FEIR_App_G-C_R_report_for_FEIR_final~1.pdf	
5/15/2013 23:43:32	National Water Resources Infrastructure, Central Operations, Usutu River	Mpumalanga?	Not directly confirmed and precise details of the centre are hard to find but the Department of Water requires security officers to be certified for National Key Points: http://www.nda.agric.za/daaDev/sideMenu/jobs/circular%2012%202013.pdf	
5/15/2013 23:54:08	Lehurutshe Magistrate Court	Dp Moloto Street, Lerato, North West	Not directly confirmed, but security officers must be familiar with the NKPA: http://www.justice.gov.za/vacancies/posts/NW-13-034.pdf	
5/16/2013 0:03:50	City Power installations (unspecified number)	Johannesburg	Introduced as a measure to combat conductor theft http://www.eepublishers.co.za/images/upload/Combating%20S%20Zimu.pdf put out to tender here: http://www.citypower.co.za/Available%20Tenders/BID%20-%201810S.pdf	
5/16/2013 0:05:22	Department of Home Affairs, Waitloo Campus	Waitloo, Pretoria	Confirmed by Security contractors: http://www.secelec.co.za/projects/project3.htm	
5/16/2013 0:15:01	Groenpunt Prison	Deneysville, Free State	http://ewn.co.za/2013/01/18/Dept-to-probe-death-of-prisoner	
5/16/2013 0:23:43	CENTLEC (unspecified site)	Mangaung, Free State	Security manager job requirements: http://www.mangaung.co.za/docs/CENTLEC-External-Vacancy-Bulletin-14-January-2011.pdf	
5/16/2013 0:37:55	5 Eskom substations in ETHIKWINI?	ETHIKWINI - locations not specified?	http://www1.durban.gov.za/durban/services/electricity/annual-report/2009-10%20Annual%20report.pdf	
5/16/2013 0:47:09	Zuikerbosch Water Treatment Plant	?	Security staff require NKP clearance: http://govpage.co.za/ENTITIES/RAND-WATER-10-VACANCIES-09-03-2013.html	
5/16/2013 12:42:18	Cutler Keypoint Complex	Island View/Bluff, Durban	I provide services to the Keypoint and was told by an official. It is a group of Keypoints (each of the major oil companies and assets are a keypoint and they are grouped together in a Keypoint Complex called Cutler.	
5/18/2013 10:18:16	SABC	Auckland Park, Johannesburg, Gauteng	Sign at entrance Radio Park	
5/18/2013 13:39:42	South African Mint	Centurion	worked there	
5/18/2013 13:40:45	All military bases	Upington	served there	
5/20/2013 11:22:24	waterkloof Airbase	Pretoria	Unclear	
5/20/2013 14:10:48	Railway building	-33.896993, 18.5150 co ordinates on google earth	Informed by warrant officer whilst doing police duties in the Kensington, Cape Town, area	
5/21/2013 11:15:19	Eskom	Germiston	It is written on the Entrance	

Timestamp	Name of building or institution?	Location	How do you know this building is a National Key Point?	R2K NOTES
5/21/2013 15:36:05	SAS Scorpion - SA Naval Base	Salisbury Island, Bluff, Durban	My dad was a Naval Officer there	
5/23/2013 17:21:42	Cape Town Refinery and Oil Storage Tanks	Cape Town	Extensive fencing and lookout towers	
5/23/2013 17:39:38	Upper reservoir in Oranjezicht	Oranjezicht, Cape Town	I tried to take a photo of the reflections in the water, and I was stopped. I think that there's a notice.	
5/23/2013 17:55:10	e-NATIS	Waterfall Park - Midrand	There is a sign at the entrance	
5/23/2013 18:01:12	State Theatre	Pretoria	Was stopped when I took photos of the building and told by a security person it was a NKP	
5/23/2013 18:14:22	Sentech STP	Honeydew	General knowledge to all employees	
5/23/2013 19:26:43	simons town dock yard	simons town	home for south african navy ships	
6/11/2013 15:01:07	CSIR	Meiring Naude Road, Pretoria	Previous member of staff	
7/15/2013 13:40:18	TRUFM	Bhisho	SABC	
7/19/2013 14:19:34	tempe sadf base	bloemfontein		
7/25/2013 12:39:43	Municipal Demarcation Board	Hatfield, Pretoria	Want to know if it is a national key point	
7/29/2013 10:14:42	Eskom National Control	Germiston Lake, Ekurhuleni	http://www.engineeringnews.co.za/article/inside-eskom-national-control-as-peak-pressures-mount-2013-07-26	

SOUTH AFRICAN
HISTORY ARCHIVE

"SAHA"

DEED OF TRUST

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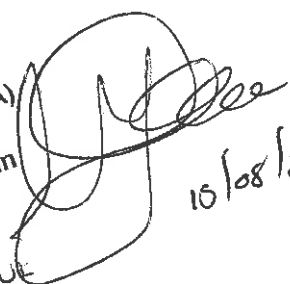

10/08/2013

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1. ORIGINAL MOTIVATION

- 1.1 There is a need to collect, preserve and catalogue materials of historical and contemporary political, social, economic and culture importance.
- 1.2 There is a need to promote awareness of the importance of preserving records of contemporary events of historical significance.
- 1.3 There is a need to make the above-mentioned materials accessible to the public, to historians and to researchers.
- 1.4 There is a need to promote public awareness of recent historical events.

2. ESTABLISHMENT OF A TRUST

- 2.1 A trust is hereby constituted to be known as the South African History Archive ("SAHA") Trust for the purpose herein set out and otherwise on the terms and conditions of this Trust Deed.
- 2.2 SAHA is a body corporate and has an identity and existence distinct from its members and office bearers.
- 2.3 SAHA continues to exist despite changes in the composition of its trustees and director.
- 2.4 Trustees or directors have no rights in the property or other assets of the organisation solely by virtue of holding those positions.

3. OBJECTIVES OF THE TRUST

- 3.1 The main objective of the Trust is to document, support and promote greater awareness of past and contemporary struggles for justice through archival practices and outreach, and the utilisation of access to information laws.
- 3.2 It is not the objective of the Trust to make a profit or gain and the income and assets of the Trust may not be distributed to any person save for the payment of reasonable remuneration for services actually rendered in furtherance of the objects of the Trust.

4. ANCILLARY OBJECTIVES OF THE TRUST

- 4.1. In furtherance of its primary objectives the Trust shall:
 - 4.1.1 Recapture lost and neglected histories;
 - 4.1.2 Record aspects of South African democracy in the making;
 - 4.1.3 Bring history out of the archives and into schools, universities and communities

in new and innovative ways;

4.1.4 Extend the boundaries of freedom of information in South Africa;

4.1.5 Raise awareness, both nationally and internationally, of the role of archives and documentation in promoting and defending human rights.

5. GALA

5.1 It is recorded that in 1996 SAHA established the Gay and Lesbian Archives (GALA) as a project of SAHA.

5.2 In 2007, GALA formed a separate and independent trust. However, the work of SAHA and GALA remains closely aligned and the organisations continue to work in close collaboration.

6. INTERPRETATION

In this Deed, unless the context otherwise requires, words importing the singular shall include the plural. The following expressions used in this Deed shall have the meaning hereinafter assigned to them unless the context shall clearly otherwise require:

6.1 "Trust Fund" : shall mean the assets or funds held and administered by the Trustees from time to time, that is to say, the Trust capital together with donations and any additions or accruals thereto, including bequests from time to time from any sources and in any form.

6.2 "Trust Capital" : shall mean the capital of the Trust consisting of the Trust Fund and including that part of the net income which is not distributed and is accumulated as part of the capital after deducting:

6.2.1 the aggregate of the liabilities of the Trust, both actual and contingent, and

6.2.2 the sum of all provisions for depreciation, renewals or diminution in value of assets or for liabilities (actual or contingent) the amount of which cannot be determined with substantial accuracy.

6.3 "Fund Raising Act" : shall mean the Fund Raising Act 107 of 1978 as amended from time to time.

6.4 "Nonprofit Organisations Act" : shall mean the Nonprofit Organisations Act 71 of 1997 as amended from time to time.

6.5 "Income Tax Act" : shall mean the Income Tax Act 58 of 1962 as amended from time to time.

6.6 "Trust" : shall mean the Trust created under this Deed of Trust.

6.7 "Trustees" shall mean the signatories to this Deed as Trustees and any other persons appointed to that office in terms of this Trust Deed from time to time for so long as they hold office as such, who shall be deemed to be members of the trust for all purposes

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SAHA Deed of Trust – amended by resolution 24 November 2012 – Page 4

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under the Fund Raising Act and the Nonprofit Organisations Act.

7. THE AFFAIRS OF THE BUSINESS

- 7.1 The affairs and business of the Trust shall be conducted from Johannesburg.

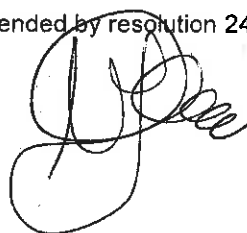
8. TRUSTEES PROVISIONS

- 8.1 The parties listed in Annexure A of this Trust Deed were the first Trustees of the Trust;
- 8.2 The parties listed in Annexure B of this Trust Deed are the Trustees of the Trust at the date of amendment of this Trust Deed.
- 8.3 Upon the death, permanent incapacity, removal or resignation of anyone of the Trustees, the Trustees then remaining shall, as soon as possible, appoint another Trustee to the office of Trustee, which person shall be decided upon by the remaining Trustees as they in their sole and absolute discretion may determine, it being the intention of the parties hereto that there shall always be a minimum of 5 Trustees and not more than 15 Trustees of the Trust in office. Between 2 and 4 Trustees shall serve as members of the Management Committee, as nominated by the Trustees on an annual basis.
- 8.4 Where the death, permanent incapacity, removal or resignation of one of the Trustees results in the number of remaining Trustees being less than 5, those remaining Trustees may appoint a further Trustee in the manner outlined in clause 8.3 but may take no other action in relation to the operation of the Trust until such appointment has been made, restoring the number of Trustees to at least 5;
- 8.5 The Trustees shall at any time from time to time be entitled to accept the resignation of any other Trustee;
- 8.6 The Trustees shall at any time from time to time have unlimited power of co-option of further Trustees, subject to the maximum referred to in 8.3 above, which shall be exercised on such terms and conditions and for such period as they in their sole discretion may determine;
- 8.7 Any appointment, removal or resignation, delegation of powers or co-operation shall not be valid unless recorded in writing;
- 8.8 A Trustee shall vacate his/her office if:
- 8.8.1 he/she commits any Act of insolvency as defined in the insolvency law from time to time in force;
- 8.8.2 he/she becomes of unsound mind or is declared incapable of managing his/her own affairs;
- 8.8.3 he/she resigns his/her office by written notice to the other Trustees;

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- 8.8.4 he/she fails to attend three (3) consecutive meetings of the Trustees without the leave of the remaining Trustees;
- 8.8.4 he/she is removed from office by the decision of the majority of the remaining Trustees after he/she has been given written notice of the intention of the remaining Trustees to remove him/her and given an opportunity to address the remaining Trustees or furnish them with reasons in writing why he/she should not be removed as a trustee.

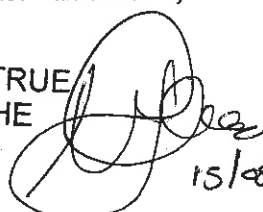
9. PROCEEDINGS OF TRUSTEES

- 9.1 A quorum for a meeting of the Trustees shall be 50 per cent of the Trustees, at least one of whom shall be a member of the Management Committee. In the event of the meeting being inquorate thirty (30) minutes after the time of commencement, it shall stand adjourned to a date which all Trustees shall be notified of in writing, but which shall be not less than seven (7) days after the date of the inquorate meeting, and at such adjourned meeting all those Trustees present shall constitute a quorum.
- 9.2 Subject to the Trustees giving effect to the terms and conditions of this Deed, administering the Trust and its affairs, they shall adopt such procedures and take such administrative steps as they shall, from time to time, deem necessary and advisable including the appointment of a management committee from amongst themselves which shall be responsible for the disbursement of monies, application by criteria for such disbursement, reporting to funders on a quarterly basis, and control an administration of activities;
- 9.3 The Trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, but not less than twice a year. The date and the place of the meetings shall be as determined by the Trustees. The Chairperson shall, however, have the power to call a meeting of the Trustees when in his or her opinion circumstances justify such a step and will be obliged to do so on receipt of a written request signed by not less than three (3) Trustees specifying the business to be transacted at such a meeting. Reasonable notice will be given to Trustees of all meetings of the Trustees, which notice may be given by letter, telegram, telex, telefax, electronic mail, or orally.
- 9.4 A notice dispatched to the last address of a Trustee as made known to the Secretary of the Trust when appointed shall be valid;
- 9.5 Decisions are made by majority vote indicated by way of a show of hands;
- 9.6 A resolution in writing signed or approved by other written means, such as by email, by majority vote is valid and effectual as if it had been passed at a meeting of the said Trustees and shall be noted at the next meeting. Such a resolution is constituted at the time of the last signature or approval of the resolution and may consist of several documents in like form each signed by one or more of the Members. If a resolution is written by email, an actual signature is not required. Emails from the Trustees are sent

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to the Director, who will then inform all the Trustees of the outcome of the resolution

- 9.7 The Trustees shall elect from amongst their number a chairperson who shall remain in office until he/she resigns as a Trustee or as chairperson or if the remaining Trustees remove him/her from office by resolution to that effect;
- 9.8 The Director shall provide written notice to the Director of Nonprofit Organisations of the names, physical business and residential addresses of the Trustees and Director of the Trust one month after any appointment or election of such persons, even if their appointment or election did not result in any changes to the persons occupying those positions, in accordance with section 18(1)(b) of the Nonprofit Organisations Act.
- 9.9 If the chairperson is absent from any meeting the remaining Trustees shall elect a chairperson for the purposes of that meeting;

10 DISPENSATION OF SECURITY

- 10.1 The Trustees or any of them shall not be required to furnish security for any reason or under any circumstances whatsoever for their duties as such and accordingly no person hereby or subsequently appointed or co-opted or to whom powers are delegated shall be required to furnish security to any state or any official under the provisions of any law which may now or which may in the future be in force. Insofar as it may be necessary, the said state or other official is hereby directed to dispense with the requirement that any Trustee or subsequent Trustees shall furnish security in terms of the Trust Property Control Act or any other law.
- 10.2 If despite the provisions of clause 10.1 hereof, security is lawfully required to be furnished, then the costs of providing the same shall be borne by the Trust.

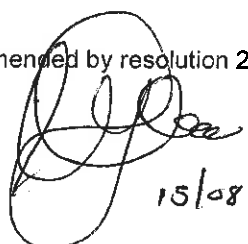
11 VESTING, COLLECTION, UTILISATION OF FUNDS AND CONTRIBUTIONS

- 11.1 The Trustees are hereby empowered to accept for the purposes of the Trust any gift, bequest or payment of any nature whatsoever from any person which may be given or paid to them with the intention that it form part of the Trust Fund. Any assets so accepted shall be administered and dealt with subject to the terms of this Deed of Trust. All donations of the Trust shall be irrevocable and subject to the terms and conditions of the Trust.
- 11.2 Contributions may be collected in and from any portion of the Republic of South Africa and outside its borders provided that the contributions from outside the Republic of South Africa shall be actually received in the Republic of South Africa.
- 11.3 The funds of the Trust shall be utilised solely for investment or for the objects for which it has been established.

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- 11.4 No portion of the income or assets of the Trust shall accrue for the benefit of the Trustees, office bearers, or their relatives or any employee but nothing herein before contained shall limit the right of the trustees to be reimbursed in respect of any reasonable expenses incurred on behalf of the Trust or to be paid a reasonable remuneration for any services rendered on behalf of the Trust including under any contract of employment.

12. TAX ISSUES

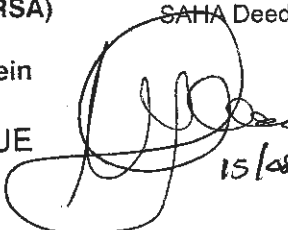
If the Commissioner approves SAHA as a "public benefit organisation", and for as long as such status is renewed, then the SAHA Trust will-

- 12.1 in the year of assessment preceding the year of assessment in which the donation is received, distribute at least 75% of its S18A (of the Income Tax Act, 1962) donations received;
- 12.2 issue a receipt for the donation on which the following details are provided-
- 12.2.1 the reference number issued by the Commissioner;
 - 12.2.2 the name and address of the SAHA Trust;
 - 12.2.3 the date of receipt of the donation;
 - 12.2.4 the amount of the donation
 - 12.2.5 the name and address of the donor;
 - 12.2.6 a certificate to the effect that the receipt is issued for purposes of Section 18A of the Income Tax Act, 1962 and that the donation has been or will be used exclusively for the object of the SAHA Trust;
- 12.3 on dissolution transfer its assets to any similar approved public benefit organisations;
- 12.4 not accept any donation-
- 12.4.1 which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and;
 - 12.4.2 conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; or
 - 12.4.3 in circumstances where a donor has imposed conditions which could enable that donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation,
- 12.5 submit to the Commissioner a copy of any amendments to the Deed of Trust.

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13 DUTIES OF TRUSTEES

13.1 The Director of SAHA and the members of the Management Committee accept the fiduciary responsibility of the organisation. In addition to any duties imposed upon them under law enforced from time to time, the Trustees shall have the following duties:

- 13.1.1 The Trustees shall appoint a person as Director. The Director shall have responsibility for the day to day management of the accounts of the Trust and such other responsibilities as delegated to the Director from time to time by the Trust. The Director shall be at all times subject to the direction and control of the Management Committee in the performance of their duties.
- 13.1.2 The Trustees shall take and maintain written minutes of the meetings held pursuant to the provisions of clause 9 above. An official minute book shall be retained at the Trust's principal office.
- 13.1.3 The Trustees shall, at the expense of the Trust, cause proper books of accounts to be kept, which books of account together with all other papers and documents connected with or relating to the Trust shall be kept as such place as may be agreed upon by the Trustees.
- 13.1.4 The Trustees at the expense of the Trust shall be entitled to cause accounts of the Trust to be audited by an auditor appointed by the Trustees from time to time, which auditor shall be charged with drawing up the financial statements of the Trust at the end of each and every year. The first financial statements of the Trust shall be prepared on 31 December following the date of resignation of this Trust Deed in terms of the Trust Property Control Act. The auditor may be one of the Trustees or a firm of which he is a member and he/she or his/her firm may charge their reasonable fee for such services.
- 13.1.5 The financial statement shall be prepared as at the last day of each succeeding year for this purpose every year shall commence on 1 January and shall end on 31 December of each succeeding year.
- 13.1.6 All monies received on behalf of the Trust shall be paid by the Trustees into a banking account or other account maintained by the Trustees at a registered commercial bank or building society or other financial institution in terms of the Financial Institutions (Investment of Funds) Act 1984 and all payments made on behalf of the Trust shall be drawn from such account. All withdrawals may be made on the signature of such persons as the Trustees may determine from time to time.
- 13.1.7 All charges, expenses and disbursements including reasonable travelling expenses reasonably incurred by the Trustees in or arising from their administration of the Trust (including the costs of attending meetings of the Trust) shall be a first charge on the income of the Trust and the Trust Assets and shall be paid on demand.

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14 INDEMNIFICATION OF THE TRUSTEES

- 14.1. Subject to the foregoing a Trustee shall in performance of his/her duties and in the exercise of his/her power act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another;
- 14.2 No Trustee shall be liable for any loss of the Trust arising by reason of any investment made on behalf of the Trust whether authorised in terms of the Trust Deed or not, or for negligence or fraud of any agent employed by such Trustee (although the employment of such agent was not strictly necessary or expedient) , or by any other Trustee or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any matter or thing whosoever, except as is occasions by such Trustees own personal, wilful act of dishonesty.
- 14.3 The Trustees shall be indemnified out of the Trust Assets against all claims or demands of whatever nature that may be made upon them arising out of the exercise, purported exercise or omission to exercise any of the powers conferred upon them by this Deed of Trust. Nothing herein contained shall be deemed to exempt a Trustee from or indemnify him/her against liability for breach of trust where he/she failed to show the degree of care diligence and skill referred to above.

15 TRADING ACTIVITY

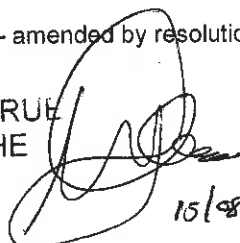
- 15.1 SAHA will not carry on any business undertaking or trading activity, otherwise than to the extent that-
- 15.1.1 if the undertaking or activity—
- 15.1.1.1. is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation " in section 30 of the Income Tax Act 1962 (as amended)¹;
- 15.1.1.2. is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
- 15.1.1.3. does not result in unfair competition in relation to taxable entities;
- 15.1.2 if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
- 15.1.3 if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
- 15.1.3.1 the scope and benevolent nature of the undertaking or activity;
- 15.1.3.2 the direct connection and interrelationship of the undertaking or

¹ <http://www.sars.gov.za/lmb/mylmb.asp?/jilc/kilc/alrg/vlrg/72k0a#ag>

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- activity with the sole or principal object of the public benefit organisation;
- 15.1.3.3 the profitability of the undertaking or activity; and
- 15.1.3.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or
- 15.1.4 other than an undertaking or activity in respect of which item (aa) , (bb) or (cc) applies and do not exceed such amount as specified under the Income Tax Act 1962 or applicable legislation from time to time'

16. POWERS OF TRUSTEES

- 16.1 The Trustees in their discretion shall have plenary powers to perform all acts and execute all documents relevant to the carrying out of the objects of the Trust and the administration thereof. Without derogating from the generality of the foregoing, the Trustees shall have the power to open and operate any banking account and/or building society account and to draw and issue cheques and promissory notes and to endorse any of the same for collection. The Trustees shall determine the manner of operating the banking or other accounts of the Trust.
- 16.2 The Trustees shall be subject to a majority resolution, have the power to acquire, lease, renovate, restore immovable property in pursuance of the objectives of the Trust. In addition, to buy or sell and transfer Trust Assets and invest the proceeds (including dividends accruing on the Trust Fund) and sign and execute any agreement in regard thereto provided that the Trustees shall not have the power to:
 - 16.2.1 enter into any transactions of a patently speculative nature in relation to property;
 - 16.2.2 carry on business including inter alia ordinary trading operations in the commercial sense as well as the administration of any immovable property acquired by the Trust.
- 16.3 The Trustees shall have the power to:
 - 16.3.1 hold the whole or any part of the Trust Fund or any investments made by them from time to time during the administration of the Trust in their own names or in the name of any person or institution which is nominated by them from time to time for that purpose or, in the name of the Trust; and
 - 16.3.2 exercise the voting power attached to any share, stock or debenture in such manner as they may deem fit, exercise and take up or realise any rights of conversion or subscription appertaining to any or debenture forming part of the Trust;
 - 16.3.3 From time to time to borrow such monies on such terms and conditions as they

NAFISA DESAI (M4701)

Ex-officio MTP(SA)

Commissioner of Oaths (RSA)

13th Floor, Pheny House

73 Juta Street, Braamfontein

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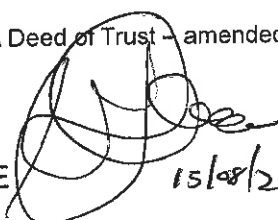
deem fit:

- 16.3.3.1 for the payment of any liability (including taxes payable in respect of the Trust); or
 - 16.3.3.2 which may be required from time to time for the protection or better or further investment of all or any of the Trust Assets; or
 - 16.3.3.3 generally for such other purposes in connection with all or any of the assets forming part of the Trust Fund.
- 16.3.4 Invest any funds that are not required for immediate use of the Trust, provided that investments may only be made in:
- 16.3.4.1 a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984;
 - 16.3.4.2 securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985;
 - 16.3.4.3 in other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and Director of Non-Profit Organisations.
- 16.3.5 Obtain such legal advice from time to time as the said Trustees in their discretion require and in which event all costs of and in connection therewith shall be borne by the Trust.
- 16.3.6 Engage the service of financial advisers, brokers, property administrators, consultants, accountants, auditors, architects and experts of all kinds and to make payment of their fees.
- 16.3.7 Institute or defend any proceedings in any court of law or arbitration proceedings in the name of the Trust.
- 16.3.8 Decide (which decision shall be final and binding and shall not be subject to dispute or challenge) whether any monies or assets received by them from time to time as part of the Trust Assets constitutes "capital" or "income" and for the purpose they shall be entitled to make such apportionment in the Trust's account.
- 16.3.9 Apply all or any of the Trust assets or monies held by them towards payment of any tax levied on the Trust or the income of the Trust, if any.
- 16.3.10 Leave the capital of the Trust or any part thereof invested as it may be when it is handed over to them.
- 16.3.11 Sell, realise, call in or convert into cash so much of the Trust assets as the Trustees may from time to time deem fit and make such further investments of the same in such form and in such manner as the Trustees may determine from time

NAFISA DESAI (M4701)
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 Commissioner of Oaths (RSA)
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to time vary any of such investments as the Trustees may determine.

16.3.12 Enter into contracts in the name of the Trust in furtherance of the interests of the Trust and to nominate one or more of them or to delegate their authority to any person selected by them for the purpose of management of the Trust and the execution of all documents or other activities of any nature relating to the carrying out of the purposes of this Trust, including documents in connection with the investment and realisation of the Trust assets which realisation shall be in whatever manner they deem fit.

16.3.13 Permit any premises owned by the Trust to be occupied free of rental or for a rental to be determined by the Trustees.

16.3.14 Engage and discharge employees and to set their terms and conditions of employment.

16.3.15 Do all things necessary to achieve the objects of the Trust.

17 BOOKS OF ACCOUNTS, RECORDS OR OTHER DOCUMENTS

17.1 Any books of account, records or other documents must be retained and preserved by SAHA for a period of 4 years –

17.1.1 after the date of the last entry in any book; or

17.1.2 after completion of financial transaction, acts or operations; and

17.2 Trustee may not without the written consent of the Master destroy any document which serves as proof of an investment, safe custody, control, administration, alienation or distribution of SAHA property before the expiry of a period of five years from the termination of the SAHA.

17.3 The Trust is to keep accounting records of its income, expenditure, assets and liabilities, and

17.3.1 Within six month after the end of its financial year, draw up financial statements, which must include at least

17.3.1.1 A statement of income and expenditure for that financial year; and

17.3.1.2 A balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

17.4 Within two months after drawing up its financial statements, the Trust must arrange for a written report to be compiled by an accounting officer and submitted to the Trustees stating whether or not-

17.4.1 The financial statements of the organisation are consistent with its accounting records;

17.4.2 The accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements;

NAFISA DESAI (M4701)

Ex-officio MTP(SA)

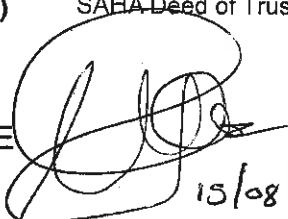
Commissioner of Oaths (RSA)

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73 Juta Street, Braamfontein

SAHA Deed of Trust – amended by resolution 24 November 2012 – Page 13

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- and,
 17.4.3 The Trust has complied with the provisions of the Nonprofit Organisations Act and this Deed of Trust which relate to financial matters.
- 17.5 The Trust must, in writing, provide the Director of Nonprofit Organisations with
 17.5.1 a narrative report of its activities together with its financial statements and the accounting officer's report as set out in clause 17.4 above, within nine months after the end of its financial year; and
 17.5.2 a physical address in the Republic for service of documents and notices, and advice of any change of such address.

18 AMENDMENTS

- 18.1 A Resolution approved by at least two thirds of the Trustees then in office shall be required for any amendment to this Deed of Trust.
- 18.2 Any amendments to this deed of Trust shall be submitted to the Commissioner of the South African Revenue Service.
- 18.3 In addition, the Trust must send to the Director of Nonprofit Organisations a copy of the resolution and a certificate signed by a duly authorised office-bearer stating that the resolution complies with its constitution and all relevant laws.

19. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

- 19.1 The Trust shall continue indefinitely but the Trustees shall have the right, in their sole and absolute discretion passed by two-thirds of the Trustees, to terminate the Trust.
- 19.2 Upon its termination the remaining assets of the Trust, after satisfaction of its liabilities shall be given or transferred to one or more trusts or associations not for gain with objects similar to the objects of the Trust which have been approved in terms of section 30 of the Income Tax Act, 1962.
- 19.3 The Trust must provide the Director of Nonprofit Organisations with at least two months' written notice of the intention of the Trustees to terminate the Trust.

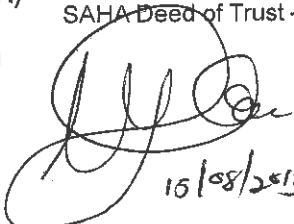
20 DISPUTES

Should any question arise as to whether the interpretation of this Deed or any of the provisions hereof as to the true construction thereof or as to the administration of the Trust or otherwise howsoever, the Trustees shall have the power to decide such questions either acting on their own judgement or upon the advice of attorneys and/or counsel and any such decisions shall be final and binding on all parties affected thereby and shall be carried into effect by them.

NAFISA DESAI (M4701)
 Ex-officio MTP(SA)
 Commissioner of Oaths (RSA)
 13th Floor, Pheny House
 73 Juta Street, Braamfontein

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21 COSTS

All costs of and incidental to the negotiations and finalisation of this Deed of Trust and its registration in terms of the Trust Property Control Act shall be paid by the Trust out of the Trust assets.

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NAFISA DESAI (M4701)
Ex-officio MTP(SA)
Commissioner of Oaths (RSA)
13th Floor, Pheno House
73 Juta Street, Braamfontein


15/08/2013

ANNEXURE "A" : ORIGINAL TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT
(BORN: 17/10/1945)

AND

SUSAN J BOOYSEN
(born: 17/9/1954)

AND

JEAN DE LA HARPE
(born: 3/9/1960)

AND

GIBSON THEMBA SIRAYI
(born: 12/10/1953)

AND

SAM MAHOSHA MKHABELA
(born: 23/10/1960)

AND

LULI CALLINICOS
(born: 10/11/1936)

AND

MICHELE PICKOVER
(born: 1/8/1959)

AND

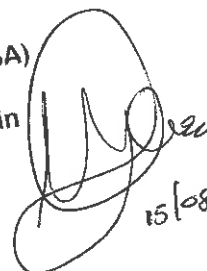
NOEL FRANCIS STOTT
(born: 28/12/1958)

AND

JOHANNES MAFODI MANAMA
(born: 16/3/1949)

NAFISA DESAI (M4701)
Ex-officio MTP(SA)
Commissioner of Oaths (RSA)
13th Floor, Pheno House
73 Juta Street, Braamfontein

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APPENDIX B: CURRENT TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT
(born: 17/10/1945)

AND

LULI CALLINICOS
(born: 10/11/1936)

and

MARLENE MERCER POWELL
(born: 07/27/1959)

AND

DUMISA BUHLE NTSEBEZA
(born 31/10/1949)

AND

NKOSINATHI BIKO
(born 11/03/1971)

AND

CIRAJ SHAHID RASSOOL
(born 27/12/1961)

AND

MOHAMED NOOR NIEFTACODIEN
(born 25/10/1964)

AND

RAZIA SALEH
(born 08/08/1962)

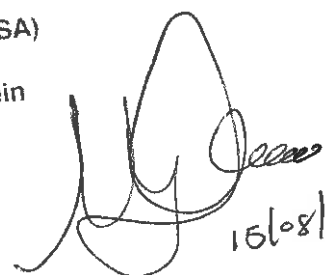
AND

ANTHONY ANDREW MANION
(born 13/04/1976)

AND

NAFISA DESAI (M4701)
Ex-officio MTP(SA)
Commissioner of Oaths (RSA)
13th Floor, Pheno House
73 Juta Street, Braamfontein

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16/08/2013

VERNE SHELDON HARRIS
(born 21/04/1958)

AND

PIERS ASHLEY PIGOU
(born 30/05/1967)

AND

SELLO KOOS HATANG - 7504285846089
(born 28/04/1975)

(hereinafter collectively referred to as "the Trustees")

NAFISA DESAI (M4701)
Ex-officio MTP(SA)
Commissioner of Oaths (RSA)
13th Floor, Pheno House
73 Juta Street, Braamfontein

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15/08/2013

FORM A
REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18 (1) of the Promotion of Access to Information
Act, 2000
(Act No. 2 of 2000)
[Regulation 2]

FOR DEPARTMENTAL USE

Reference number: _____

Request received
by: _____

(state rank, name and surname of information officer/deputy information officer) on
 _____ (date) at _____ (place).

Request fee (if any): R _____

Deposit fee (if any): R _____

Access fee: R _____

 SIGNATURE OF INFORMATION
 OFFICER/DEPUTY
 INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer: Amelda Crooks
 South African Police Service
 Private Bag X94
 Pretoria
 South Africa
 0001

Telephone: +27123931000
 Fax: +27123932819
 Email: N/A

B. Particulars of person requesting access to the record

- *The particulars of the person who requests access to the record must be recorded below.*
- *Furnish an address and/or fax number in the Republic to which information must be sent*
- *Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname: South African History Archive (SAHA)
Identity/Passport number: Non-Profit Trust No. 2522/93
Postal address: P.O.Box 31719, Braamfontein, 2017
Fax number: +27866491491
Telephone number: +27117182563
E-Mail Address: foip@saha.org.za

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: Right2Know Campaign
Identity number:

D. Particulars of record

- *Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*
- *If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

- Description of record or relevant part of the record:

1. Records indicating any place or area declared as a National Key Point in accordance with section 2 of the National Key Points Act;
2. Records indicating any place or area declared as a National Key Points Complex in accordance with section 2A of the National Key Points Act;
3. Bank statements of the special account for the safeguarding of National Key Points established in accordance with section 3B of the National Key Points Act for the period 2010 to 2012.

- Reference number, if available:
- Any further particulars of record:

E. Fees

- A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- You will be notified of the amount required to be paid as the request fee.
- The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____

Form in which record is required: _____

Mark the appropriate box with an "X".

NOTES:

- Your indication as to the required form of access depends on the form in which the record is available.
- Access in the form requested may be refused in certain circumstances. In such a

case you will be informed if access will be granted in another form.

(c) The fee payable for access to the record, if any, will be determined

<i>partly by the form in which access is requested.</i>			
1. If the record is in printed form:			
X	Copy of record*		Inspection of record
2. If record consists of visual images: (this includes photographs, slides, video recordings, computer-generated images, sketches, etc).			
	view the images		copy of the images*
		X	transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound:			
	Listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)
4. If record is held on computer or in an electronic or machine ? readable form:			
	Printed copy of record*	X	Printed copy derived from the record*
			copy in computer readable form*(stiffy or compact disc)
			YES NO
* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?			X
A postal fee is payable.			
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>			
In which language would you prefer the record? ENGLISH			

• **G. Notice of decision regarding request for access**

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

IN WRITING.

Signed at this 4th of October 2012.



SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS
MADE

Mr Senkhu Maimane (FOIP Project Officer)

South African History Archive (SAHA)

This form was
generated and submitted
electronically on the
4th October 2012.

 15 August 2013

Senkhu Maimane

"CMK9"

From: Crooks Amelda - Colonel [crooksa@saps.gov.za]
Sent: Friday, November 16, 2012 1:30 PM
To: South African History Archive (SAHA)
Cc: Freeman Steve - Lieutenant Colonel; Redelinghuys Cobus - Brigadier
Subject: FW: DECISION ON REQUEST FOR ACCESS TO A RECORD: SECTION 25 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO 2 OF 2000): RE PROPERTY NKANDLA

Ref no: 25/7/12/1(764)

To: SAHA

Dear Mr Maimane,

DECISION ON REQUEST FOR ACCESS TO A RECORD: SECTION 25 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO 2 OF 2000): RE NATIONAL KEY POINTS

Your request, SAH-2012-SAP-0008, dated 2012-10-04, for access to a record has been refused by the line manager in terms of section 38(a) and 38(b)(i)(aa) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), which provides as follows:

"Mandatory protection of safety of individuals, and protection of property

38. The information officer of a public body —

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or

(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair —

(i) the security of —

(aa) a building, structure or system, including, but not limited to, a computer or communication system;"

To provide access to the requested records, will impact negatively on and jeopardize the operational strategy and tactics used to ensure security at the relevant property or safety of an individual (eg if a person plans, intends or tries to harm the relevant individual or to prejudice or impair the security of the building, access to this information may prejudice the effectiveness of those methods, techniques or procedures used to ensure the safety of such individuals and/or the building – a person who intends to harm the relevant individual may with ease harm the relevant individual if he or she has access to such information, or he or she may with ease determine the strategies and tactics used for such protection and then use the information to do such harm).

Note that you may, within 60 days, lodge an internal appeal against the refusal of the request. If you want to lodge an appeal, you must complete a Notice of Internal Appeal-form. A Notice of Internal Appeal-form may be obtained from Col A Crooks or any police station. Such Notice must be submitted to the office of Col A Crooks. Within 180 days after being informed of the outcome of an internal appeal, you are entitled to lodge an application to court for appropriate relief.

Kind regards

Amelda Crooks COLONEL

NATIONAL DEPUTY INFORMATION OFFICER

TEL: 012 393 2606 / +27 12 393 2606

FAX: 012 393 2156 / +27 12 393 2156



"CMK 10"

FORM B
NOTICE OF INTERNAL APPEAL
(Section 75 of the Promotion of Access to
Information Act 2000 (Act No. 2 of 2000))
[Regulation 8]

STATE YOUR REFERENCE NUMBER:

A. Particulars of public body

The Information Officer/Deputy Information Officer:

Amelda Crooks
South African Police Service (SAP)
Private Bag X94
Pretoria
South Africa
0001

B. Particulars of requester/third party who lodges the internal appeal

- (a) *The particulars of the person who lodge the internal appeal must be given below.*
(b) *Proof of the capacity in which appeal is lodged, if applicable, must be attached.*
(c) *If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be given at C below.*

Full names and surname: South African History Archive (SAHA)

Identify/Passport number: Non-Profit Trust No. 2522/93

Postal address: P.O.Box 31719, Braamfontein, 2017

Fax number: +27866491491

Telephone number: +27117182563

E-Mail Address: foip@saha.org.za

Capacity in which an internal appeal on behalf of another person is lodged:

C. Particulars of requester

This section must be completed ONLY if a third party (other than the requester) lodges the internal appeal.

Full names and surname: Right2Know Campaign

Identity number:

The decision against which the internal appeal is lodged

<i>Mark the decision against which the internal appeal is lodged with an X in the appropriate box:</i>	
X	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(l) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	Decision to grant request for access

E. Grounds for appeal

If the provided space is inadequate, please continue on a separate folio and attach it to this form. You must sign all the additional folios.

State the grounds on which the internal appeal is based:

1. On 16 November 2012 the assisting NGO received an email on behalf of the appellant, informing it that the request had been denied. In the email the department denies access to the records in terms of section 38(a) and 38(b)(i)(aa) of the Promotion of Access to Information Act (or PAIA).

2. The appellant appeals this refusal for the reasons set out below and submits the appeal.
3. The subject line of the email sent to the appellant reads;

“FW: DECISION ON REQUEST FOR ACCESS TO A RECORD: SECTION 25 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO 2 OF 2000): RE PROPERTY NKANDLA.”
4. The words “Property Nkandla” form part of the subject line.
5. The application for information deals with those records indicating any place or area declared as a National Key Point, indicating any place or area declared as a National Key Points Complex and Bank statements of the special account for the safeguarding of National Key Point.
6. The application does not deal with any “Property Nkandla”
7. The refusal of the record is premised on the assumption that records are requested in relation to “Property Nkandla” This assumption is wrong, and the information officer misdirected themselves in relation to the record requested.
8. The information officer did not make a decision in relation to the records requested, but in relation to records not requested.
9. The information officer did not apply their mind to the actual request for records; indicating any place or area declared as a National Key Point, indicating any place or area declared as a National Key Points Complex and Bank statements of the special account for the safeguarding of National Key Points.
10. The requested information does not fall into the category of information exempted from release in terms of section 38(a) and 38(b)(i)(aa) of PAIA. The information requested does not reveal information which could reasonably expected to endanger the life or physical safety of an individual or prejudice or impair the security of a building, structure or system, including but not limited to a computer or communication system. The applicant seeks a list of places or areas declared as National Key Points, and the Bank statements of the special account for the safeguarding of the National Key Points, and not any information about security in relation to these Key Points.
11. The information officer failed to apply their mind in relation to the discretion granted in terms of section 38(b)(i)(aa), whereby the information officer may release information in relation to information described in that section.
12. The information officer did not state adequate reasons for refusal, as required in section 25(3)(a) of the Act.

13. Section 28 of PAIA requires that the information officer must disclose a requested record that does not contain exempt information, and can reasonably be severed, from any part that does, so as to provide the requester with access to the part which does not contain exempt information.

14. Accordingly, if any part of the record indeed contains information which is exempt from release, which the appellant denies, the information officer failed to apply their mind to such severing, or alternatively did not properly sever the exempt information from the record, and release the remaining record..

15. The Assisting NGO therefore respectfully submits that you should order that appellant be given access to the requested records pursuant to section 77(2) of PAIA, which empowers you to substitute the information officer's decision with a new decision.

State any other information that may be relevant in considering the appeal:

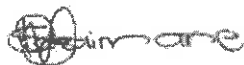
F. Notice of decision on appeal

You will be notified in writing of the decision on your internal appeal. *If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

State the manner:

Particulars of manner:

Signed at JOHANNESBURG this 18th of December 2012.



SIGNATURE OF APPELLANT

Mr Senkhu Maimane (FOIP Project Officer)

South African History Archive (SAHA)

*This form was generated
and submitted electronically
on the 18th December 2012*



15 August 2013

FOR DEPARTMENTAL USE:

OFFICIAL RECORD OF INTERNAL APPEAL

Appeal received on

(date) by (state rank, name and surname of information officer/deputy information officer).
Appeal accompanied by the reasons for the information officer's/deputy information officer's
decision and, where applicable, the particulars of any third party to whom or which the record
relates, submitted by the information officer/deputy information officer on (date) to the relevant
authority.

OUTCOME OF APPEAL:

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER
CONFIRMED/NEW DECISION SUBSTITUTED
NEW DECISION:

DATE

RELEVANT AUTHORITY

RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION OFFICER
FROM THE RELEVANT AUTHORITY ON (date):

Regards,
Senkhu Maimane
Project Officer
Freedom of Information Programme (FOIP)
South African History Archive (SAHA)

Tel. +2711 718 2563
Fax. +2786 649 1491
Physical: 1 Kotze Street, Women's Jail, Constitution Hill
Postal: P.O Box 31791, Braamfontein, 2017

Web: www.foip.saha.org.za
To subscribe to the SAHA newsletter click [here](#).

From: Crooks Amelda - Colonel [<mailto:crooksa@saps.gov.za>]
Sent: Thursday, January 17, 2013 3:26 PM
To: senkhu@saha.org.za
Subject: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Our ref no: 25/7/12/1(764)

Dear Mr Maimane,

NOTICE OF INTERNAL APPEAL: PAIA SAH-2-12-0008: NATIONAL KEY POINTS

Your Notice of Internal Appeal, dated 18 December 2012, and telephonic discussion on 2013-01-17, have reference to the matter.

Please accept my apologies for referring to "NKANDLA" in the heading of my e-mail response dated 16 November 2012. Another heading was copied and paste and Col Crooks forgot to delete the last part "RE PROPERTY NKANDLA". Be assured that it was merely a typing error and the Nkandla decision had no reference to your request.

One of the responsibilities of the National Deputy Information Officer is to prepare an Information Note for the Minister regarding an appeal – all relevant records or presentations from the appellant and also from the SAPS must be attached and reflected in such Information Note to enable the Minister to make an informed decision in terms of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000).

Due to the limited 30 day time period and from experience in the last 10 years in submitting Internal Appeals through our lines of communication to the Minister, it is almost impossible to ensure finalization of these appeals within 30 days from receiving such an appeal. (The holidays during December 2012 and January 2013 even shorten this limited time period).

Although the relevant Act does not make provision for an extension period during the appeal process, **an extension of at least another 30 days (ie till end of February 2013) is requested** to enable this office to consult with the relevant offices within the SAPS (legal Services) and then submit your appeal together with the recommendation of the National Deputy Information Officer to the Minister to enable him to make an informed decision on such appeal.

Kind regards

Amelda Crooks COLONEL

NATIONAL DEPUTY INFORMATION OFFICER

TEL: 012 393 2606 / +27 12 393 2606

FAX: 012 393 2156 / +27 12 393 2156



From: Senkhu Maimane [<mailto:senkhu@saha.org.za>]

Sent: 18 December 2012 11:22

To: Scholtz Hein - Lieutenant Colonel

Cc: Crooks Amelda - Colonel; 'Persla Sayyar'; 'Murray Hunter'

Subject: RE: Out of Office AutoReply: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Good day Lt Col Scholtz,

Our reference: SAH-2012-SAP-0008

Your reference:

Please find attached internal appeal form B, and supporting documentation.

Regards,

Senkhu Maimane

Project Officer

Freedom of Information Programme (FOIP)

South African History Archive (SAHA)

Tel. +2711 718 2563

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From: Crooks Amelda - Colonel [<mailto:crooksa@saps.gov.za>]

Sent: Tuesday, December 18, 2012 10:32 AM

To: South African History Archive (SAHA)

Subject: Out of Office AutoReply: Submission of Internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

I am out of office till 9 January 2013.

The following members may be contacted for urgent enquiries:

18-21 Dec 2012 & 2-8 Jan 2013:

Lt Col Hein Scholtz tel: 012 393 1742 ScholtzH@saps.gov.za

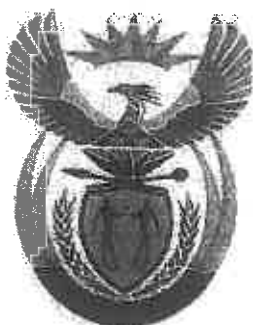
24-31 Dec 2012:

Capt Hanneke Pieters tel: 012 393 1378 pietersh@saps.gov.za

Kind regards

COLONEL A CROOKS
NATIONAL DEPUTY INFORMATION OFFICER
SOUTH AFRICAN POLICE SERVICE

"CMK12"



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Mr Senkhu Maimane
South African History Archives
Po Box 31719
BRAAMFONTEIN
2017

Dear Mr Maimane,

**SECTION 74 OF THE ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000):
NOTICE OF INTERNAL APPEAL: SOUTH AFRICAN HISTORY ARCHIVES:
NATIONAL KEY POINTS**

Your Notice of Internal Appeal, dated 18 December 2012, has reference to the matter.

After due consideration of the internal appeal against the decision of the Service to refuse access to the requested records, I have decided —

1. with regard to the first part of the appeal relating to the words "Property Nkandla" in the subject line of the e-mail message dated 2012-11-16 sent to you, that the Service did apply its mind to the matter and did not assume that the records are requested in relation to "Property Nkandla" and that a mere typing error was made;
2. to dismiss the appeal in terms of section 38(a), section 38(b)(l)(aa) and section 45(1)(b) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), (hereinafter referred to as the "Act"), with regard to the second part of the appeal relating to a list of all the places or areas which had been declared National Key Points or Complexes; and
3. to dismiss the appeal, with regard to the third part of your appeal relating to bank statements of the special account for the safeguarding of National Key Points established in accordance with section 3B of the National Key Points Act for the period 2010 to 2012 and to inform you that Service does not have a special account for the safeguarding of the National Key Points.

The reasons for the decisions are as follows:

1. The words "Property Nkandla" which is in the subject line of the e-mail message dated 2012-11-16 to you, was a mere typing error when the National Deputy Information Officer submitted the decision of the line manager to you. In the heading of the letter self, the words do not appear. The fact that the line manager, Section Head: National Key Points and Strategic Installations, after consultation with legal Services, made the decision to refuse access to the requested records, and only submit the decision to the National Deputy Information Officer to enable her to notify you of such decision, is further proof that the line manager or the Service did apply his mind to the matter and did not assume that the records are requested in relation to "Property Nkandla". The National Deputy Information Officer only informed you of such decision and she merely made a typing error.
2. The Service correctly refused access to the requested records in terms of section 38(a) and section 38(b)(i)(aa) of the Act. However, the Service should also have relied on section 45(1)(b) of the Act for refusal of access to the requested records.
3. Section 38(a) and section 38(b)(i)(aa) of the Act provides as follows:
"Mandatory protection of safety of individuals, and protection of property"
 38. The information officer of a public body —
 - (a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or
 - (b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair —
 - (i) the security of —
 - (aa) a building, structure or system, including, but not limited to, a computer or communication system;"
4. It is agreed that to provide access to the requested records, will impact negatively on and jeopardize the operational strategy and tactics used to ensure security at the relevant property or safety of an individual (eg if a person plans, intends or tries to harm the relevant individual or to prejudice or impair the security of the building, access to this information may prejudice the effectiveness of those methods, techniques or procedures used to ensure the safety of such individuals and/or the building – a person who intends to harm the relevant individual may with ease harm the relevant individual if he or she has access to such information, or he or she may with ease determine the strategies and tactics used for such protection and then use the information to do such harm). If a person wants to cause such harm, the fact that certain places are National Key Points or critical places, will be an aid to such culprits in such plans.
5. The National Key Points include different places or areas which are extremely important and its loss, damage, disruption or immobilization may prejudice the

Republic or its safety and it is in the public's interest that they be secured and that such declaration as a National Key Point not be publicly advertised. Such "critical" places or areas are very likely to become "soft spots or targets" for the enemy or a person that intends to harm the Republic or endanger the life or physical safety of an individual at or from such place or area. Knowledge of exactly which places or areas are declared as such points, are highly likely to prejudice or impair the security of such places or areas when such knowledge is used by persons who intend to do such harm to such building, structure or system.

Places or areas which are National Key Points include places or areas such as:

- (1) Banks;
- (2) Munitions Industries;
- (3) Petro Chemical Industries;
- (4) Water Supply;
- (5) Electricity;
- (6) Communications;
- (7) Transport Air;
- (8) Government Institutions;
- (9) Data Processing;
- (10) Research; or
- (11) Technology Information Systems.

6. It must be noted that there is 200 places or areas which have been declared as National Key Points. The majority of these places or areas is not government owned and therefore there are personal information (ie the name of the place or area qualifies as "the address of the individual" or that he or she is the owner of such place or area) of numerous third parties involved in the request. The fact that a place or area is the property of a certain person qualifies as personal information of such person.

The Service should therefore also have refused access to the requested records in terms of section 45(1)(b) of the Act. Personal information of third parties is contained in the requested record (ie a list of all National key Points or Complexes). In order for the Service to adhere to the provisions of section 47 of the Act (ie the work involved in processing and notifying third parties of the request of access to a record contemplated in section 34(1) of the Act, and afford them 21 days to grant or refuse such access with reasons), will substantially and unreasonably divert the resources of the Service.

7. The Act defines "personal information" as follows:
"personal information" means information about an identifiable individual, including, but not limited to -
 - (a) *information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or*

- mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, fingerprints or blood type of the individual;
- (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;
- (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual;
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and
- (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, but excludes information about an individual who has been dead for more than 20 years;

8. Section 34 of the Act provides as follows:

"Mandatory protection of privacy of third party who is natural person

34. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information-
- (a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;
 - (b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
 - (c) already publicly available;
 - (d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is-
 - (i) under the age of 18 years; or

- (ii) incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
- (e) about an individual who is deceased and the requester is-
 - (i) the individual's next of kin; or
 - (ii) making the request with the written consent of the individual's next of kin; or
- (f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to-
 - (i) the fact that the individual is or was an official of that public body;
 - (ii) the title, work address, work phone number and other similar particulars of the individual;
 - (iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
 - (iv) the name of the individual on a record prepared by the individual in the course of employment."

9. Section 45(1)(b) of the Act provides as follows:

"Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources"

45. The information officer of a public body may refuse a request for access to a record of the body if-

- (a) ...; or
- (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body."

10. Section 47 of the Act provides as follows:

"Notice to third parties"

47. (1) The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request.
- (2) The information officer must inform a third party in terms of subsection (1)-
- (a) as soon as reasonably possible, but in any event, within 21 days after that request is received or transferred; and
 - (b) by the fastest means reasonably possible.
- (3) When informing a third party in terms of subsection (1), the information officer must-
- (a) state that he or she is considering a request for access to a record that might be a record contemplated in section 34(1),

- 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record;
- (b) furnish the name of the requester;
 - (c) describe the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be;
 - (d) in any case where the information officer believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46(a) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 46 might apply; and
 - (e) state that the third party may, within 21 days after the third party is informed-
 - (i) make written or oral representations to the information officer why the request for access should be refused; or
 - (ii) give written consent for the disclosure of the record to the requester.
- (4) If a third party is not informed orally of a request for access in terms of subsection (1), the information officer must give a written notice stating the matters referred to in subsection (3) to the third party."

11. In general employees of the Service are not used to secure the National Key Points. However, in terms of the Constitution and the South African Police Service Act, VIP's must be protected by the Service. As these persons are mostly at some of these National Key Points, members of the VIP Protection Unit are safeguarding such persons and subsequently certain places where such persons are. There is not a separate account or budget in the Service for this safeguarding or protection provided by these members. Such members resort under the Personal Protection Unit or VIP Protection Unit.

You should have been informed that the Service does not have a special account for the safeguarding of the National Key Points and a statement to this effect should have been provided in terms of section 23 of the Act.

If you are aggrieved by the decision taken on the internal appeal, you may, within 180 days [as decided in the Constitutional Court Case, *Brümmer v Minister for Social Development and Others 2009 (11) BCLR 1075 (CC)*] lodge an application with a court against the decision on the internal appeal.

With kind regards

P. Mthethwa (acting)

EN Mthethwa
Minister of Police

Date: 28/2/13

Senkhu Maimane

"CMK13"

From: Crooks Amelda - Colonel [crooksa@saps.gov.za]
Sent: Thursday, March 07, 2013 8:27 AM
To: Senkhu Maimane
Subject: RE: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008
Attachments: DOC.PDF

Our ref no: 25/7/12/1(764)

Dear Senku,

NOTICE OF INTERNAL APPEAL: PAIA SAH-2-12-0008: NATIONAL KEY POINTS

Please find attached decision on the Internal Appeal. The original document will be posted.

Kind regards

Amelda Crooks COLONEL
 NATIONAL DEPUTY INFORMATION OFFICER
 TEL: 012 393 2606 / +27 12 393 2606
 FAX: 012 393 2156 / +27 12 393 2156



From: Senkhu Maimane [mailto:senkhu@saha.org.za]
Sent: 04 March 2013 15:35
To: Crooks Amelda - Colonel
Subject: RE: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Dear Lt Col Crooks

Communiqué noted. Thanks for the update.

Senkhu

From: Crooks Amelda - Colonel [mailto:crooksa@saps.gov.za]
Sent: Monday, March 04, 2013 2:25 PM
To: Senkhu Maimane
Subject: FW: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Our ref no: 25/7/12/1(764)

Dear Senku,

NOTICE OF INTERNAL APPEAL: PAIA SAH-2-12-0008: NATIONAL KEY POINTS

Please note that the appeal had to be send to Cape Town to the Minister to ensure his decision within the time period provided by you – the signed decision is on its way to this office. We will submit the Minister's decision as soon as it is received.

Kind regards

Amelda Crooks COLONEL
NATIONAL DEPUTY INFORMATION OFFICER
TEL: 012 393 2606 / +27 12 393 2606
FAX: 012 393 2156 / +27 12 393 2156



From: Crooks Amelda - Colonel
Sent: 28 January 2013 11:20
To: 'Senkhu Maimane'
Subject: RE: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Thank you Senkhu – much appreciated

Amelda Crooks COLONEL
NATIONAL DEPUTY INFORMATION OFFICER
TEL: 012 393 2606 / +27 12 393 2606
FAX: 012 393 2156 / +27 12 393 2156



From: Senkhu Maimane [<mailto:senkhu@saha.org.za>]
Sent: 28 January 2013 10:26
To: Crooks Amelda - Colonel
Subject: RE: Submission of internal appeal against decision relating to PAIA request SAH-2012-SAP-0008

Dear Mam,

Please note that the Right2Know Campaign have agreed to extend your time by a further 30 days.

IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA**(HELD IN PRETORIA)****CASE NO: 67574/12**

In the application of:

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST Applicant for admission
as *Amicus Curiae*

In the matter between:

**MANDG CENTRE FOR INVESTIGATIVE
JOURNALISM NPC**

First Applicant

VINAYAK BHARDWAJ

Second Applicant

and

THE MINISTER OF PUBLIC WORKS

First Respondent

**THE INFORMATION OFFICER: DEPARTMENT
OF PUBLIC WORKS**


Second Respondent

**FOUNDING AFFIDAVIT IN THE APPLICATION
TO BE ADMITTED AS *AMICUS CURIAE***

I, the undersigned,

CATHERINE MOIRA KENNEDY

do hereby make oath and state the following:



- 1 I am an adult female director of the South African History Archives Trust ("SAHA"), situated at the Women's Jail, Constitution Hill, 1 Kotze Street, Braamfontein, Johannesburg.
- 2 I am duly authorised to depose to this affidavit on behalf of SAHA.
- 3 The facts contained herein are, to the best of my knowledge, true and correct. Unless otherwise stated or indicated by the context, they are within my personal knowledge. I personally compiled the statistics and other facts relating to SAHA's work from SAHA records and publications, and / or research publications based on data sets provided by SAHA, for inclusion in this affidavit.

NATURE OF THIS APPLICATION

- 4 The main application arises from the Applicants' request in terms of section 18(1) of Promotion of Access to Information Act¹ ("PAIA") for access to information regarding financial and procurement considerations related to the expenditure by the Respondents with regards to the improvement of the Nkandla estate of the President of the Republic of South Africa. The Second Respondent refused to provide the Applicants with the requested information and it proceeded to lodge an internal appeal in terms of section 77(7) of PAIA. The internal appeal was deemed to have been refused after the First Respondent failed to make a decision.
- 5 SAHA seeks an order admitting it as *amicus curiae* in the main application in terms of Rule 16A of the Uniform Rules of Court ("the Rules"). As I describe

¹ 2 of 2002.



in more detail below, SAHA requested the consent of the parties to its admission as *amicus curiae* and received consent from all the parties to be admitted.

6 In this affidavit SAHA deals with the following issues:

6.1 The interest of SAHA in main proceedings;

6.2 The limited evidence sought to be adduced by SAHA;

6.3 The legal submissions to be advanced by SAHA, should it be admitted as *amicus curiae* in these proceedings along with the relevance of these legal submissions, and how they would assist this Court and differ from the arguments of the primary parties; and

6.4 SAHA's compliance with Rule 16A of the Rules.

THE INTEREST OF SAHA IN THE MAIN PROCEEDINGS

7 SAHA is a Non-Governmental Organisation ("NGO") constituted as a trust in terms of the laws of South Africa. I attach hereto a copy of SAHA's trust deed marked as annexure "CMK1".

8 SAHA's founding objectives were to collect, preserve and catalogue materials of historic, contemporary, political, social, economic and cultural significance, and to promote the accessibility of such materials to the general public.

9 SAHA is an independent NGO dedicated to documenting and providing



access to archival holdings that relate to past and contemporary struggles for justice in South Africa. Established by anti-apartheid activists in the late 1980s, its founding mission was to promote the recapturing of South Africa's lost and neglected history and to record history in the making. Further, SAHA now aims to document, support and promote awareness of past and contemporary struggles for justice through archival practices and outreach, and the utilisation of access to information laws.

- 10 In 2001 SAHA launched the Freedom of Information Programme dedicated to using PAIA in order to test and extend the boundaries of freedom of information in South Africa. This programme seeks to create awareness of, compliance with and use of PAIA.
- 11 In seeking to achieve its objectives, SAHA has made over 1800 requests for information, predominantly from various government departments since 2001. It has brought numerous applications in the High Court arising out of refusals of these requests. SAHA has also intervened as *amicus curiae* in the Constitutional Court in the matter of *Brummer v The Minister of Social Development and Others*.² Over the last few years, SAHA has developed a comprehensive capacity training programme for NGOs and community based organisations on using PAIA, including the development of resource kits, workshop guides, PAIA case study DVDs, and a dedicated online management system for the submissions and monitoring of PAIA requests made by civil society. It has further trained hundreds of activists, students, community members, NGO members, attorneys and paralegals in the use of

² [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC).

PAIA.

- 12 SAHA therefore has a substantial interest in the outcome of these proceedings as it will affect applications to court presently contemplated by SAHA and have a significant impact on future requests for information that SAHA will make. The present matter has the potential to impact substantially on the effective implementation of PAIA where disclosure is resisted on grounds relating to alleged national security concerns.
- 13 It is submitted that the legal submissions that SAHA proposes to make are relevant and different to the submissions of the parties, and are likely to assist the Court in deciding the matter. SAHA offers an expertise and a perspective that place it in a position to be of assistance to the Court.

THE LIMITED EVIDENCE SOUGHT TO BE ADDUCED BY SAHA

- 14 SAHA wishes to adduce limited evidence which relates to research conducted by SAHA and its experience in relation to requests for access to information. The evidence demonstrates and illustrates two trends that are relevant to the present matter:

14.1 First, the culture of secrecy pervading public bodies, which is one of the primary limitations on the right of access to information; and

14.2 Secondly, the nature and extent of the reliance by the State on apartheid era legislation such as the National Key Points Act,³ the

³ 102 of 1980.

Protection of Information Act,⁴ and the misapplication of PAIA's security exemptions to withhold information from the general public.

15 SAHA's legal submissions are also structured around these two themes.

16 The limited evidence that SAHA seeks to adduce consists of the following:

16.1 The report entitled 'Paper Wars: Making access to information in South Africa 2001 – 2007', attached as Annexure "CMK2". This report documents the nature and extent of the reliance by organs of state on security-related justifications to refuse to release information.

16.2 The contents of this affidavit (to the extent that it goes beyond the Paper Wars report), in which I set out certain relevant examples of specific PAIA requests and High Court applications.

17 SAHA gave notice to the parties of its intention to place this limited evidentiary material before the Court when requesting consent to SAHA's admission as *amicus curiae*. All the parties gave their consent.

18 In any event, it is submitted that much of the limited evidence sought be adduced is merely of a statistical nature and that all of the evidence is substantially incontrovertible.

19 In relation to the examples of specific PAIA requests that are included in this affidavit, SAHA does not put up facts that are (or could be) placed in dispute.

The Court is not invited to make factual findings in respect of any of these

⁴ 84 of 1982.



discrete disputes. The examples are put up for the limited purpose of illustrating the trends referred to above. In order not to burden the papers, SAHA does not attach to this affidavit the PAIA documentation and court papers in each of the disputes referred to as illustrative examples. However, these documents shall be made available to the parties on request and, if necessary, to the above Honourable Court.

- 20 SAHA will accordingly seek an order directing that the contents of this affidavit and its annexures stand as evidence in the main application.

THE LEGAL SUBMISSIONS THAT SAHA INTENDS TO ADDUCE

- 21 In terms of Rule 16A(6)(b) of the Rules, SAHA is required to clearly and succinctly set out the submissions which it will advance should it be admitted as *amicus curiae*.

- 22 If admitted as *amicus* SAHA proposes to submit oral and written submissions regarding the two themes identified above:

22.1 First, the culture of secrecy pervading public bodies; and

22.2 Secondly, the nature and extent of the reliance by the State on apartheid era legislation such as the National Key Points Act and the Protection of Information Act, and the misapplication of PAIA's security exemptions to withhold information.

- 23 SAHA makes its submissions against the backdrop of the limited evidence that it introduces in this affidavit.



The culture of secrecy pervading public bodies

24 In SAHA's experience, a culture of secrecy exists in South African public bodies. This culture has a permeating effect, and without intervention it will continue to act as a 'wall' between government and the general public.

25 The culture of secrecy manifests itself in responses to PAIA requests, in particular in that:

25.1 requests are often only considered once there is a threat of litigation or an appeal;

25.2 requests are routinely met with an initial 'knee-jerk', unreflective refusal, generally –

25.2.1 without adequate (or any) reasons as required in terms of section 25(3) of PAIA,

25.2.2 refusing access to all requested records, without considering the obligation to sever materials that may be disclosed in terms of section 28 of PAIA,

25.2.3 without considering whether the public interest override in section 46 of PAIA may require disclosure even where a valid ground to refuse disclosure is present; and

25.3 refusal is eventually withdrawn when litigation is instituted.

26 SAHA will submit that this culture frustrates the legislative scheme envisaged by PAIA.



27 In 2012, SAHA surveyed all the PAIA requests that it had administered in the past year. Of 159 requests for information held by various public and private bodies, 102 were either outright refused or simply received no answer (which is a deemed refusal under PAIA). This equates to a 64 per cent refusal rate. Out of 11 PAIA requests directed to the Office of the Presidency during the same period, ten were refused (over 90 per cent).

28 SAHA refers to the following practical examples:

28.1 During 2004, SAHA intervened in a PAIA request submitted by David Forbes, a documentary filmmaker, who sought access to the full transcript and exhibits of the amnesty hearings into the murders of the 'Cradock 4'. The PAIA request was initially refused and then only partially acceded to. The requested records were only finally released in terms of an out of court settlement after SAHA approached the High Court for relief.⁵

28.2 In 2006, SAHA submitted a request for access to the entire amnesty application presented by Eugene de Kock to the Truth and Reconciliation Commission ("TRC"). The Department of Justice ("DOJ") failed to deal with the request within the time periods prescribed by PAIA. In the request submitted by the DOJ's information office for an extension of time, disclosure was resisted on the basis that de Kock's application was contained in various different collections and not collated in one submission. SAHA disputed this fact, as it was privy to knowledge that the application had not been separated after it

⁵ *David Forbes and Another v The Minister of Justice and Constitutional Development and Another* (North Gauteng High Court, Case number: 17095/95).



was submitted by de Kock's legal advisors. No progress was made with the request, despite various letters to the Minister of the DOJ. SAHA only received the requested records in 2009 after having submitted a new request, the initial refusal of which was overturned by the Minister.

29 The clear trend that emerges from the statistics and examples set out above are of an emergent culture of secrecy characterised by:

29.1 The failure to respond to PAIA requests timeously, or at all;

29.2 The failure to give reasons for refusals of PAIA requests;

29.3 The 'knee-jerk' and unreflective refusal of requests, forcing requesters to resort to litigation; and

29.4 The belated withdrawal of resistance to disclosure once litigation is instituted, presumably on advice that there is no lawful basis to refuse disclosure.

30 SAHA does not seek to convey this trend to the Court in order to visit the sins of other organs of state on the current Respondents or score cheap political points; nor to seek relief directly related to the discrete disputes put up as examples.

31 SAHA places this material before the above Honourable Court to assist the court to appreciate the increasingly pervasive culture of secrecy that is taking root in certain government bodies and its impact on the implementation of PAIA and the enjoyment of the constitutional right of access to information. It



is submitted that the culture of secrecy provides crucial context in assessing:

31.1 the conduct of the Respondents in resisting the PAIA request, including the failure to give full or adequate reasons, the failure to decide the internal appeal and the failure to place adequate evidence before the Court to enable it to consider the objections; and

31.2 an appropriate remedy that will not merely vindicate the rights of the requester in the immediate dispute but safeguard the implementation of PAIA.

32 Considered in the light of the growing culture of secrecy, although relatively high-profile, the present matter is not 'exceptional' – it typifies the trend.

The State's reliance on apartheid era legislation

33 The second trend to which SAHA will refer, and which provides the backdrop to SAHA's legal submissions, is the nature and extent of reliance by organs of state on security legislation, including apartheid-era legislation, to resist PAIA requests.

34 SAHA submitted 1297 requests to public bodies between 2001 and 2011. Out of this number, 79 requests received refusals with reasons relating to the content of the requested records, of which 16 requests were initially refused in full or in part on grounds relating to national security. Accordingly, security concerns were invoked to refuse access in over 20 per cent of all requests actively refused during this period for reasons relating to content (that is, excluding deemed refusals in terms of section 27, refusals where no reasons



were cited, and those requests for which records could not be found in terms of section 23). SAHA appealed decisions in seven of these 16 requests, refusals were overturned in full or in part at the internal appeal stage for one of these requests, and documents were released in out of court settlements relating to three of these requests. SAHA is still awaiting judgment in one case.

- 35 SAHA refers to the following practical examples of refusals premised on the National Key Points Act and the Protection of Information Act, which examples also illustrate the misapplication of PAIA's security exemptions to withhold information from the general public:

35.1 The '34 boxes case':

35.1.1 Commencing in 2001 SAHA's submitted various requests in terms of PAIA to access state records relating to the TRC, primarily held by the National Archives, including copies of the correspondence files documenting the National Archives' dealings with the TRC in relation to the archive of the TRC.

35.1.2 Between 2001 and 2004 SAHA submitted 38 requests relating directly to the TRC archive. In one instance, SAHA waited almost three years for its PAIA request to be finalised, which delay was occasioned by reliance by the National Archives and the Department of Arts and Culture on state security concerns identified by the National Intelligence Agency. This request culminated in an application to the High Court in

Handwritten signature and initials, possibly 'LW' and 'B', with a vertical line and a small 'h' below.

January 2003, eventually resulting in an out of court settlement.⁶

35.1.3 The court case was then re-enrolled for January 2004. Another out of court settlement was signed on 17 August 2004. Then, on 15 November 2004 Vusi Pikoli authorised the release of some documents to help facilitate settlement.

35.2 The Apartheid Military Intelligence files case:⁷

35.2.1 In 2001 SAHA uncovered the existence of 38 series of Apartheid-era Military Intelligence files, in the possession of the Department of Defence ("DOD"), which had been withheld from the TRC. When SAHA sought access to these records, a legal dispute ensued regarding the interpretation of the provisions of PAIA and the intersecting operation of the Protection of Information Act.

35.2.2 The DOD refused to provide SAHA with certain series due to the fact that it had not been declassified by Defence Intelligence and had only been downgraded to 'Secret' as they contained information relating not only to the defence of the Republic of South Africa but also to personal information of third parties which was protected by Part 2, Chapter 4, sections 34 and 41 of PAIA. The requested records were only released after SAHA approached the High Court for relief.

⁶ *SAHA v The Minister of Justice and Constitutional Development and Another* (North Gauteng High Court, Case number: 33394/2002)

⁷ *SAHA v The Chief, South African National Defence Force and 3 Others* (North Gauteng High Court, Case number 15982/2002)

35.3 The National Key Points PAIA request:

35.3.1 In October 2012, SAHA made a formal request for access, on behalf of the Right2Know Campaign, in terms of section 18(1) of PAIA to the Information Officer of the South African Police Service ("SAPS").

35.3.2 SAHA requested access to any records indicating any place or area declared as a National Key Point or a National Key Points Complex in accordance with section 2 and section 2A of the National Key Points Act. It further requested access to the bank statements in respect of the special account for the safeguarding of National Key Points which is established in accordance with section 3B of the National Key Points Act.

35.3.3 SAHA's request was once again denied in terms of section 38(a) and 38(b)(i)(aa) of PAIA. The information officer further stated that to provide access to the requested records would impact negatively on and jeopardize the operational strategy and tactics used to ensure security at the relevant property or safety of an individual. SAHA proceeded to lodge an internal appeal in terms of section 75 of PAIA. However, the appeal was also unsuccessful. The matter remains unresolved as SAHA and the Right2Know Campaign explore the possibility of litigation in this regard.

36 There is accordingly a problematic trend among organs of state to resist disclosure on the basis of alleged concerns relating to 'security' where such



objections cannot be sustained.

37 In respect of the Protection of Information Act and the National Key Points Act, SAHA will make the following general legal submissions:

37.1 In terms of section 5 of PAIA, PAIA applies to the exclusion of both statutes to the extent that they purport, prohibit or restrict the disclosure of a record and are materially inconsistent with an object or a specific provision of PAIA;

37.2 Both statutes need to be approached with caution, cognisant of the fact that they are laws made to entrench the apartheid security state, prior to the adoption of the Constitution;

37.3 To the extent that either statute applies – and subject to any future constitutional challenge – its provisions must be interpreted so as to promote the spirit, purport and objects of the Bill of Rights in terms of section 39(2) of the Constitution;

37.4 When interpreting these statutes, the context in which they are implemented, including the trends towards a culture of secrecy and reliance on 'security' concerns to resist disclosure, must be taken into account;

37.5 The provisions of both statutes that purport to restrict disclosure of information or impose civil or criminal liability have the potential to limit the right of access to information in section 32 of the Constitution and must be narrowly construed.



- 38 SAHA shall develop these submissions fully in its heads of argument in due course when it has had sight of the parties' legal submissions, conscious of its obligation not to repeat the arguments of the parties and its duty to assist the court.

COMPLIANCE WITH RULE 16A

- 39 In two letters dated 5 April 2013, copies of which are attached as Annexure "CMK3a" and "CMK3b", SAHA informed the parties to the current proceedings that it wished to be joined as *amicus curiae* to the proceedings, and requested the parties for their consent in accordance with Rule 16A(2) of the Rules.
- 40 The Applicants in the matter consented to SAHA's request in a letter dated 8 April 2013, attached hereto marked as Annexure "CMK4".
- 41 The Respondents' representatives replied by letter dated 11 April 2013, consenting to the admission of SAHA as *amicus curiae*. The letter is attached hereto as Annexure "CMK5".
- 42 Accordingly, SAHA has received the consent of all the parties to be admitted on the terms set out in the notice of motion.

CONCLUSION

- 43 SAHA submits that its admission as *amicus curiae* will not cause any delay or inconvenience to the relevant parties involved in the main proceedings or to



the Court. It estimates that its oral submissions to the Court will not exceed 30 minutes. It further undertakes to provide the parties involved with its written submissions in advance of the hearing date.

- 44 In light of the above, SAHA requests that this Court admits it as *amicus curiae* in the main proceedings, that this affidavit and its annexures stand as evidence in the application and that SAHA be granted permission to advance oral and written argument.


CATHERINE MOIRA KENNEDY

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at *Rosebank* on this the *16* day of *April* 2013, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.


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Zuma's costly home expansion

10 Jul 2010

Skhumbuzo Miya

THE cost of the expansion of President Jacob Zuma's family homestead in Nkandla in northern KwaZulu-Natal, estimated at R65 million last year, has rocketed to almost R200 million, a source close to the project has revealed.



The source said the cost soared because of additions to the architectural plan, unforeseen expenses as a result of transporting building material to this remote rural area and rising construction costs.

Although Zuma is expected to be financially responsible for part of the building expenses, the taxpayer is expected to foot the largest chunk of the bill, said the source.

According to the Mail & Guardian's original report on the project last year, the expansion will turn the presidential homestead into a sprawling precinct that will include a police station, helicopter pad, military clinic, visitors' centre, parking lot with parking for at least 40 vehicles and at least three smaller houses that will serve as staff quarters.

Weekend Witness has learnt that other extensions that added to the soaring cost include fencing and the construction of roads within the precinct.

Phase one of the project comprises two houses — a double-storey and a guesthouse — which are expected to be completed shortly as soon as builders complete the roof-thatching.

Locals in Nkandla would not comment openly about the project. Those who spoke to Weekend Witness expressed their excitement about what was going on in their area.

Said an elderly woman who spoke on condition of anonymity, "Having a president as a neighbour has already started benefiting us as we now have running water and electricity.

"We hope this new development will help attract other development projects in the area, especially with regard to job opportunities for our youth,"

The views of people at a local shop were generally that although the Zuma homestead is like a mansion in a sea of poverty, local people have not lost hope that one day the government will provide them with subsidised housing.

Presidential spokesperson Vincent Magwenya referred all inquiries about the expansion to the Public Works Department (PWD), saying it is handling the project.

The response from Thami Mchunu, spokesperson for the PWD to a list of detailed questions (see box) was that the department "is not in a position to answer any questions related to the accommodation of the president of the country".

"The accommodation for the executive falls under the ambit of the National Key Points Act* and we therefore cannot provide any details as this can compromise the safety and security of the executive."

* The National Key Points Act was first promulgated in 1980 and amended as the National Key Points and Installations Act in 2007. Like its predecessor, it seeks to protect places and areas deemed to be of strategic national interest against sabotage or other forms of attack.

- Are projected costs above R65 million as reported?
- If they have soared, what are the reasons behind that and what is the new figure?

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- How much is going to be spent by President Zuma on the whole project and how much will be footed by the state?
- Can you confirm that the whole project is done on behalf of the Public Works Department? If so, how is President Zuma going to reimburse the state after the completion of the project?
- When is phase one of the project going to be completed and when will the entire project be finished?
- Are there any other developments projected for the area?

Comments: [Post a Comment]

Posted by Emelia on 26 Jul 2010

Zuma house

Will Zuma be paying for the house or will it be "subsidized" like poor people get subsidized? Building training colleges, or pre schools or any other form of educational institution, with a view to improving employment would have been a far more virtuous project.

Posted by CLAUDETTE on 11 Jul 2010

re zuma hous

why can he have a normal home like everyone else, no wonder the country has no money and his people are starving

Posted by Nalen on 11 Jul 2010

President's Home

While the country fights unemployment, people have no homes, poor gets poorer, state has money to waste on a presidents home. This is a total waste of money.

p.s how is Zuma going to pay back his portion to the state when he has no money

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Security law: State wields apartheid's big stick

The battle for the truth about Nkandla is far more significant than the recent squabble between Helen Zille and a group of Zuma loyalists suggests.

16 Nov 2012 00:00 Vinayak Bhardwaj, Murray Hunter, Bongani Mthembu



The minister of police can arbitrarily declare a place such as Nkandla as a key point. (Madelene Cronjé, M&G)

The battle for the truth about Nkandla is far more significant than the recent squabble between Democratic Alliance leader Helen Zille and a group of Zuma loyalists suggests.

In fact, the government's attempt to use the National Key Points Act both to justify and to hide the R238-million Nkandla upgrade is just the latest and most extreme abuse of a law that has undermined democracy since its inception.

Drafted in 1980 in response to acts of sabotage, the Act is in every way a child of PW Botha's

securocratic regime. It gives arbitrary powers to the minister of police to declare any building or installation a key point that is vital to state security; once this is done, the constitutional rights to freedom of expression and access to information seem no longer to apply. These fundamental rights are granted or taken away at the whim of the minister, or anyone to whom his powers are delegated.

Although its draconian measures have no real place in our constitutional democracy, the Act seems to have found new friends in a new era.

A month ago the Right2Know Campaign launched a request for information in terms of the Promotion of Access to Information Act. We asked the head of the South African Police Service, who is meant to be the guardian of this information, for a list of all the key points. But, although the legal deadline for a response was November 4, the police have failed to provide the information.

Why should the public have a list of them? Simply, it's a law that undermines basic rights; at the very least we should know how widely those rights are being undermined.

Once a site is declared a national key point, secrecy provisions come into play: there's a jail sentence or R10 000 fine for any person who discloses "any information" in "any manner whatsoever" about the security measures of a national key point or "any incident that occurred there".

Any site can be named a key point, from our airports and factories to our power stations and presidential residences. This is why, for many years, activists, unionists and community groups have been calling for a public list of the key points, but the list itself is in effect a secret.

Lawful protests

Although the Act may be an apartheid dinosaur, it has continued to give private sector and government officials the opportunity to shut the public out. In fact, Nkandla is not a first for presidential residences – in 2006 the department of public works used the Act to try to hush up the building of an alleged R90-million wall around the official presidential residence in Pretoria.

Because public gatherings are also prohibited at key points, the Act has also been invoked to clamp down on lawful protests. In 2003, for example, the police arrested 36 transport workers who were demonstrating outside Cape Town International Airport – a national key point.

Even more farcically, women's groups protesting against gender violence in 2008 were stopped from holding a peaceful protest outside the Emperors Palace casino where noted boxer and occasional wife-beater Mike Tyson was being hosted. The stated grounds for

refusing their right to gather was that Emperors Palace is next to OR Tambo International Airport, also a national key point.

The Act has been used to prevent accountability in the private sector as well, and nowhere in South Africa has this experience been more bitter than for the communities surrounding the petrochemical refineries in the South Durban basin, where a years-long struggle has been waged between residents and representatives of the petrochemical industry, in particular the Engen refinery.

Despite many concerns about the environmental risks posed by the refinery and the toxins running through its degraded pipelines, its status as a national key point has been used to withhold information about the safety of its infrastructure and possible risks to the health of people living nearby who must breathe in the refinery's air and use local water sources.

In light of this, we must see Nkandlagate as only the latest in a long history of strategic use and misuse of this apartheid-era law to undermine the public's right to know. No threat comes to national security from knowing how R238-million in public funds was used to upgrade a private residence, just as there is no threat when airport workers hold a peaceful strike outside their workplace, or when the communities of South Durban request air quality samples from the petrochemical industry.

It's time to make this apartheid dinosaur extinct.

Vinayak Bhardwaj is advocacy co-ordinator of the M&G Centre for Investigative Journalism (amaBhungane), Bongani Mthembu is the air quality officer of the South Durban Community Environmental Alliance and both are Right2Know members. Murray Hunter is a spokesperson for the campaign


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Zuma's Nkandla declared a national keypoint

January 27 2013 at 01:16pm
By Genevieve Quintal
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Pretoria - The government spent R206 million on security upgrades and consultants for President Jacob Zuma's Nkandla home, Public Works Minister Thulas Nxesi said on Sunday.



President Jacob Zuma's private residence in Nkandla.
File Photo: Bongile Mchunu

Included in this amount was R135 million for "operational needs", R71 million for consultants and security features such as bullet proof windows, security fencing, evacuation mechanisms, and firefighting equipment, he told reporters in Pretoria.

Also included in the total was R26 million to make changes to the project (variation orders).

The "operational needs" included medical facilities and accommodation for various government departments.

Of the R71 million around R50 million was for the actual security upgrade and R20 million was paid to consultants.

However no houses were built using public money.

"There is no evidence that any house belonging to the president was built with public money," Nxesi said, following an investigation by a task team.

Nxesi was joined by Justice Minister Jeff Radebe, Police Minister Nathi Mthethwa and State Security Minister Siyabonga Cwele.

There were however irregularities in the appointment of the 15 service providers and consultants who worked on the project.

"It is very clear that there were a number of irregularities with regards to appointment of service providers and procurement of goods and services."

In view of the irregularities the task team's report would be handed to the Special Investigation Unit, the Auditor General and the SA Police Service for further investigation, Nxesi said.

"If there are any professionals who are found to have acted unethically (they) will be reported to their respective professional bodies."

The task team was appointed in November after the costs of Zuma's residential complex caused an outcry. The matter was also raised in Parliament.

Nxesi said Zuma's home, like those of former presidents and former deputy presidents, had been declared a national key point.

The task team was told to ascertain in detail the security assessments and recommendations made by state security agencies.

"The investigation revealed that an approval was granted to the regional bid adjudication committee to adopt a negotiated nomination procedure in appointing contractors, despite this being a national project," Nxesi said.

Mthethwa said the amount spent on security was justified.

"At the point of (the security threat) assessment and at the conclusion (it became clear) that these are the kind of things we need for assessment and they need to be adhered to," he said.

Cwele said neither Zuma nor his family had an input on the security upgrade.

"They were not involved with the design and installation of security measures."

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'National Key Points Act a repressive relic'

February 22 2013 at 10:35am
By Sipokazi Fokazi

Cape Town - Deputy Public Works Minister Jeremy Cronin says Parliament should consider changing the apartheid-era National Key Points Act, as it is contrary to the values of a democratic South Africa.

Cronin questioned the appropriateness and constitutionality of the legislation - cited by his immediate boss, Thulas Nxesi, when he refused to make public the full report on a departmental investigation into the R206 million security upgrade at President Jacob Zuma's Nkandla residence.

Cronin said though the act still was in force and the government relied on it for certain matters, particularly the security of office-bearers, including presidents and premiers, it was "awkward" legislation and Parliament needed to "evaluate if that's what we want in the new South Africa".

The act applies to "any place or area" so important that its loss, damage, disruption or immobilisation may "prejudice the Republic", or whenever a minister of police or defence considers it "necessary or expedient for the safety of the Republic or in the public interest".

It also prohibits anyone from providing "any information relating to the security measures applicable at or in respect of any National Key Point or in respect of any incident that occurred there".

First used by the apartheid government to draw a veil of secrecy around its security and military operations, the act has been invoked by Nxesi and others to withhold details of the controversial Nkandla security "enhancements", leading to accusations of a cover-up.

Cronin had included his views on the act in the written version of his speech during the debate this week on Zuma's State of the Nation address, but omitted them when he delivered it in the National Assembly, prompting the DA to call for him to clarify his position.

The party's spokeswoman on public works, Anchen Dreyer, said despite Cronin's prepared speech having mentioned the "probably excessive and undoubtedly extremely costly security operational requirements" at Nkandla, he had failed to express his views during the debate.

His draft speech had said, about the National Key Points Act, that "Parliament does need to look at this anachronistic and problematic piece of legislation".

But Cronin defended himself on Thursday, saying he had not had time to read his entire prepared speech. The issue of the Nkandla spending had also been substantially addressed by Defence Minister Nosiviwe Mapisa-Nqakula.

The act came under scrutiny last year after news reports revealed that hundreds of millions of rand had been spent on upgrading Zuma's private Nkandla residence. Senior government officials prevented further details from emerging, saying Zuma's residence had been declared a National Key Point.

Following an investigation by his department, Nxesi said R206m had been spent on the upgrades.

A total of R71m was for security upgrades and R135m went towards the "operational needs" of other departments.

Irregularities in procurement processes had been referred to the law enforcement agencies.

In his prepared speech, Cronin referred to the act as "dastardly apartheid legislation". He later told Independent Newspapers that while he felt the legislation should be changed and replaced by "more democratic legislation", there should still be guidelines concerning sensitive information about security of presidents and other government officials.

DA parliamentary leader Lindiwe Mazibuko slammed Zuma on Thursday for failing to address the Nkandla issue in his response to the debate.

sipokazi.fokazi@ioli.co.za

Political Bureau

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Deputy Minister of Public Works Jeremy Cronin.
Picture: Etienne Creux

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The trouble with South Africa's national key points

12 June 2013



What's the difference between a national key point, a strategic installation and a place of importance? And at which of these might you get a fine of up to R1 million if you take a cellphone photo of the guards at the gate and tweet it? And how would you know that you're not allowed to do that anyway?

These are some of the questions that should be raised in the renewed public debate about the National Key Points Act. The Act is

due to be reviewed and a new bill is likely to come before Parliament by March 2014. Later this month, the National Assembly will debate the issue and this will inform opinion on the contents of the bill.

The current law dates back to 1980, a time of heightened apartheid paranoia. The Act was designed to arrange (even to order) protection primarily for private establishments and facilities — secretly. The intention of this obscure piece of legislation was to enable the state to force owners of facilities that presented security risks to secure their facilities at their own cost. The Act was intended to cover privately owned places, such as fuel depots and sites of sensitive industry, but also covered state-owned installations, like power stations, that were run by entities that did not focus on security. On the other hand, facilities that were secured as part of the regular business of state departments whose primary function was security, such as prisons and military bases, did not need to be designated as 'key points'. This is presumably why military installations are not necessarily key points. For example, it recently emerged that Waterkloof Air Force Base, the site of May's GuptaGate debacle, is not. In 2004 the authority for the law was shifted from the minister of defence to the minister of police. In 2007 an update was drafted, but not finalised, and is now being redrafted.

So, what is wrong with the National Key Points Act? The problems lie in the secrecy, lack of accountability and lack of clarity about what constitutes an offence under the Act. The minister under whose authority the Act falls has total discretion in

designating places as key points, which is contrary to the principles of accountability and transparency.

In the past year, the government has used the National Key Points Act on several occasions to avoid accountability and transparency on issues of public interest. Minister of Public Works Thulas Nxesi withheld information about his department's expenditure of more than R200 million on renovations to President Jacob Zuma's private residence, Nkandla, stating that it was a national key point. In January, journalists from *The Star* photographed the fatal beating of a prisoner by warders at Groenpunt Prison. The chairman of the parliamentary Portfolio Committee on Correctional Services, Vincent Smith, berated them for breaking the law by taking photos at a national key point.

Usually, the public has no way of finding out which places are South Africa's key points, or why they have been designated as such. The Act does not require the minister responsible to keep a record of them, although a list clearly exists because the police budget makes note of 197 national key points. The absence of a comprehensive public list means that a politician can claim that a facility is a key point – even if this is false.

The police budget hints at the contents of the list and mentions airports, oil pipelines, ports, refineries, the Union Buildings, legislatures, the Square Kilometre Array, World Cup stadiums and ministers' homes. This indicates that the elasticity of the existing law has allowed a significant broadening of what should be designated key points, such that prisons and the private homes of politicians are now included. However, this particular list seems incomplete because prisons are not actually named – despite Smith's claims.

This creates an absurd situation because the police could be responsible for – and allocate a portion of their budget to – securing prisons, when the security of prisons is already a core responsibility of the Department of Correctional Services. The implication is that public funds may be allocated twice to secure the same facility.

Also, the designation of politicians' homes as key points implies that the minister believes that they are more at risk than the homes of other citizens. It also implies that he believes that the security of politicians' residences is, as the Act states 'so important that [their] loss, damage, disruption or immobilisation may prejudice the republic' or he believes that their security is 'necessary or expedient for the safety of the republic or in the public interest'. Politicians already have VIP protection and budgets for upgrading the security of their residences, within reason. Therefore, it is unclear why they should also be designated as key points. Unless the purpose is to avoid accountability for the state funds that are spent on them.

A serious flaw in the existing Act is the discretion given to the minister to declare a national key point. The minister is not required by law to reveal that he has done so, other than to the owner, or to provide reasons for his decision. He need not even report this to Parliament. This absence of accountability renders the Act contrary to democratic accountability and makes it, in all likelihood, unconstitutional.

Consider the following scenario: the current law allows the minister of police to designate his own house as a national key point. He would not be obliged to tell anyone and he could, theoretically, spend money from the special account (provided for in the Act but never set up, according to Treasury officials) to secure the property with no need for justification. Yet a journalist writing about the guards on the minister's lawn could, theoretically, be charged for contravening the Act.

In 2007 a new draft bill, which was intended to replace the National Key Points Act, provided for three categories of places of strategic importance: national key points, strategic installations and places of importance. The criteria for these definitions were not included in the bill. The only apparent difference between them was that key points would be privately owned properties, strategic installations would be state-owned properties and places of importance would be temporary designations for public or private properties. The original Act merely defines a national key point as 'any place or area which has under section 2 been declared a National Key Point' and that section 2 allows the minister the power to list anything he considers 'necessary or expedient for the safety of the republic'.

In the draft bill, it was listed as an offence to provide information on a key point, punishable by a fine of up to R1 million. But, again, the definition of what constitutes an offence is vague and the minister is not required to provide the list of key points. So the public would not even know if they were contravening the law.

On 30 May 2013, Minister of Police Nathi Mthethwa stated that the old draft bill would undergo 'refining' and realignment with the Constitution. He asserted that the responsible team will finish this task by the end of July, and the bill will be introduced to Parliament by the end of the financial year. MPs were due to debate the national key points issue last week, but this has been rescheduled for later this month. The debate is sorely needed and should focus on tightening accountability and defining rational, clear criteria for determining key points.

Chandré Gould, Senior Researcher, Governance, Crime and Justice Division, ISS Pretoria and Louise Flanagan, Senior Reporter, *The Star*



"CMK16" 163

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Cape refugees arrested

August 5 2008 at 08:39am

By Devin Hermanus

Fifteen displaced foreigners and a volunteer have been arrested outside the Department of Justice building in central Cape Town and are to appear in the magistrate's court today (Tuesday) on probable charges of trespassing.

The police responded to a statement by the department of justice that the two women and 14 men who had been sleeping outside the building were breaking the law as it was a national key point, police spokesperson Randall Stoffels said.

The group were allegedly squatting illegally outside the building, at the corner of Albertus and Buitenkant streets, he said.

The 16 had been among the expatriates who, after the xenophobic violence in May, slept outside the Cape Town Central police station, earning the name the Caledon Square Group.

Stoffels said there had been no physical interaction between the police and the expatriates, and the volunteer had been charged as she had allegedly refused to leave.

The volunteer is from the Jewish Relief Fund, which has been assisting the Caledon Square Group.

Volunteer Mandy Goldberg said the foreigners had been outside the department of justice building every day since Thursday.

She said a bus had been arranged by the Premier's office for those members of the group not yet reintegrated into communities to visit refugee sites around the city in the hope of finding shelter.

The bus had not arrived on Sunday as scheduled, so the group had refused to board it when it turned up on Monday.

"There's a mistrust over the process, so (the foreigners) didn't want to go. They are not to be treated like cattle."

devin.hermanus@iol.co.za

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Xstrata miners arrested

November 15 2012 at 07:31pm
By SAPA

North West - North West police arrested 23 Xstrata mineworkers on Thursday for demonstrating outside the Rustenburg Magistrate's Court.

Brigadier Thulani Ngubane said they had been charged with illegal gathering, malicious damage to property and public violence.

"They were picketing outside of the court, supporting their co-workers who were arrested at the beginning of this week," said Ngubane.

He said the law did not allow protests to be conducted close to national key points.

"Any form of picketing, whether legally or illegally, (must) be done 100 metres away from the national key point."

The group also allegedly stoned police vehicles parked outside the court.

The 23 men would appear in the same court on November 18.

They were at the court for the appearance of 37 mineworkers arrested on Tuesday for public violence.

They had been part of a group of around 200 mineworkers who barricaded the road leading to the company's Kroondal mine.

They allegedly threw stones at passing cars and burnt tyres in the road.

They were granted bail of R500 each and the case was postponed until January 29. - Sapa

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North West police arrested 23 Xstrata mineworkers on for demonstrating outside the Rustenburg Magistrate's Court.

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'Prison officials cannot destroy evidence'



Two warders at the Groenpunt Prison in Deneyville in the Free State were injured in a prison protest in which inmates set part of the facility on fire on 7 January, 2013. Picture: Supplied.

Barry Bateman | [7 months ago \(2013-01-21T05:55:24+0200\)](#)

PRETORIA - The chairman of the parliamentary portfolio committee on correctional services at the weekend defended officials taking the law into their own hands by destroying evidence of journalists' alleged crimes.

The incident relates to reporters photographing Groenpunt Prison officials assaulting an offender, who later died.

Officials said maximum force had to be used after the prisoner attacked a warder.

Vincent Smith said the taking of pictures was in contravention of the National Key Points Act.

"I think we must condemn journalists breaking the law. Those who are guilty must, if they have broken the law, face the full might of the law."

But he went on to defend prison officials who deleted the very evidence of such a crime taking place, saying officials had the right to enforce the law.

Criminal lawyer Rude Krause said, "Had the officials of the Department of Correctional Services been of the view that an offence had been committed, there were most certainly not entitled to destroy the evidence.

Police spokesperson Thandi Mmambo said if they established the photos were in fact evidence of a crime being committed, the police would prosecute a case of defeating the ends of justice.

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