IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.

In the matter between:

SOUTHERN AFRICA LITIGATION CENTRE	Applicant
and	
THE MINISTER OF HOME AFFAIRS	First Respondent
THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS	Second Respondent
AUGUSTINUS PETRUS MARIA KOUWENHOVEN	Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

KAAJAL RAMJATHAN-KEOGH,

declare under oath as follows:

1. I am an adult female and the Executive Director of the Southern Africa Litigation Centre (*"SALC"*), the Applicant in this matter. The offices of the Applicant are at 1 Hood Avenue, Rosebank, Johannesburg.

2. I am duly authorised to depose to this affidavit on SALC's behalf. A copy of the resolution of the SALC Board empowering me to do so is annexed hereto marked **"KRK1"**.

3. Unless the context indicates otherwise, the contents of this affidavit are within my personal knowledge and are, to the best of my belief, true and correct. Where I make submissions of a legal nature, I do so on the advice of SALC's legal representatives. I also rely on my own knowledge and understanding of the legal framework.

4. This is an application to challenge the basis on which the First and Second Respondents have allowed, and continue to allow, the Third Respondent to reside in South Africa notwithstanding the fact that he –

    4.1 is a fugitive from justice having failed to return to the Netherlands to serve a term of imprisonment of nineteen years following his conviction referred to immediately below; and

    4.2 has previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, being serious crimes which are recognised under sections 4(1), (3)(c) and 5(2) of the Implementation of the Rome Statute of the International Criminal Court Act No. 27 of 2002.

5. This affidavit is structured as follows:

    5.1 The parties

    5.2 SALC's interest in the application

    5.3 Background to the application

5.4 Grounds of review

5.5 Relief prayed for and conclusion

THE PARTIES

6. The Applicant is a non-governmental organisation based in Johannesburg. SALC's mandate is to promote human rights and protect the rule of law in the Southern Africa region. The Applicant brings this application in its own interest as well as in the public interest.

7. The First Respondent is the Minister of Home Affairs, and is cited in his official capacity. The Minister is responsible for the implementation of the Immigration Act, No. 13 of 2002 (*"the Immigration Act"*). In terms of Uniform Rule of Court 4(9), this application will be served on the Minister care of the State Attorney, 22 Long Street, Cape Town.

8. The Second Respondent is the Director-General of the Department of Home Affairs (*"the Department"*), who is, *inter alia*, authorised to issue visas to foreigners who comply with the provisions of the Immigration Act, and empowered under the Immigration Act with the discretion to declare a foreigner an undesirable person. The Second Respondent has an parliamentary office in Cape Town. He is, however, served at his address at the head office of the Department of Home Affairs, Hallmark Building, 230 Johannes Ramokhoase Street, Pretoria.

9. The Third Respondent is Augustinus Petrus Maria Kouwenhoeven, an adult male citizen of the Kingdom of the Netherlands (*"the Netherlands"*). His address is 50 De

Wet Road, Bantry Bay, Cape Town, on a temporary residence visa in terms of section 11(6) of the Immigration Act. He is is served care of his attorneys Eisenberg & Associates, Suite 904, Touchstone House, 7 Bree Street, Cape Town, by agreement. No relief is sought against the Third Respondent. However, as his rights and interests are affected by the relief sought in this application, he is cited as an interested party.

10. A copy of this application will also be served on the Minister of Justice and Constitutional Development, the Minister responsible for the Extradition Act, No. 67 of 1962, by virtue of the fact that extradition proceedings are pending against the Third Respondent.

SALC'S INTEREST IN THIS APPLICATION

11. One of SALC's principal objectives is to ensure that Southern African states are fully aware of their obligations under domestic and international law. Through litigation, research and advocacy, SALC works to ensure that Southern African states give effect to these obligations.

12. SALC's International Criminal Justice Programme monitors and promotes the investigation and prosecution of the most serious crimes under international law, namely crimes against humanity, genocide, war crimes and aggression in Southern Africa and on the African continent.

13. SALC's international criminal justice work rests on the principle that the prevention of impunity for core international crimes depends primarily on initiatives and actions at the domestic level.

14. SALC's mandate also recognises the role that domestic recognition, observance and the application of international law can play in providing content to state obligations to respect, protect, promote and fulfil human rights.

15. To fulfil these objectives in South Africa, SALC litigates as a party and intervenes as *amicus curiae* before the courts in cases that raise issues of proper investigation and prosecution of core international crimes or serious violations of human rights.

16. Specifically, SALC has initiated or intervened in the following proceedings between 2014 and 2019: *S v Okah*;[1] *Law Society of South Africa and Others v President of the Republic of South Africa and Others*;[2] *Democratic Alliance v Minister of International Relations and Cooperation (CASAC Intervening)*;[3] *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others*;[4] *National Commissioner of the South African Police v Southern Africa Litigation Centre and Others*;[5] *Consortium for Refugees and Migrants in South Africa v President of the Republic of South Africa and 11 Others*;[6] and *Joao Rodrigues v NDPP and Others*.[7]

17. South Africa is a signatory to the 1949 Geneva Convention and signed and ratified the Rome Statute of the International Criminal Court in 1998. In so doing, South Africa affirmed its commitment to the rule of law, and in ending impunity for perpetrators of international crimes, including war crimes. South Africa's

[1] 2018 (1) ASCR 492 (CC)
[2] 2018 ZACC 51
[3] 2017 (3) SA 212 (GP)
[4] 2016 (3) SA 317 (SCA)
[5] 2015 (1) SA 315 (CC)
[6] 2014 ZAGPPHC 753
[7] Case No. 76755/18 (GP) (unreported judgment).

commitment to the rule of law is entrenched in the Constitution of the Republic of South Africa, 1996. This commitment is reflected in the preamble to the Immigration Act which records the importance of the legislation (and the implementation thereof) in ensuring that the role of the Republic in the continent and the region is recognised and that the international obligations of the Republic are complied with.

18. SALC has an interest in the decision of the Second Respondent to issue the Third Respondent with a visa valid for three years, notwithstanding the fact that he has been convicted of complicity in war crimes and was sentenced to a term of imprisonment of nineteen years. SALC has an interest in the failure of the Second Respondent to declare the Third Respondent an undesirable person, notwithstanding the fact that he has failed to return to the Netherlands to serve the term of imprisonment. These proceedings raise several important issues of international law and domestic law. SALC brings this application in its own interests, as an organisation dedicated to the upholding and protection of a country's obligations to international commitments including those arising from customary international law. The application is also brought in the public interest, as the public likewise has an interest in ensuring that the rule of law is upheld.

BACKGROUND TO THIS APPLICATION

19. I wish to point out that while the facts set out below are not within my personal knowledge, they are a matter of public record as most of the facts have been placed before court in the matter of Augustus Petrus Maria Kouwenhoven / Minister of Police and Others, case number 1477/18 in this Division (*"the application against*

the Minister of Police") by the Third Respondent as the applicant. The pleadings in the application under case number 1477/18 will be made available at the hearing of this application for review.

20. As stated above, the Third Respondent is a Dutch citizen. He has travelled to South Africa frequently over the past few years as his wife has permanent residence status. On each visit he was issued with a visitor's visa in terms of section 11(1) of the Immigration Act at the port of entry, as citizens of the Netherlands are not required to be in possession of a port of entry visa. A visitor's visa is issued for up to 90 days, and may be extended for a further period of 90 days, whereafter the holder must leave the Republic.

21. Section 10 of the Immigration Act deals with the issuance of visas, and section 10(4) specifically provides that *"a visa is to be issued on condition that the holder is not or does not become a prohibited person or an undesirable person"*. The list of persons who are prohibited is set out in section 29 of the Immigration Act, and includes *"anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country in respect of genocide, terrorism, human smuggling, trafficking in persons, murder, torture, drug-related charges or kidnapping"*.

22. Section 30 of the Immigration Act deals with undesirable persons and reads as follows:

> *"30.(1)The following foreigners may be declared undesirable by the Director-General, as prescribed, and after such declaration do not qualify for a port*

of entry visa, visa, admission into the Republic or a permanent residence permit:

(a) …

(f) anyone who is a fugitive from justice;

(g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, with the exclusion of certain prescribed offences: …"

23. Section 10(9) provides that the Director-General may at any time in writing notify the holder of a visa that the visa shall be cancelled for the reasons disclosed in the notice (for instance, that the holder is an undesirable person) and that the holder is thereby ordered to leave the Republic within the period stated in that notice, and upon the expiration of that period the visa shall become null and void. Section 10(10) provides the holder with the right, before the expiry of the period referred to in the notice, to make representations before the decision is made final.

24. The Third Respondent last entered South Africa on 18 December 2016 when he was issued with a visitor's visa valid for three months. On 3 March 2017 he applied for an extension of this visa. A copy of the extension, which expired on 17 June 2017, is attached hereto marked **"KRK2"**.

25. The visitor's visa was issued subject to the following conditions:

"1. Purpose of the visit: holiday.

2. To continue visit.

3. Not allowed to change status within South Africa."

26. The third condition reflects the limitation in section 10(6) of the Immigration Act that the holder of a visitor's visa or a medical treatment visa may not apply for a change of status or conditions of his visa within the Republic, except in exceptional circumstances as prescribed. The relevant regulation 9(9) was recently found to be unconstitutional in the matter of Nandutu and Others v Minister of Home Affairs and Another 2019 (8) BCLR 938 (CC), in that the exception did not extend to the spouse or child of a South African citizen or permanent resident.

27. On or about 15 June 2017 the Third Respondent applied to change his status, alternatively the terms and conditions of his employment, from that of a visitor to a visitor in terms of section 11(6) of the Immigration Act – a provision introduced by an amendment to provide for the foreign spouse of a citizen or permanent resident. This visa is colloquially known as a *"spousal visa"* and the holder may be authorised to work or undertake other activities. A copy of the application which is annexure "APMK14" to the Third Respondent's founding affidavit in the application against the Minister of Police, is attached hereto marked **"KRK3"**.

28. The second page of the signed checklist for a section 11(6) visa states that no person holding a visitor's visa may apply for a change of status to his or her visa while in the Republic, unless under the exceptional circumstances as set out in items (v), (vi) and (vii) which mirrors regulation 9(9) of the 2014 Immigration Regulations. At the time of application VFS Global (Pty) Ltd (*"VFS"*) (the company which processes visa and permit applications on behalf of the Department) routinely refused to accept applications where the applicant was the holder of a visitor's visa. As is noted from item (viii), it is the practice of VFS only to issue the spouse of a

South African citizen or permanent residence holder who is in possession of a relative's visa with a section 11(6) visa. The Third Respondent was not the holder of a relative's visa.

29. On page four of the Third Respondent's online application, Form 9 (which is included in "KRK3"), and in amplification of his having ticked *"yes"* to the question relating to his criminal convictions, the Third Respondent stated:

> ***"On 21 April 2017 conviction in absentia by court in the Netherlands of various offences allegedly committed in Liberia."***

30. It will be argued at the hearing of the matter that the Third Respondent was not convicted *in absentia* as stated. He did not provide the Second Respondent with details of the charges for which he was convicted or the sentence. It will be argued at the hearing of this matter that the Second Respondent had a duty to establish these facts before issuing any visa to the Third Respondent. It would appear from the pleadings in application against the Minister of Police that the Third Respondent did not disclose the fact that he was convicted during 1977 in the United States of America of crimes relating to an attempt to sell stolen artworks, including a Rembrandt, and sentenced to two years imprisonment. Apparently he only served a few weeks of the sentence and was deported from that country.

31. The Second Respondent issued the Third Respondent with a visitor's visa in terms of section 11(6) of the Immigration Act on 30 August 2017, notwithstanding the fact that on 21 April 2017 the Court of Appeal in 's-Hertogenbosch, the Netherlands, had convicted him of war crimes and sanctions violations committed in Guinea and

Liberia between 2000 and 2003, and imposed on him a sentence of 19 years imprisonment. A copy of the Third Respondent's current visa is attached hereto marked **"KRK4"**.

32. The Third Respondent was arrested during March 2005. In 2006 he was convicted by the District Court of The Hague of violations of the Dutch Sanctions Act and sentenced to 8 years imprisonment. He was acquitted on charges of war crimes. Subsequent to appeals brought by both the Third Respondent and the prosecution, the Court of Appeal in The Hague directed that a new trial should be held, which took place in the Appeal Court at 's-Hertogenbosch. The case proceeded in the latter court where the Third Respondent, as previously, was present and legally represented. However, during January 2017 the Third Respondent's legal representatives informed the court that he could not attend the proceedings due to ill health. The proceedings were concluded in his absence but in the presence of his legal representatives. The trial proceedings against the Third Respondent were therefore not *in absentia*, although he was excused from the conclusion of the proceedings.

33. During the final phase of the proceedings the Third Respondent provided the Court of Appeal with documents which the court had requested from him and when the court offered him the opportunity to have *"the last word"* in March 2017, he sent his *"final words"* in writing to the Court of Appeal on 21 March 2017.

34. The charges for which the Third Respondent was convicted and sentenced to 19 years imprisonment are summarised as follows:

34.1 Aiding and abetting violations, by persons associated with the then President of Liberia, Charles Taylor, of the laws and practices of war, contrary to international common law and/or *"the stipulations set out in 'common' article 3 of the Geneva Conventions dated 12 August 1949"*, in Guéckédou, Guinea, in 2000 and 2001 and Voinjama and Kolahun, Liberia, in 2001 and 2002; and

34.2 Contravening Dutch regulations giving effect to the United Nations arms embargos on Liberia by imposing an embargo on sales of weapons to Liberia, by supplying AK-47s, RPGs and GMGs to, amongst others, Charles Taylor, and his armed forces in the periods 21 July 2001 to 8 May 2002 and 26 September 2002 to 7 May 2003.

35. In coming to a conclusion with regard to an appropriate sentence, the court described the nature and seriousness of the proven offences and the circumstances in which they were committed as follows:

"The defendant, a business man operating on international level, was active in logging operations in Liberia with the companies OTC and RTC from 1999 to mid-2003. The interests of (the companies of) the defendant were intertwined with the political, financial and private interests of (the regime of) Charles Taylor, the president of Liberia at that time.

In the period from 2000 to mid-2003, the defendant, together with others, used the company OTC (of which he was president) to import shipments of weapons (RPGs, AK 47s and GMGs) and corresponding ammunition with a ship via the port of Buchanan, Liberia. By importing these weapons, the defendant acted in violation of arms embargoes in 2001 and 2002, which resulted directly from United Nations

Security Council resolutions. These resolutions had been issued because the support of Charles Taylor's regime to the RUF rebel group resulted in a threat to international peace and security in the region. The defendant and his co-perpetrators have deliberately violated the embargoes, making use of covert procedures (including sending people away from the port, shutting down the harbour and unloading weapons and ammunitions in the dark) to keep the arms deliveries out of (international) sight.

*The defendant did not only supply arms and ammunition to Charles Taylor's armies for years, but also provided a camp of his company RTC for the (temporary) storage and distribution of weapons. He also made (armed) employees available to Charles Taylor's troops. All this for the purpose of an armed conflict in norther (*sic) *Liberia and just across the border in Guinea, in Guéckédou. In this armed conflict, Charles Taylor's armies fought in a bloody war with the rebel group LURD, which operated in and out of Guinea. As accomplice, the defendant is co-responsible for the proven war crimes and crimes against humanity committed against defenceless civilians during that armed conflict. He deliberately provided an essential contribution to these violations because, through the supply of weapons and ammunition, he enabled the regime to (almost undiminishedly) continue their armed attacks on defenceless civilians inflicting death and destruction for a number of years. The armed fighters were ordered to rescue nothing and no one ('no baby on target') and, among other things, they randomly bombed cities, beheaded civilians, raped women and children, threw live babies into wells, hit/threw babies with their heads against the wall until their skulls crushed and, after they had plundered them, left cities in ruins."*

The quoted paragraphs are to be found in annexure "APMK38" to the Third Respondent's founding affidavit in his application against the Minister of Police at pages 606 to 611.

36. Due to the fact that the Third Respondent was sentenced to a term of imprisonment of 19 years for (among others charges) complicity in war crimes, this represented a conviction for crimes for which provisional detention is allowed under Dutch Law. Therefore, on 21 April 2017 the Court of Appeal in ‘s-Hertogenbosch ordered the imprisonment of the Third Respondent notwithstanding the fact that he had lodged an appeal. The Third Respondent applied to terminate or suspend the order of provisional imprisonment and the request was heard in chambers on 13 June 2017. However, on 15 June 2017 the Court of Appeal rejected the request. The Third Respondent has not returned to the Netherlands in order to comply with the order of imprisonment and is therefore a fugitive from justice.

37. The Third Respondent lodged an appeal on 24 April 2017. The Supreme Court in the Netherlands upheld his conviction on 18 December 2018.

38. A request for the extradition of the Third Respondent was received by the Republic of South Africa from the Netherlands in order to surrender the Third Respondent to serve a term of 19 years imprisonment. He was arrested on 8 December 2017 in Cape Town and appeared in the Cape Town Magistrate’s Court where he was granted bail in the extradition enquiry held in terms of the Extradition Act, No. 67 of 1962. These proceedings are ongoing. I understand that the matter will only proceed after judgment is handed down in the review application against the Minister of Police.

39. During the bail application the State submitted an affidavit deposed to by the Control Immigration Officer stationed at the Barrack Street office of the Department, Mr

Adrian Cedric Jackson. A copy of his affidavit (annexure “APMK13” in the application against the Minister of Police) is attached hereto marked **“KRK5”**.

40. In paragraph 3 of the affidavit, Mr Jackson raises a number of concerns with the Third Respondent’s application for a section 11(6) visa. These are summarised as follows:

    40.1 The Third Respondent’s denial that there were pending criminal cases against him was incorrect in that the order for imprisonment had not been complied with. The case can only be finalised when he is imprisoned.

    40.2 The Third Respondent did not provide full particulars of his conviction. In particular, he does not provide particulars of the offences, which Mr Jackson now understands involve international crimes such as war crimes and crimes against humanity.

    40.3 The Third Respondent omits the fact that there was an Interpol Red Notice issued.

    40.4 The information relating to the Third Respondent’s health status is incomplete.

41. Mr Jackson gives an opinion that, due to the information now in the Department’s possession, the Third Respondent falls within the ambit of both section 29 (he is a prohibited person) and section 30 of the Immigration Act (he should be declared undesirable).

42. In paragraph 6 of his affidavit, Mr Jackson states that as a result of the above *"the Department is taking immediate steps to have his visum (sic) revoked and to declare him an undesirable person".*

43. The affidavit was deposed to in December 2017. SALC obtained copies of the the pleadings in the application against the Minister of Police on 9 April 2019 and, having persued same, became aware that (a) the Third Respondent was in possession of a section 11(6) visa and (b) the Department had not taken steps to cancel the visa. The SALC wrote to the First and Second Respondents on 17 July 2019 to enquire as to the steps that had been taken regarding the Third Respondent's residency status. Furthermore, the SALC demanded that if he had not done so, the Second Respondent should exercise his powers under the Immigration Act to declare the Third Respondent undesirable and cancel his visa. A copy of this letter is attached hereto marked **"KRK6"**.

44. Although the Department has acknowledged receipt of this letter, and we have followed up from time to time, over two months later, we have not received a substantive reply thereto.

45. The Third Respondent continues to reside in South Africa.

GROUNDS OF REVIEW

46. The Applicant – acting in its own and the public interest and pursuant to its concern for the integrity of the immigration system and the rule of law – is compelled to launch this application.

47. This application is brought under the Promotion of Administrative Justice Act, No. 3 of 2000 (*"PAJA"*). In terms of PAJA, both a decision and a failure to take a decision is subject to judicial review.

48. The Second Respondent failed to exercise his discretion to declare the Third Respondent undesirable in terms of section 30(*f*) and (*g*) of the Immigration Act.

49. In terms of section 6(2)(*g*) of PAJA, the action to be reviewed consists of a failure to take a decision.

50. In relying on this ground, the Applicant will argue that the Second Respondent has a duty to take the decision to declare the Third Respondent undesirable. His failure to do so undermines the purpose of the Immigration Act which includes supporting the role of the Republic in the continent and the region; and ensuring that the international obligations of the Republic are complied with.

51. Sections 30(1)(*f*) and (*g*) form part of legislation in order that fugitives from justice and those convicted of serious crimes, including war crimes and international crimes, do not sojourn with impunity in the Republic. By failing to declare the Third Respondent undesirable, South Africa is acting in conflict with its international obligations.

52. The Second Respondent have a duty to declare the Third Respondent undesirable and failed to take that decision. There is no law that prescribes the period within which he is required to take the decision. Under the circumstances the Second Respondent's delay is unreasonable.

53. As stated above, Mr Jackson deposed to an affidavit in December 2017 in which he stated that the Department would proceed without delay to declare the Third Respondent undesirable. The Second Respondent was put to terms by SALC on 17 July 2019 - 18 months later and still no decision has been made.

54. The failure to take a decision to declare the Third Respondent undesirable and the positive decision to issue him with a section 11(6) visa on 30 August 2017 are unlawful and unconstitutional in that a fugitive from justice and a convicted war criminal has been allowed to remain in South Africa and to enjoy the rights and privileges of a legal resident.

55. In making a decision to issue the Third Respondent with a section 11(6) visa, the Second Respondent failed to take into account the fact that the Third Respondent had been convicted of serious crimes. He failed to take further steps to enquire from the Third Respondent as to the specific crimes for which he had been convicted and, more importantly, whether the sentence imposed had been served.

56. Under the circumstances the relevant considerations as provided for in section 6(2)(*e*)(iii) of PAJA were not considered by the Second Respondent when he made the decision to issue the visa.

57. The decision is also subject to judicial review under section 6(2)(f) of PAJA in that the decision contravenes section 29(*b*) of the Immigration Act in that a conviction has been secured against the Third Respondent for being complicit in war crimes which include the crimes set out in that subsection, rendering the Third Respondent a prohibited person, who in turn does not qualify for a visa. The decision to issue the visa is not rationally connected to the information that was before the decision-maker.

58. Finally, the exercise of the power by the Second Respondent to issue the visa was so unreasonable that no reasonable person would have exercised the power in this manner, even given the limited information before him.

59. While section 29 of the Immigration Act provides that a prohibited person is such by definition, section 30 gives the Second Respondent a discretion whether or not to declare the foreigners referred to in subsections (*a*) to (*h*) "*undesirable*".

60. Administrative decision-making requires a blend of legal rules, standards and principles. The range, significance, impact and effect of the decision may vary and this will affect the relevant weight to be placed upon the facts as relevant to the decision. It will be argued at the hearing of this matter that in terms of the Constitution, the values set out in the Bill of Rights ***must*** influence discretionary decisions.

61. One of the defining characteristics of administrative power is its purpose. Powers are always conferred for certain purposes, both general and specific, and must be exercised in order to advance the particular purpose of the enabling legislation. In

terms of the Immigration Act, the exercise of the Second Respondent's discretion under section 30 must be guided by the purpose for which the legislation was passed, including compliance with South Africa's international obligations.

62. It will be argued at the hearing of this matter that the discretion of the Second Respondent is limited and that he had a duty to declare the Third Respondent undesirable.

CONCLUSION AND RELIEF SOUGHT

63. As indicated in the notice of motion to which this affidavit is attached, the Applicant seeks to review and set aside the decision of the Second Respondent to issue the Third Respondent with a section 11(6) visa, as well as declaratory relief to the effect that the decision to issue him with a visa was unlawful and unconstitutional.

64. In addition, the Applicant prays for an order that the above Hourable Court substitutes its decision for that of the Second Respondent and declares the Third Respondent to be undesirable in terms of sub-sections 30(1)(*f*) and (*g*) of the Immigration Act.

65. It will be argued at the hearing of this matter that the facts set out above justify the exceptional remedies set out in section 8(1)(*c*)(ii)(aa) of PAJA. The above Honourable Court is in as good a position as the Second Respondent to make the decision to declare the Third Respondent undesirable.

66. The Department in this matter is not called upon to exercise unique expertise in considering whether or not the Third Respondent is a fugitive from justice or whether

he has previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic.

67. Whether or not the offences for which the Third Respondent has been convicted are offences in South Africa is a matter of law. In the application against the Minister of Police, the Third Respondent did not dispute that he has been convicted of offences relating to complicity in war crimes.

68. At the stage when his application was launched, his appeal to the Supreme Court of the Netherlands had not been heard. The conviction and sentence was in fact upheld on 18 December 2018.

69. The decision is therefore a foregone conclusion. The relief prayed for is fair to both the Applicant and the Respondents. The Applicant, acting in its own interest and in the public interest, has a right to demand that the rule of law be upheld. The Second Respondent has unduly and unreasonably delayed the decision to declare the Third Respondent an undesirable foreigner and to take steps to cancel his visa, .

70. The Applicant therefore requests the above Honourable Court to direct the Second Respondent to take the steps set out in section 10(9) of the Immigration Act without delay and within 10 working days of the order of this Court.

71. Given the fact that the First and Second Respondents have not responded to the Applicant's letter of demand and that the Department did not act as it indicated it would in Mr Jackson's affidavit, the Second Respondent should be required to

advise the Applicant and this Court of the steps taken to cancel the Third Respondent's visa and deport him to the Netherlands.

72. To the extent that it may be necessary, the Applicant prays for an order condoning the late filing of the application to review the decision of the Second Respondent to issue the Third Respondent with a section 11(6) visa.

73. Section 7(1) of PAJA provides that an application for judicial review must be instituted without delay and not later than 180 days after the date on which the Applicant became aware that the Third Respondent had been issued with a section 11(6) visa.

74. As stated above, the Second Respondent issued the Third Respondent's section 11(6) visa on 30 August 2017. While SALC became aware of the protracted extradition proceedings against the Third Respondent in March 2019, and sought to intervene in the application against the Minister of Police on 29 March 2019, we only became aware of the fact that the Second Respondent had –

    74.1 been apprised, albeit in a limited sense, of the fact that the Third Respondent had been convicted for offences committed in Liberia, in the Form 9 application; and

    74.2 that the Department had stated in December 2017 that it would take steps to declare the Third Respondent undesirable and withdraw his section 11(6) visa;

on 8 April 2019 when we obtained copies of the pleadings.

75. However, in order to avoid what might have been unnecessary litigation, we wrote to the First and Second Respondents on 17 July 2019 requesting information regarding any steps which they might have taken in order to uphold their obligations. Despite frequent attempts to follow up on this request, no information has been forthcoming and SALC is therefore constrained to bring this application to request the Court to ensure that the First and Second Respondents uphold the rule of law and South Africa's international obligations.

76. It is submitted that this application has been brought within 180 days of SALC being made aware of the specific circumstances of the failure to declare the Third Respondent as undesirable and the decision to issue him with a section 11(6) visa, and that such application was brought without delay. Should the Respondents however argue that SALC should have been aware of these facts at any stage prior thereto, it is in the interests of justice that the failure to launch the application sooner should be condoned.

77. It will be argued at the hearing of the matter that the delay is not unreasonable and that in light of the principle of legality, the above Honorable Court should be particularly careful to allow the invalid exercise of public power to *"slip through the net"*.

78. The delay, such as it may be, has not prejudice any other party and does not interfere with the efficient administration of justice.

CONCLUSION

79. The failure by the Second Respondent to exercise his powers under the Immigration Act to cancel the Third Respondent's section 11(6) visa and deport him, is both a failure to uphold the rule of law and to comply with South Africa's international obligations. It also sends out the unfortunate message that a perpetrator of international crimes, including war crimes, will find a safe haven in South Africa.

80. The Applicant has been left with no other option but to bring this application to obtain the necessary relief as set out in the notice of motion.

81. Accordingly, I pray for an order in terms of the notice of motion to which this affidavit is attached.

_____

KAAJAL RAMJATHAN-KEOGH

Signed and sworn before me at _____ on this ____ day of September 2019, the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath to be binding on his/her conscience.

_____

COMMISSIONER OF OATHS