

Our ref: ERP/Inga

2 July 2019

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Attorney: Centre for Environmental Rights

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Ref: CER 34.27

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ATT: Feroze Shaik
Chief of Staff: The Minister of Environmental Affairs

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ATT: Dr Thuli Khumalo
The national air quality officer

Second Respondent
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ATT: THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent
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**ATT: Member of the Executive Council for Agriculture,
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AT: Mr Radebe
**Member of the Executive Council for Agriculture,
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ATT: THE STATE ATTORNEY
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Dear Sir/Madam,

RE: Admission as *amicus curiae* in terms of Rule 16A of the Uniform Rules of Court in the matter of *The Trustees for the Time Being of GroundWork Trust and Another v The Minister of Environmental Affairs & Four Others* (NGHC case no 39724/19)

1. We refer to the above-mentioned matter.
2. Lawyers for Human Rights (LHR) is acting on behalf of and with instructions from Mr David Richard Boyd (our client), the United Nations (UN) Special Rapporteur on Human Rights and the Environment (Special Rapporteur). Mr Boyd is an associate professor of law, policy, and sustainability at the University of British Columbia. He is an author of nine books and over 100 reports and articles on

environmental law and policy, human rights and constitutional law. He was appointed as Special Rapporteur for a three year period commencing on 1 August 2018.

3. Our client hereby seeks your written consent to enter as *amicus curiae* in this matter, in his capacity as Special Rapporteur.
4. The mandate for the Special Rapporteur on Human Rights and the Environment was established by the UN Human Rights Council in March 2012 to (among other tasks) study the human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, and to promote best practices relating to the use of human rights in environmental policy-making. The Special Rapporteur's role is, therefore, to advocate for the protection of human rights from various types of environmental harms, including air pollution.
5. In March 2019, the Special Rapporteur presented a detailed report to the Human Rights Council on the adverse impacts of air pollution upon a range of human rights, including the right to life and the right to health, in particular by vulnerable groups. The report highlights the different State obligations in relation to the right to breathe clean air and identifies several good practices implemented worldwide that have helped improve air quality.
6. We have read the notice of motion and founding affidavit relied upon in support of the application for this matter. The case raises an important issue relating to States' obligations to protect the enjoyment of human rights from environmental harm. The Special Rapporteur's global expertise and perspective may assist the court in its interpretation of section 24 of the Constitution of the Republic of South Africa, as well as other constitutional and legislative provisions.
7. Our client's submissions will focus on international human rights law and the comparative constitutional law as it relates to the enjoyment of a safe, clean, healthy, and sustainable environment. In particular, our client's submissions will seek to:
 - 7.1. Provide a contextual overview of the relevant internationally guaranteed human rights and the impact of air pollution on the enjoyment of these rights;
 - 7.2. Set out the obligations of States under international human rights law so as to inform the interpretation of the Constitution and the National Environmental Management (NEM): Air Quality Act 39 of 2004; and
 - 7.3. Analyse the constitutional jurisprudence of other States in interpreting the right to a healthy environment in the context of air pollution, in order to identify possible ways in which this comparative interpretation may influence the interpretation of South Africa's laws.
8. We believe that the submissions which our client seeks to advance are relevant, will be of assistance to the court, and are different from those currently advanced by parties at this stage. It is clear from the founding affidavit in the matter that the primary arguments that the Applicants seek to advance

will focus on the domestic obligations of the State in realizing the right to an environment that is not harmful to health and well-being. Our client's submissions will be of assistance to the court in its determination of the issue whether the Minister has a legal duty to establish regulations in terms of the NEM: Air Quality Act, in order to implement and enforce the Highveld Priority Area Air Quality Management Plan, by examining the ambit of obligations incumbent upon South Africa under international law. In so doing, the court will have the benefit of considering all relevant sources of State obligations, holistically, so as to properly understand the nature and extent of such obligations.

9. We accordingly request written consent in accordance with Rule 16A of the Uniform Rules of Court for admission of the Special Rapporteur as *amicus curiae* in this matter in order to:

9.1. Submit written submission on the issues outlined above; and

9.2. Present oral submissions at the hearing of this matter.

10. Please notify us in writing by **16h00 on 08 July 2019** whether you/your client consents to our client's admission as *amicus curiae*. Such consent can be sent by email to:

Inga@lhr.org.za

Michael@lhr.org.za

Wayne@lhr.org.za

Yours Sincerely,

LAWYERS FOR HUMAN RIGHTS



Wayne Ncube

Attorney