IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 48/10

In the ex parte application of:

THE HELEN SUZMAN FOUNDATION   Applicant for admission as
                                                          amicus curiae

In the matter between:

HUGH GLENISTER   Applicant

and

THE PRESIDENT OF THE REPUBLIC   First Respondent
OF SOUTH AFRICA

THE MINISTER OF SAFETY AND SECURITY   Second Respondent

THE MINISTER OF JUSTICE AND   Third Respondent
CONSTITUTIONAL DEVELOPMENT

THE NATIONAL DIRECTOR OF PUBLIC   Fourth Respondent
PROSECUTIONS

THE GOVERNMENT OF THE REPUBLIC   Fifth Respondent
OF SOUTH AFRICA

FOUNDING AFFIDAVIT

I, the undersigned,

FRANCIS ANTONIE

do hereby make oath and say that:

I am an adult male director of the Helen Suzman Foundation ("HSF") situated at Block A, Anerley Office Park, 7 Anerley Road, Parktown, Johannesburg.

The facts contained in this affidavit fall within my personal knowledge, unless it appears otherwise from the context, and are both true and correct.

I am duly authorised to depose to this affidavit on behalf of the HSF having obtained the necessary consent as discussed more fully below.

The HSF was established in 1993, and is a non-governmental organisation whose objectives are "to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights".

Purpose of this application

The purpose of this application is to apply for condonation for the late request by the HSF to be admitted as amicus curiae in the matter of *Glenister v the President of the Republic of South Africa and others, case no CCT 48/10* which is enrolled for hearing on 2 September 2010 in the Constitutional Court.

Reasons for the Delay

On 21 July 2010, I became aware of the appeal by Mr Glenister to the Constitutional Court during a conversation with Advocate Paul Hoffman.

Advocate Hoffman enquired whether the HSF would be seeking leave to intervene as amicus curiae in light of the submissions HSF had made to the portfolio committee on Justice and Constitutional development and the portfolio committee on Safety and Security regarding the National Prosecuting Authority Amendment Bill and the South African Police Service Amendment Bill during 2008.

Immediately after this conversation, I consulted with Mr Richard Steyn, the Chairman of the HSF, and the Gauteng Committee of the Board of the HSF, to elicit views on whether we should apply to intervene in the hearings at the Constitutional Court.

The members of the board telephonically canvassed by me were in agreement that the rule of law issues arising from the dissolution of the Directorate of Special Operations were as pertinent as before and went to the heart of the values espoused by the HSF. The board accordingly mandated me to seek the advice of HSF's attorneys regarding the procedures to be followed to intervene and on the substantive issues that could be raised before the Constitutional Court.

On 21 July 2010, I communicated with Mr Peter Leon, a partner and senior attorney at Webber Wentzel, to establish whether he would act for the HSF and whether his firm would undertake to act pro bono.

Mr Leon's response was that he would need in principle to obtain permission to represent the HSF pro bono from the firm's management and would have to assemble a team of constitutional lawyers who could work on the application.

On 27 July 2010, Webber Wentzel attorneys established a team to consider our instructions under the umbrella of the pro bono practice group. I was advised by Moray Hathorn, also a partner at Webber Wentzel and head of the pro bono practice group, that only once proper preparation and research had been undertaken would our attorneys be in a position to advise whether the HSF had grounds to intervene as amicus curiae.

On 10 August 2010, I was advised by Asmita Thakor, an attorney, that after considerable and careful research of the complex legal issues involved, Webber Wentzel was satisfied that there were grounds on which the HSF could approach this Honourable Court for leave to intervene as amicus.

Accordingly permission was sought from the Applicant and the State Attorney to intervene in the case. The submissions which the HSF wishes to advance concern the binding role of international law in the dispute, the submission that the amending acts constitute retrogressive measures in the fight against corruption and organised crime and that the independence of the National Prosecuting Authority has been undermined. These submissions are set out at paragraphs 11.4, to 11.10.3.5 of the letter sent to the state attorney by Webber Wentzel, annexed hereto marked "Annexure Z". For reasons of not overburdening my affidavit, I have not copied these submissions into my affidavit. I request the Court to read these submissions as if specifically incorporated herein.

I am advised that the respondents filed their submissions on 23 July 2010 and that the HSF was required in terms of the Rules of Court to have brought an application for admission as amicus curiae within 5 days thereafter, i.e. by 30 July 2010.

Due to the process of obtaining the record in the court *a quo*, the perusal of the record and the need for careful consideration of the complex constitutional issues involved it was not possible for the HSF to seek written consent from the parties by 30 July 2010.

I submit that the HSF and its attorneys have acted with due diligence and expedition in finalising this application under the circumstances. I accordingly ask that this late application to be admitted as amicus curiae be condoned.

I submit that the issues the amicus wishes to raise are different from those raised by the other parties and are of considerable public interest. Significantly I am advised that the parties have also given their written consent to HSF being admitted as an amicus curiae.

In the circumstances I ask that HSF be granted leave to intervene as amicus curiae.

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FRANCIS ANTONIE

Signed and sworn to before me at   on   2010, the deponent having acknowledged that the deponent knows and understands the contents of this affidavit.

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COMMISSIONER OF OATHS

full names :

business address:

designation:

capacity: