

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN, JOHANNESBURG**

Case Number: JS 692/23
CCMA Case Number: GATW 14247-22

In the application of

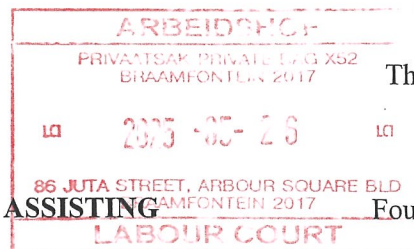
UNITED DOMESTIC WORKERS OF SOUTH AFRICA

First Applicant for admission as *Amicus Curiae*

IZWI DOMESTIC WORKERS ALLIANCE

Second Applicant for admission as *Amicus Curiae*

SOLIDARITY CENTER



Third Applicant for admission as *Amicus Curiae*

INTERNATIONAL LAWYERS ASSISTING WORKERS NETWORK

Fourth Applicant for admission as *Amicus Curiae*

UNITED NATIONS SPECIAL RAPPORTEUR FOR CONTEMPORARY FORMS OF SLAVERY

Fifth Applicant for admission as *Amicus Curiae*

In re: the matter between

BRENDA MAKAMBA

Applicant

and

FAHAD ALOTOAIBI

First Respondent

SARAH ALOTOAIBI

Second Respondent

ABDELASIS ALOTOAIBI

Third Respondent

EMBASSY OF THE KINGDOM OF SAUDI ARABIA

Fourth Respondent

NOTICE OF MOTION

TAKE NOTICE that the first to fifth applicants for admission as *amicus curiae* (“**the amici applicants**”) hereby make application to this Court for an order in the following terms:

1. That the *amici* applicants be admitted as an *amicus curia* in this matter;
2. That the *amici* applicants are granted the right to file written submissions and present oral submissions at the hearing of this matter;
3. Further and/or alternative relief.

TAKE NOTICE further that the affidavit of **PINKY MASHIANE**, together with annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the *amici* applicants have appointed **LAWYERS FOR HUMAN RIGHTS** as attorneys of record and are prepared to accept service of all documents and notices in this matter by means of electronic mail at charne@lhr.org.za and kayan@lhr.org.za.

Dated at Johannesburg on this the 19th day of May 2025.


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JOHANNESBURG

AND TO: MALCOLM LYONS & BRIVIK INC.

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c/o ANDREW GOLDBERG ATTORNEYS

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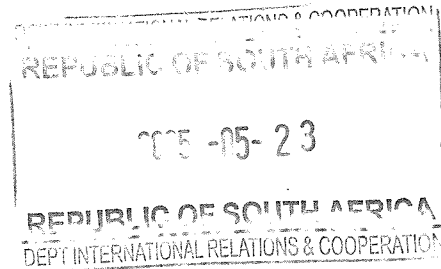
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prejudice



J. Demetrawes (DIRCO)

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FOUNDING AFFIDAVIT FOR ADMISSION AS *AMICUS CURIAE*

P. J. M. 12

CONTENTS

INTRODUCTION	3
PURPOSE OF THE APPLICATION	5
BRIEF BACKGROUND	7
INTEREST IN THIS MATTER	8
THE NATURE OF THE <i>AMICI</i> APPLICANTS	9
<i>United Domestic Workers of South Africa</i>	9
<i>Izwi Domestic Workers Alliance</i>	10
<i>The Solidarity Center</i>	11
<i>International Lawyers Assisting Workers Network</i>	13
<i>The UN Special Rapporteur on contemporary forms of slavery</i>	14
THE <i>AMICI</i> APPLICANTS' COLLECTIVE INTEREST IN THE MATTER	15
SUMMARY OF THE <i>AMICI</i> APPLICANTS' SUBMISSIONS	16
WIDESPREAD PREVALENCE OF GBV AND HARASSMENT AGAINST DOMESTIC AND MIGRANT WORKERS	18
<i>Additional Evidence of Gender-Based Violence and Harassment Experienced by Domestic Workers</i>	22
EMPHASISING THE VULNERABILITIES FACED BY DOMESTIC WORKERS	23
KEY PRINCIPLES FOR ADDRESSING GBV	25
<i>International Norms relating to Gender-based Violence and Sexual Harassment: ILO; CEDAW, and the Duty to prevent domestic servitude</i>	25
<i>The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")</i>	26
<i>The International Covenant on Economic, Social and Cultural Rights ("ICESCR")</i>	27
<i>The International Labor Organization ("ILO")</i>	28
THE RIGHT TO EQUALITY AND NON-DISCRIMINATION PROTECTS EVERYONE FROM DISCRIMINATION AND INCLUDES THE RIGHT TO AN EFFECTIVE REMEDY	30
THE RIGHT TO A REMEDY REQUIRES THAT DIPLOMATIC IMMUNITY SHOULD NOT PROTECT EMPLOYERS IN THESE CIRCUMSTANCES	31
PROCEDURAL COMPLIANCE	34
CONCLUSION	34

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I, the undersigned,

PINKY MASHIANE


Do hereby make oath and state that:

1. I am an adult female and the president of United Domestic Workers of South Africa ("**UDWOSA**").
2. I am duly authorised to depose to this affidavit and bring this application on behalf of: -
 - 2.1. Izwi Domestic Workers Alliance ("**Izwi**");
 - 2.2. The Solidarity Center;
 - 2.3. The International Lawyers Assisting Workers Network ("**the ILAW Network**"); and
 - 2.4. The United Nations Special Rapporteur on contemporary forms of slavery, Tomoya Obokata ("**the UN Special Rapporteur**")

(collectively "**the amici applicants**").
3. The facts contained in this affidavit are both true and correct and, save where the contrary appears from the context or is otherwise stated, are within my personal knowledge.
4. Where I deal with questions of law, I do so on the advice given by my legal representatives, which advice I accept to be correct.

INTRODUCTION

5. The *amici* applicants are public interest organisations that respectively advocate for workers' rights in assisting workers by helping them fight discrimination, exploitation and systems that entrench poverty, and within the context of the applicant's case which will be elaborated on below, all these organisations

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are challenging the deplorable circumstances experienced by domestic workers in South Africa which perpetuate oppression, victimization and violation of the following fundamental rights entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**"):

- 5.1. equality and unfair discrimination (section 9);
 - 5.2. human dignity (section 10);
 - 5.3. bodily and psychological integrity (section 12);
 - 5.4. privacy (section 14);
 - 5.5. freedom of association (section 18);
 - 5.6. freedom of movement (section 21); and
 - 5.7. fair labour practices (section 23).
6. The *amici* applicants have considered the nature and scope of the dispute between the applicant and the respondents and are of the view that they have substantial interest in the proceedings and can make a valuable contribution to determining the issues that lay before this Honourable Court.
7. In what follows, I set out:
- 7.1. the purpose and brief background;
 - 7.2. the basis upon which the *amici* applicants should be admitted;
 - 7.3. the legal submissions to be advanced by the *amici* applicants, and their relevance to the proceedings, which include:

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- 7.3.1. South Africa's legal obligation to respect, protect and fulfil the right to equality and non-discrimination pursuant to its obligations under international human rights law;
- 7.3.2. Widespread prevalence of gender-based violence ("GBV") and harassment against domestic and migrant workers;
- 7.3.3. The vulnerabilities faced by domestic workers in the informal economy;
- 7.3.4. The gaps in the implementation of the Violence and Harassment Convention, 2019, No. 190 ("the C190");
- 7.3.5. The application of diplomatic immunity in employer-employee relationships involving abuse or harassment; and
- 7.3.6. Obligations for Embassies to comply with local employment laws.

PURPOSE OF THE APPLICATION

- 8. This application is filed in support of an application in terms of Rule 19 of the Rules of this Honourable Court for the admission of UDWOSA, as the first applicant, Izwi, as the second applicant, the Solidarity Center, as the third applicant, the ILAW Network, as the fourth applicant, and the United Nations Special Rapporteur, Tomoya Obokata, as the fifth applicant, as *amicus curiae* in the above-mentioned matter.
- 9. The submissions that the *amici* applicants intend to make are different from those advanced by the parties to the application and the submissions are directly relevant to the issues before the Court, are cogent and will be of assistance to this Court in arriving at a just and equitable conclusion affording protection to human rights and the rule of law.
- 10. The reasons why the *amici* applicants believe that the submissions will assist the court and are different from those of the other parties, which includes:

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- 10.1. advocating for effective enforcement mechanisms and sector specific regulations to protect domestic workers from violence and harassment at work;
 - 10.2. advocating for proactive and effective engagement by embassies to prevent incidents or the escalation of incidents relating to harassment at work experienced by domestic workers;
 - 10.3. establishing institutional measures that ensure grievances by domestic workers about harassment and/or violence at the workplace are investigated and handled in a manner that protects the identities of the persons involved; and
 - 10.4. establishing obligations for embassies to comply with local employment laws.
11. The duty of procedural fairness is a fundamental aspect of the administration process in South Africa, thereby ensuring that the rights of individuals, in particular to this application; domestic workers, are recognized and protected.
12. The *amici* applicants' submissions seek to emphasis procedural obligations on embassies when advocating for the determination and implementation of effective enforcement mechanisms and sector specific regulations to protect domestic workers from violence and harassment at work. Such procedural obligations include:
- 12.1. openness and clarity about how decisions are made and criteria used in these processed;
 - 12.2. accessible information to those affected by the decisions of embassies in relation to their grievances;
 - 12.3. opportunity to present cases before a decision is made. This includes access to a fair hearing where a victim can present their views and provide evidence to support their case;
 - 12.4. impartial decision making, without bias or based on relevant factors only; and

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- 12.5. regulatory bodies designated to address violence and harassment at work are expected to provide reasons for their decisions, thereby allowing for transparency and accountability.

BRIEF BACKGROUND

13. The applicant has instituted the application against the respondents as a result of what is consonantly in the view of the *amici* applicants, a *prima facie* case of an automatically unfair dismissal.¹
14. The applicant is one of the estimated 200 000 migrant domestic workers who live in South Africa² and was a live-in domestic worker who is not only fighting for access to her rights under the labour law, but also to secure basic human rights to dignity, family and freedom, which would not ordinarily be impacted by employment in most other industries.³
15. For Sub-Saharan Africa, which countries include Botswana, Lesotho, Namibia, South Africa and Zimbabwe, official data from 2013 suggest that migrant domestic workers make up around 7% of all migrant workers, as well as of all domestic workers. Of all women migrant workers in Sub-Saharan Africa, about 1 in 10 is a domestic worker, and migrant domestic workers make up almost 5% of all women employed in this sector.⁴ However, with the data-collection challenges and data gaps in the region, together with the hidden nature of migrant domestic work, it is safe to say that the above figures are an underestimation.⁵

¹ Application to the Labour Court affidavit, para 9.

² ILO (2022). "Migrant Domestic Workers in the SADC Region: Intersecting Decent Work with Safe, Orderly and Regular Migration." International Labour Office, Southern African Migration Management Programme.

³ Research on human rights violations against live-in domestic workers, and related Code of Good Practice: dated 11 May 2024 at <https://migrationnetwork.un.org/practice/research-human-rights-violations-against-live-domestic-workers-and-related-code-good>.

⁴ ILO, 2015. https://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang--en/index.htm.

⁵ "Migrant domestic workers study for the Southern African Region", A Southern Africa Migration Management (SAMM) Project Terms of Reference, dated May 2021, ILO.

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16. The applicant's case concerns itself with the right to work in an environment free from violence, and harassment including sexual harassment.⁶ The applicant was a full-time domestic worker under the employ of the first to third respondents. During her duration of employment by the first and second respondents, the applicant's relationship with the first to third respondents was beleaguered by various encounters of rape, and/or sexual assault.⁷
17. Much like the *Mahlangu* case⁸, this case too provides an unprecedented opportunity to expressly consider the application of section 9(3), which provides protection against discrimination on the basis of, amongst others, race, gender, sex and social origin as well as access to an effective remedy, through the framework of intersectionality.⁹
18. The *amici* applicants wish to make material submissions that do not repeat any issue set forth in the applicant's founding affidavit before this Honourable Court.
19. Accordingly, the *amici* applicants seek leave to be admitted as *amicus curiae* in terms of Rule 19 of the Rules of this Honourable Court.

INTEREST IN THIS MATTER

20. I have been advised that for a party to be admitted as an *amicus curia*, the *amici* applicants must:
 - 20.1. Explain their interest in the proceedings;
 - 20.2. Identify the position it will adopt in the proceedings; and

⁶ Applicant's Statement of Case, para 5.1.

⁷ Applicant's Statement of Case, para 5.3.

⁸ *Mahlangu and Another v Minister of Labour and Others* 2021 (2) SA 54 (CC).

⁹ Supra at para 75.

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20.3. Describe the nature of the submissions that will be advanced, why such submissions will be useful to the Honourable Court and propose a differing view from the submissions made by the applicant and the respondents.

21. I shall elaborate further on these requirements below.

The Nature of the *Amici* Applicants

United Domestic Workers of South Africa

22. UDWOSA is a Labour Movement and Union founded on International Domestic Workers' Day, 16 June 2018, and represents over 800 members across branches in Pretoria, Vaal, Mpumalanga, and Cape Town. As a leading advocate for domestic workers' rights, UDWOSA's primary goals align with addressing the systemic vulnerabilities and abuses faced by domestic workers, particularly migrant workers who are disproportionately impacted by exploitation and violence.
23. Since its establishment, UDWOSA has worked to educate domestic workers about their rights under South African labour laws and the Constitution, empower domestic workers to exercise and defend their rights, irrespective of union membership, and represent domestic workers in legal proceedings, including at the Commission for Conciliation, Mediation and Arbitration ("CCMA"), Labour Court, and other forums.
24. UDWOSA has conducted workshops, meetings, and training sessions for both local and migrant domestic workers, and has achieved significant outcomes, including obtaining CCMA arbitration awards, settlement agreements, and resolving disputes with employers amicably.
25. UDWOSA actively opposes abuse, harassment, and violations of domestic workers' rights, including sexual harassment and gender-based violence, and has led marches to advocate for justice and accountability in cases such as the applicant's, and it continues to champion the rights of all domestic workers.

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Izwi Domestic Workers Alliance

26. Izwi is a grassroots, membership-based network of domestic workers and advice office. It provides labour rights education and representation for domestic workers, assistance to women facing violence, and advocacy for improved legal protections and labour law compliance. Based in South Africa and launched in 2018, Izwi advocates for the rights and dignity of domestic workers.
27. Some of its core partners include: -
 - 27.1. Socio-Economic Rights Initiative (“**SERI-SA**”);
 - 27.2. Lawyers Against Abuse (“**LvA**”);
 - 27.3. Casual Workers Advice Office;
 - 27.4. South African Domestic and Service Allied Workers Union (“**SADSAWU**”);
 - 27.5. UDWOSA; and
 - 27.6. The Migrant Workers Union of South Africa (“**MIWUSA**”).
28. Founded to address the systemic injustices and challenges faced by domestic workers, Izwi provides a platform for workers to collectively organise, amplify their voices, and demand fair treatment in the workplace. Izwi focuses on promoting awareness of labour rights, facilitating access to legal and social support, and advancing policies that protect domestic workers from exploitation and abuse.
29. Through its initiatives, Izwi has become a vital advocate for recognizing domestic work as dignified labour, ensuring that the contributions of domestic workers are respected and valued within South African society.
30. Examples of Izwi’s recent work in this regard includes:

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- 30.1. A joint research report entitled “*Report of the study into: South African domestic workers’ vulnerabilities to (and experience of) GBV in the workplace*” published in 2020.¹⁰
- 30.2. A joint research report titled “*A Qualitative Survey of Human Rights Violations Against Live-In Domestic Workers in South Africa*” published in December 2021;¹¹
- 30.3. Training representatives from seven worker organisations to become legal advisors and peer counsellors for cases of gender-based violence in the workplace, (2022);
- 30.4. Publication of information fliers on gender-based violence in five languages, (2022);
- 30.5. Coordination of the One Wage Campaign to advocate with the National Minimum Wage Commission for the inclusion of domestic workers in the full national minimum wage, (2019 – 2021); and
- 30.6. Advocacy to Department of Employment and Labour for the unregistered domestic workers to have access to TERS wage support during Covid-19 pandemic.

The Solidarity Center

31. The Solidarity Center is an international non-governmental organization dedicated to promoting and protecting workers' rights globally. With a presence in over 60 countries, the Solidarity Center works to empower workers, particularly those in vulnerable and marginalized sectors, by advancing fair labour standards, combating exploitation, and promoting social and economic justice. The Solidarity Center partners with trade unions, worker associations, and grassroots organizations to strengthen collective bargaining, improve workplace conditions, and advocate for policies that ensure decent work for all.

¹⁰ The report is accessible at https://www.hlanganisa.org.za/wp-content/uploads/2020/09/Domestic_Workers_GB_V_Research_Report.pdf.

¹¹ The report is accessible on [South-Africa.-Domestic-Worker-Rights-Survey.12.2021.pdf \(solidaritycenter.org\)](#).

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32. By addressing systemic inequalities and amplifying the voices of workers, the Solidarity Center plays a pivotal role in fostering dignity, equity, and human rights in the world of work.
33. The Solidarity Center works closely with the 2 million-member Congress of South African Trade Unions (“**COSATU**”) and the Federation of South Africa Trade Unions (“**FEDUSA**”), including SADSAWU. It partners with domestic worker unions, lawyers and academics in South Africa to make submissions to United Nations treaty bodies, including the Convention on Elimination of Racial Discrimination, the Convention on Elimination of All forms of Discrimination against Women, the International Covenant on Economic Social and Cultural Rights and C190 on Violence and Harassment at Work, addressing domestic worker rights in South Africa, including their right to be free from violence and harassment at work.
34. The main matter is in line with the Solidarity Center’s objective to advocate around the rights of vulnerable workers particularly those affected by gender-based violence and harassment and multiple forms of discrimination which is insufficiently addressed in South Africa. Examples of the Solidarity Center’s recent work in this regard includes:
- 34.1. A joint research report titled “When the Job Hurts: Workplace Injury and Disease Among South African Domestic Workers”¹²;
- 34.2. A joint research report titled “A Qualitative Survey of Human Rights Violations Against Live-In Domestic Workers in South Africa” published in December 2021¹³; and

¹² A report by Janet Munakamwe and Tinovimbanashe Gwenyaya, Joel Munyewende and Nobuhle Ajiti (assistant researchers) and is accessible on <https://www.solidaritycenter.org/publication/when-the-job-hurts-workplace-injury-and-disease-among-south-africas-domestic-workers/>

¹³ The report is accessible on [South-Africa.-Domestic-Worker-Rights-Survey.12.2021.pdf \(solidaritycenter.org\)](#).

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- 34.3. “*What happens underground stays underground*”,¹⁴ with Lawyers for Human Rights, which addresses Gender based Violence and Harassment in the Mining Sector.

International Lawyers Assisting Workers Network

35. The ILAW Network is currently a project of the Solidarity Centre, a US-based non-governmental organisation which is dedicated to the promotion of workers’ rights worldwide. The core mission of the ILAW Network is to bring together legal practitioners and scholars in an exchange of ideas and information to best represent the rights and interests of workers and their organisations wherever they may be. Given the global nature of work and the common trends that affect workers regardless of nationality, a global legal network is needed now more than ever to effectively represent workers in issues that transcend national boundaries. Effective legal advocacy for workers increasingly requires collaboration among lawyers in multiple legal jurisdictions.
36. The ILAW Network comprises over 1,300 members in 95 countries, including several in South Africa. It is supported by an international advisory board of worker rights lawyers and led by a dedicated team, including Regional Coordinators for Sub-Saharan Africa, Latin America & the Caribbean, Europe & Central Asia, and South Asia.
37. The ILAW Network has filed numerous *amicus curiae* submissions related to the promotion of workers’ rights with the high courts of numerous countries, including South Africa, Uganda, Nigeria, Colombia, Costa Rica, Ecuador, Mexico, the Republic of Georgia, Thailand and the United States, as well as with regional human rights courts, including the Inter-American Court of Human Rights.
38. Additionally, the ILAW Network: -

¹⁴ The report is accessible on <https://www.solidaritycenter.org/publication/what-happens-underground-stays-underground/>

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- 38.1. Facilitates the exchange of information and ideas through an online library and forums, encouraging all members to contribute resources. It endeavours to convene member conferences as resources allow; and
- 38.2. Conducts and publishes comparative research on a broad range of labour issues, including, of particular relevance to the current proceedings, non-discrimination in employment, and gender-based violence and harassment, and gendered impacts of platform economy work, informal economy work, domestic work, and telework.

The UN Special Rapporteur on contemporary forms of slavery

- 39. The mandate on contemporary forms of slavery was established by the Human Rights Council in 2007 under Resolution 6/14,¹⁵ to address and combat all modern manifestations of slavery, including forced labour, bonded labour, child labour, domestic servitude, and other exploitative practices. The Special Rapporteur has been mandated through Human Rights Council resolution 51/15¹⁶ to: -

- 39.1. Promote the effective application of relevant international norms and standards on slavery;
- 39.2. Request, receive and exchange information on contemporary forms of slavery from Governments, treaty bodies, special procedures, specialized agencies, intergovernmental organizations, non-governmental organizations and other relevant sources, including on slavery practices and, as appropriate and in line with the current practice, respond effectively to reliable information on alleged human rights violations with a view to protecting the human rights of victims of slavery and preventing violations;
- 39.3. Recommend action and measures applicable at the national, regional and international levels to eliminate slavery practices wherever they occur, including remedies that address the causes and

¹⁵ Human Rights Council, Resolution 6/14, accessible at http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_14.pdf.

¹⁶ Human Rights Council, Resolution 51/15, accessible at <https://undocs.org/A/HRC/RES/51/15>.

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consequences of contemporary forms of slavery, such as poverty, discrimination and conflict, and the existence of demand factors and relevant measures to strengthen international cooperation; and

- 39.4. Focus principally on aspects of contemporary forms of slavery that are not covered by existing mandates of the Human Rights Council;
40. The UN Special Rapporteur has a particular interest in ensuring that domestic workers, who are often among the most vulnerable to exploitation and abuse, are afforded the full protection of international human rights and labour standards. In this capacity, the Special Rapporteur contributes expertise on identifying systemic gaps, advocating for accountability, and providing recommendations to prevent and address contemporary slavery practices.

The *Amici* Applicants' Collective Interest in the Matter

41. The *amici* applicants collectively share a vested interest in the protection and promotion of the rights and dignity of domestic workers in South Africa, many of whom face systemic injustices, exploitation, and gender-based violence. Their involvement in this matter underscores the broader objective of achieving legal recognition, protection, and access to remedies for domestic workers, particularly those who are migrants or live-in workers, who face compounded vulnerabilities.
42. The *amici* applicants are united by a shared commitment to addressing gaps in legal protections and ensuring compliance with international human rights and labour standards, which aim to safeguard vulnerable groups in the workforce. Collectively, they bring unique insights from their extensive work on the ground, legal expertise, and advocacy efforts to support the advancement of jurisprudence that promotes social justice and worker protection.
43. Given their extensive research, representation in legal forums, and community-driven advocacy, the *amici* applicants are well-placed to assist the court by offering insights on: -

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- 43.1. The lived experiences and systemic challenges faced by domestic workers, including gender-based violence, harassment, and exploitative employment conditions;
 - 43.2. Comparative perspectives on how international legal frameworks can be utilized to advance protections for domestic workers; and
 - 43.3. The importance of ensuring that domestic work is recognized and valued as dignified and legally protected labour, in line with constitutional imperatives and international obligations.
44. By sharing these perspectives, the *amici* applicants seek to provide the court with critical context and guidance on ensuring that judicial outcomes promote fairness, justice, and equality for one of South Africa's most marginalized and overlooked workforce segments. Their participation aligns with their respective organizational mandates and global best practices for legal advocacy in support of domestic workers.

SUMMARY OF THE *AMICI* APPLICANTS' SUBMISSIONS

45. The issues raised in this application seek to advance the implementation of domestic and international law as well as protecting the human rights of non-citizens.
46. The protection of the applicant's right to work in an environment free from violence and harassment is guaranteed with reference to the Constitution, Convention C190 – Violence and Harassment, the Employment Equity Act 55 of 1998 (the “**Equity Act**”), the Code of Good Practice on Prevention and Elimination of Sexual Harassment in the Workplace, 2005, and section 187(1) of the Labour Relations Act, 66 of 1995 (“**LRA**”).
47. In accordance with its mandate, purpose and existing body of work, the amicus curiae applicants have sought to intervene to make submissions on the following:

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- 47.1. Widespread prevalence of gender-based violence and harassment (“GBVH”) against domestic and migrant domestic workers;
- 47.2. The vulnerabilities faced by domestic workers in the informal economy enable the perpetration and impunity for acts of GBVH and can lead to domestic servitude, forced labour and contemporary forms of slavery;
- 47.3. Regulation in the form of the Revised Code of Good Practice on the Prevention of Harassment, includes domestic workers within its ambit but does not addressing intersectional and sectoral vulnerability or effectively address prevention and remedy. As such it such does not effectively comply with requirements to prevent and remedy gender-based violence and harassment at work as set out in the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the International Labor Organization (“ILO”) Convention 190 and 198;
- 47.4. Obligations for Embassies to comply with local employment laws, as well as international law, including the prohibition of gender-based violence and harassment;
- 47.5. Section 39(1) of the Constitution provides that courts, “must consider international law” in interpreting the rights contained in the Bill of Rights;
- 47.6. Section 39(2) of the Constitution provides that courts must, when interpreting legislation, “promote the spirit, purport and objects of the Bill of Rights”;
- 47.7. Section 233 of the Constitution provides that courts must, when interpreting legislation: “prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law”;
- 47.8. South Africa has binding obligations under international human rights South Africa’s binding obligations under international human rights law, most particularly in terms of the CEDAW,

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the ICCPR, the ICESCR, as well as ILO Conventions 198 on Domestic Work and Convention 190 on Violence and Harassment at Work and the African Charter; and

47.9. The Vienna Convention on the Law of Treaties ("VCLT"), provides that:

"[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith" (Article 26); that a State "may not invoke the provisions of its internal law as a justification for a failure to perform a treaty" (Article 27).

48. Given South Africa's recent ratification of ILO Convention 190 on Violence and Harassment at Work and relatively recent ratification of ICESCR, both of which address the right to be free from violence and harassment at work, including gender-based violence and harassment.
49. Accordingly, it is imperative that this Court looks closely at obligations under these instruments, in order to ensure that our law develops in line with relevant international human rights law and standards.
50. Having carefully considered the founding papers in this application, I respectfully submit that the *amici* applicants believe that they are well-placed to assist this Court in adjudicating key issues arising in this matter.

Widespread Prevalence of GBV and Harassment against Domestic and Migrant Workers

51. The ILO Domestic Workers Convention No. 189 of 2011 defines domestic work as any "work performed in or for a household or households". It further defines sexual harassment as "a sex-based behaviour that is unwelcome and offensive to its recipient. For sexual harassment to exist these two conditions must be present".
52. Under Section 31 of Sectoral Determination Seven: Domestic Worker Sector, provided by the Department of Labour in South Africa, a "domestic worker" is defined as any domestic worker or

P. J. M. ll

contractor who performs domestic work in a private household and who receives or is entitled to receive pay and includes: -

(a) "gardener;

(b) a driver of a motor vehicle; and

(c) a person who takes care of any person in that home but does not include a farm worker."

53. Having regard to the above definition, domestic workers are notoriously poorly treated in the labour market. In South Africa live-in domestic workers frequently find themselves in the intractable position of having to forego their Constitutional rights in order to retain their jobs.
54. The domestic worker sector is historically underpinned by racism, sexism and classism, wherein is the rights to privacy, freedom of movement and children's right to parental care are frequently sacrificed for wages and stable work. Indeed, the status of domestic workers was aptly described by Justice Viktor in *Mahlangu and Another v Minister of Labour and Others*, in the following terms:

"Being at the bottom of the social hierarchy meant that black women were often required to do the "least skilled, lowest paid and most insecure jobs." The case of domestic workers was particularly severe. Domestic workers, the majority of whom were – and still are – black women, were denied both a family life and a social life. They lived in poor conditions devoting more time to caring for the children of their employers than their own."
55. While the case being heard in this application is exceptional, that is largely because it is one of the few cases of workplace gender-based violence and harassment against a domestic worker that has managed to reach a court of law. In fact, gender-based violence and harassment are prevalent if under-reported in the domestic work sector.
56. In September 2020, Hlanganisa Community Fund and Izwi conducted research into South African domestic workers' vulnerabilities to and experience of GBV in the workplace and reported that domestic

P. J. M. a

workers experience shocking levels of gender-based violence at hands of employers, ranging from numerous forms of harassment through to repeated assault. The research report demonstrated high levels of impunity among employers in South Africa. The report concluded with recommendations to the Department of Labour on improving accessibility of GBV support services to the sector. Relevant portions of the report are attached as annexure “FA1”.

57. In the research, four interviewees mentioned cases of rape or sexual assault. In other cases, domestic workers were shown pornography, forced to touch employers and sexually harassed. Domestic workers interviewed reported that employers saw them as vulnerable because they were poor and believed this meant that workers could be manipulated.
58. The report relays the following case, which highlights the interplay between the right to adequate housing, the right to privacy, and the right to freedom from abuse.
59. One domestic worker indicated that the back room that she was allocated in her employer’s yard had a bathroom that did not give her total privacy, i.e. someone could see you through the window from outside when doing your ablutions. She said, *“One evening when I went into the bathroom I found him, out there, staring at me and I decided that I would take my bath later when I knew that they were already sleeping.”* This domestic worker’s case of alleged rape is in court and has not yet been concluded after six years.
60. The report also notes the long-term impact of such abuse on domestic workers, as described by the World Health Organisation:

“Women who have been abused also tend to experience poorer physical functioning, more physical symptoms, and more days in bed than do women who have not been abused. For many women, the psychological consequences of abuse are even more serious than its physical effects. The experience of abuse often erodes women’s self-esteem and puts them at greater risk of a variety of mental health problems including depression, anxiety, phobias, post-traumatic stress disorder, and alcohol and drug abuse.”

P. J. M.

61. The problems facing domestic workers and migrant domestic workers are widespread and impact these workers globally.
62. In September 2018, the United Nations Human Rights Commission published a report on the impact of slavery and servitude on the marginalized migrant women domestic workers in the global economy titled *"unspoken servitude of women domestic workers"*.
63. The then Special Rapporteur noted that migrant domestic workers suffer high rates of physical and psychological abuse, including the absence of any private space, such as a bedroom, over 15 hours of work a day, no clear rest periods and the expectation that they will be on standby at all times. Further *"many migrant domestic workers are subject to sexual harassment and to gender-based violence that is often ignored or considered a personal matter, rather than a right violation for which the employer is responsible."* The report notes that *"some domestic workers live in constant fear of being raped."*
64. In December 2021, the Solidarity Center and Izwi published a qualitative survey of human rights violations against live-in domestic workers in South Africa titled *"The Persistence of Private Power: Sacrificing Rights for Wages"*. The study aimed to provide a qualitative exploration of the broader constitutional and human rights violations of domestic workers who live on their employer's premises. The research aimed to contribute to the understanding of intersectional discrimination experienced by domestic workers. Relevant portions of the report are attached as annexure "FA2".
65. Of relevance to this case, the report found that three out of 98 respondents experienced the employer flirting with them, touching them in private places, or sexually abusing them. The report recorded that the absence of the right to privacy or any requirement that a domestic worker's accommodation has a door that locks can enable sexual harassment and abuse of domestic workers. Domestic workers who live in a room in the employer's house or share a room with the employer's children have reported the male employer coming into their room at night to sexually abuse them. Workers who have their own room or cottage frequently report being watched by the male employer through the windows or that he comes in without knocking.

P. J. M. u

- 67.4. Another domestic worker, who called UDWOSA crying after a radio interview in 2022, reported that her employer had sexually assaulted her and recorded a video of the incident. The employer's wife discovered the video and, instead of taking action against the abuser, showed it to her friends, subjecting the worker to humiliation. Although UDWOSA attempted to support her in opening a criminal case, the worker eventually stopped taking calls, likely out of fear or despair.
68. These experiences, along with the research already presented, paint a stark and troubling picture of the pervasive nature of gender-based violence and harassment in the domestic work sector. They further underscore the urgent need for stronger legal protections, enforcement mechanisms, and remedies to ensure that domestic workers, particularly migrant and live-in domestic workers, can work in environments free from abuse, coercion, and exploitation.

Emphasising the Vulnerabilities faced by Domestic Workers

69. A recent report by the ILAW Network and the Equal Rights Trust (“ERT”) on tolerance of non-discrimination at work identifies that gender-based violence is both a cause and a consequence of informality, which disproportionately impacts on women workers.
70. It is well established that the isolating conditions and the imbalance of power between the employer and domestic worker heighten the risk of psychological, physical and sexual abuse. This is exacerbated by the limited labour inspection in private homes given under the Labour Relations Act, labour inspectors are not allowed to inspect private homes without consent or a court order. This means that there is no oversight over the working and living conditions of domestic workers.
71. The Special Rapporteur report notes that “this has serious consequences for all domestic workers, but particularly for migrant domestic workers in an irregular situation”. Given the perpetuated isolating conditions and the imbalance of power between employer and domestic worker, the heightened risk of psychological, physical and sexual abuse is seemingly more prevalent for domestic and migrant workers.

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72. A report published by the Hlanganisa Institute for Development in Southern Africa and Izwi similarly notes that Domestic Workers indicated that the factors that make them more vulnerable to GBV are:
- 72.1. working in isolation in the private homes of their employers, with no witnesses;
 - 72.2. poverty and low salaries which are often used to coerce them into abusive sexual relations with their male bosses; and
 - 72.3. unequal power relations between themselves and their bosses that are often accompanied by bullying, negation of domestic workers' humanity and generic employee abuse.
73. This is further compounded by the lack of structural support from institutions meant to protect victims such as the police and the labour inspectorate. With regard to secondary harassment by the police, the report notes that:
74. In one case of rape of a domestic worker, the police deliberately did not collect the DNA results from the forensic laboratory in Pretoria. The police chose to accuse DW's boyfriend rather than the employer in that case; and
75. The report also notes that "*There is also plenty of anecdotal evidence about how the police do not take issues of GBV in the home or workplace seriously.*" The report further highlights a 2013 case of a worker who ended up dead (in the employer's premises) after reporting sexual harassment to her family. At the time of concluding the report, the case had yet to be concluded.
76. Echoes of the dynamics in which domestic workers work are described by the Constitutional Court in the case of *Omar v Government of the Republic of South Africa and Others* wherein the following was stated about the prevalence of domestic violence in South Africa:

"[13] The high incidence of domestic violence in our society is utterly unacceptable. It causes severe psychological and social damage. There is clearly a need for an adequate legal response to it. Whereas women, men and children

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can be victims of domestic violence, the gendered nature and effects of violence and abuse as it mostly occurs in the family, and the unequal power relations implicit therein, are obvious. As disempowered and vulnerable members of our society, women and children are most often the victims of domestic violence.” (own emphasis)

77. However, it is important to note that while GBVH in the domestic work sector has similar characteristics to domestic violence, since domestic workers are employees in private homes and not family members, they are not covered by the Domestic Violence Act.

Key Principles for Addressing GBV

78. In the section that follows, the *amici* applicants will outline the key principles for addressing gender-based violence, contained the international human rights conventions ratified by South Africa.
79. These include the principle that all workers, enjoy effective protection from violence and harassment at work, which includes accessible complaint mechanisms; effective investigation and inspection through a labour inspectorate enabled to inspect private homes; and that laws and regulations take into account sectoral intersectional discrimination, that is aggravated by migration status.
80. The *amici* applicants will request that the Revised Code and EEA be interpreted through the prism of the Constitution and binding international law obligations, as described in the section below.

International Norms relating to Gender-based Violence and Sexual Harassment: ILO; CEDAW, and the Duty to prevent domestic servitude

81. The due diligence standard for addressing gender-based violence, has become the normative standard for addressing gender-based violence, and underpins the numerous international human rights instruments ratified by South Africa. It is guided by the realization that the implementation gap is often the critical barrier to access to a remedy. The due diligence standard was first articulated by CEDAW in General Recommendation No. 19.

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82. General Recommendation No. 19 recognized that sexual harassment at work can be a form of GBV and defined sexual harassment as “including such unwelcome and sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography, sexual demand, whether by words or action”. It further defined GBV as:

“...violence that is directed against a woman because she is a woman or affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It. Subsequently, Recommendation 19 In 1993, under the Declaration on Elimination of Violence against Women was passed, which definition broadly determines that violence against women includes physical, sexual and psychological violence perpetrated or condoned by the state wherever it occurs, and expresses concern that groups of women, including women migrants and migrant workers, are especially vulnerable to violence. The Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life”.

83. General Recommendation No. 19 which required states to take positive measures to eliminate all forms of violence against women, providing that states may be liable for private acts of third parties if it fails to act with due diligence to prevent, investigate and punish acts of violence. In varying forms, it has become embedded in the approaches of the ICESCR as well as the more recent ILO Convention 190 on Violence and Harassment at work.

The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)

84. In July 2017 CEDAW adopted General Recommendation No. 35, which establishes that prohibitions on gender-based violence have now evolved into a general principal of Customary International Law and makes clear that GBV against women is “one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles, are protected” and is one of the central obstacles to achieving substantive equality between men and women.

P.J.M
12

85. It defines GBV as involving forms including omissions, intended to or likely to cause or result in death, physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Significantly, it acknowledges that GBV against women is affected and exacerbated by factors, including migration. It reiterates that the core obligations of state parties are to respect, protect and fulfill women's rights to discrimination, and sets out that women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, and that appropriate legal and policy responses are needed to acknowledge that GBV affects women in different ways and to different degrees.
86. Under Article 2(e), state parties are required to take all appropriate measures to eliminate discrimination against women by a person, organization or enterprise. The due diligence obligation renders state parties responsible for failure to take all appropriate measures to prevent, investigate, prosecute and provide reparations for acts or omissions of state actors, which result in GBV against women. With respect to prevention, the General Recommendation stipulates that the failure of a state to take all appropriate measures to prevent acts of GBV against women when its authorities knew or should have known of the danger of violence, or a failure to investigate, prosecute and punish and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to acts of GBV, and constitutes a human rights violation. General Recommendation No. 35 is clear that states have overarching obligations to pursue by all appropriate means and without delay a policy of elimination discrimination against women, including GBV against women.

The International Covenant on Economic, Social and Cultural Rights ("ICESCR")

87. General Comment 23 of 2016 of the ICESCR on the right to just and favourable conditions of work similarly interprets the right to just and favorable conditions at work under Article 7, as including "freedom from violence and harassment, including sexual harassment".
88. General Comment 23 is clear that this right belongs to "everyone without distinction of any kind" and includes "all workers in all settings, regardless of gender, as well as ...informal sector, migrant workers,

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domestic workers...". It requires that legislation criminalize and punish sexual harassment where appropriate and a national policy which explicitly covers harassment and includes the prohibition of sexual harassment; identification of duties on employers to prevent, resolve and remedy harassment; access to justice including free legal aid and compulsory staff training.

89. It also requires focal points to protect victims as well as avenues for complaint and redress. It stipulates there should be explicit prohibition of reprisals and procedures for notification and reporting to a central public authority the claims of sexual harassment and their resolution. In addition, there should be the provision of a clear and workplace specific policy, developed in consultation with workers, employers and their representative organization and civil society.
90. The General Comment further requires state parties to ensure accountability by establishing a functioning labour inspectorate with the authority to enter all workplaces freely and without prior notice and that penalties should apply for non-compliance. It makes clear that labour inspectorates should focus on monitoring the rights of workers and not be used for other purposes such as checking the immigration status of workers. The General Comment continues that not only courts, but national human rights institutions, labour inspectorates and other relevant mechanisms should have the authority to address such violations and legal assistance to obtain remedies, should be free for those unable to pay.

The International Labor Organization ("ILO")

91. South Africa has ratified both ILO C189 of 2011 on Domestic Work and ILO C190 on Violence and Harassment at work, both of which address violence and harassment at work.
92. Under Article 3 of C189 members are obliged to respect, promote and realize the fundamental principles and rights at work in relation to domestic workers, including the elimination of discrimination in respect of employment and occupation.

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93. Further, Article 5 sets out that each member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence: Article 17 provides that members shall establish “effective and accessible complaint mechanisms”.
94. Article 1 of C190 defines gender-based violence and harassment as violence and harassment directed at a person because of their sex or gender or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment, which applies to employees and persons working irrespective of contractual status. Article 4 is clear that ratifying states must “respect, protect, promote and realize the right to everyone to a world of work free from violence and harassment”, which includes establishing and strengthening the enforcement and monitoring mechanisms, ensuring access to remedies and support for victims and providing sanctions.
95. Further, Article 6 of C190 requires states to adopt laws regulations and policies ensuring the right to non-discrimination and equality for “groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.”
96. Article 8 addresses prevention and requires states to take appropriate concerns to prevent violence and harassment in the work of work by recognizing the role of public authorities in the case of informal workers; identifying in consultation with employers and workers organization and through other means, sectors or occupations and work arrangements in which workers concerned are more exposed to violence and harassment and taking measures to effectively protect such persons.
97. Article 9 addresses the requirement of states to adopt laws and regulations requiring employers to prevent violence and harassment, which includes adopting a workplace policy on violence and harassment, in consultation with workers; take into account violence and harassment and associated risks, identify hazards and assess the risks of violence and harassment, with the Participation of workers and their representatives and take measures to prevent and control them; and provide workers with information and training in accessible formats on identified hazards and risks of violence and harassment, and associated prevention and protection measures.

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98. With respect to enforcement and remedies, Article 10 requires states to take appropriate measures to monitor and enforce regulations on violence and harassment, and “ensure easy access to appropriate and effective remedies in cases of violence and harassment”.
99. Under Article 10(e), states shall provide victims of gender-based violence and harassment have effective access and gender responsive, safe and effective complaint mechanisms, dispute resolution mechanisms, support, services and remedies. It also requires that labour inspectorates are empowered to address violence and harassment at work.

The Right to Equality and Non-Discrimination Protects Everyone from Discrimination and Includes the Right to an Effective Remedy

100. The particular vulnerability experienced in the domestic work sector is exacerbated by migration status. It is important to state at the outset that the right to non-discrimination applies to everyone, regardless of national origin. The Constitution states that “everyone is equal before the law and had the right to equal protection and benefit of the law”. Discrimination is prohibited on both unlisted and listed grounds, including “social origin”.
101. The right to equality and non-discrimination is also protected by various provisions of the ICCPR, ICESCR and the African Charter: Article 2(1) of the ICCPR mandates each State party to:
- “Respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, **national or social origin**, property, birth or other status.”* (own emphasis)
102. Article 26 of the ICCPR further asserts that:

“all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection

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against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Emphasis added).

103. Also of relevance are Articles 6, 9, 17 and 20 which canvas the right to life, the right to freedom of security of the person and against arbitrary arrests and rights of detained persons, the protection against arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and the right to protection of the law in such instances and the prohibition against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
104. We submit that section 9 of the Constitution must be read consistently with South Africa’s international law obligations in terms of ICESCR, the ICCPR and the African Charter. The prohibition on discrimination on “ethnic or social origin” in the Constitution should be read to encompass the same prohibitions as international law prohibitions on “national and social origin”.
105. The above-mentioned report by the ILAW Network and ERT in Non-discrimination at work, finds that effective remedies must recognize harm, offer material and moral damages, compensation, and ensure restitution and rehabilitation. In the workplace, this would include compensation for psychological harm, reinstatement, resignation with compensation, work environment adaptations, access to psychosocial support, and assistance in job market re-entry or job change.

The Right to a Remedy Requires that Diplomatic Immunity should not Protect Employers in these Circumstances

106. A The codification of diplomatic immunities and privileges took place under the aegis of the United Nations resulting in the Vienna Convention on Diplomatic Relations in 1961 (the “**Vienna Convention**”) and the collateral agreement, Vienna Convention on Consular Relations in 1963.

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107. The Diplomatic Privileges and Immunities Act (“**DIPA**”), which governs this issue nationally, establishes that the Vienna Convention on Diplomatic Relations (“**VCDR**”) and the Vienna Convention on Consular Relations (“**VCCR**”) have the force of law.

108. The VCDR and VCCR establish the inviolability of diplomatic and consular officials , respectively. VCDR Article 29 provides that:

“The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.”

109. Similarly, VCCR art. 41 establishes that “consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.” Beyond this exception, “*consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect*” (VCCR art. 41(2)).

110. VCDR art. 31(1) grants diplomatic agents total immunity from criminal jurisdiction. It similar extends immunity from civil and administrative jurisdiction, though with limited exceptions:

110.1. First, a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

110.2. Second, an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; and

110.3. Third, an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

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111. The *amici* applicants will advance the argument that actions arising from an employment contract fall within (c), depending on its being a “*commercial activity*” falling “*outside [an agent’s] official functions*” and are thus not covered by immunity. DIPA does not prevent employees from bringing claims under the LRA against diplomatic or consular employers.
112. The defence of diplomatic immunity is canvassed in foreign case law from United Kingdom, the case of *Basfar v Wong*, wherein the Supreme Court on appeal held that a serving diplomat’s employment of a “*trafficked*” domestic servant at his UK diplomatic residence constitutes the exercise of a “*commercial activity*”, an exception to the 1961 Convention which would prevent him from asserting immunity from civil suit pursuant to the 1961 Convention.
113. In our submissions, the *amici* applicants will also draw from comparative cases in which diplomatic immunity did not bar an official from accountability for violating a national law. These cases include but not limited to:
- 113.1. *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010);
- 113.2. *United States v. Al Sharaf*, 183 F. Supp. 3d 45 (D.D.C. 2016);
- 113.3. *Boanan v. Baja et al.*, 627 F.Supp.2d 155 (2009); and
- 113.4. A British High Court found that the Crown Prosecution Service’s failure to prosecute a former UAE attaché who had abused a domestic servant was unlawful. Indeed, efforts by the OSCE to prevent domestic servitude in diplomatic households have resulted in changes in over 16 OSCE states; and in the US, federal authorities have prosecuted 11 criminal cases against diplomats for trafficking, abuse and exploiting of domestic workers since 2000.

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PROCEDURAL COMPLIANCE

114. This application is brought in terms of Rule 19 of the Rules of this Honourable Court. The *amici* applicants have complied with the requirements set out therein by:

114.1. Complying with Rule 19(4) of the Rules in this affidavit; and

114.2. Ensuring compliance with Rule 19 (3) and (5).

115. I confirm that the *amici* applicants will comply with any time frames imposed by this Court in relation to the filing of written submissions and presentation of oral argument.

CONCLUSION

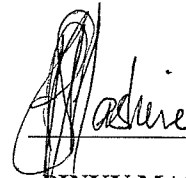
116. The submissions sought to be made by the aspirant *amici* applicants are relevant and important to the proceedings. They cover ground distinct from the submissions that will be made by the other parties and will assist this court in arriving at a just and equitable conclusion affording protection to international and domestically protected human rights and the rule of law.

117. I respectfully submit that the only sensible and purposive interpretation of the above submissions by the *amici* applicants in persuading this Court to find in favour of the applicant is to grant the order so prayed for in the applicant's notice of motion which will set a formidable precedent for the effect of sexual harassment against domestic workers in matters regarding the defence against diplomatic immunity.

118. Accordingly, the *amicus curiae* applicants have satisfied the requirements for admission as *amicus curiae*.

119. I pray for orders admitting UDWOSA, Izwi, the Solidarity Center, the ILAW Network, and the UN Special Rapporteur as *amicus curiae* and permitting us to present written and oral argument, as per the notice of motion that accompanies this affidavit.

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PINKY MASHIANE

I CERTIFY that this affidavit was signed and sworn to before me at Pretoria on this the 7th day of March 2025 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".



COMMISSIONER OF OATHS

Full Name: _____

Business Address: _____

Designation: _____

Capacity: _____

Date: _____

COMMISSIONER OF OATHS (RSA)
Lavinia Lucy Bernards
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Annexure "FA1"

Report of the study into:

South African domestic workers' vulnerabilities to (and experience of) GBV in the workplace

Isolated and Vulnerable: The Story of SA's Domestic Workers & GBV

Acknowledgements

IDWF's Myrtle Witbooi

SADSAWU's Eunice

Izwi's Amy Tekie

Wits' Janet Munakamwe

Izwi Associates in Gauteng

SADSAWU Members in Gauteng, KZN and Western Cape

Report of the study into:

South African domestic workers' vulnerabilities to (and experience of) GBV in the workplace

Isolated and Vulnerable: The Story of SA's Domestic Workers & GBV

RATIONALE FOR THE STUDY

The levels of gender-based violence (GBV) in South Africa remain alarming, and significantly impact women's lives. Women at the lower rungs of the socio-economic ladder are most vulnerable, and least likely to report, various forms of GBV. They are thus unlikely to receive justice.

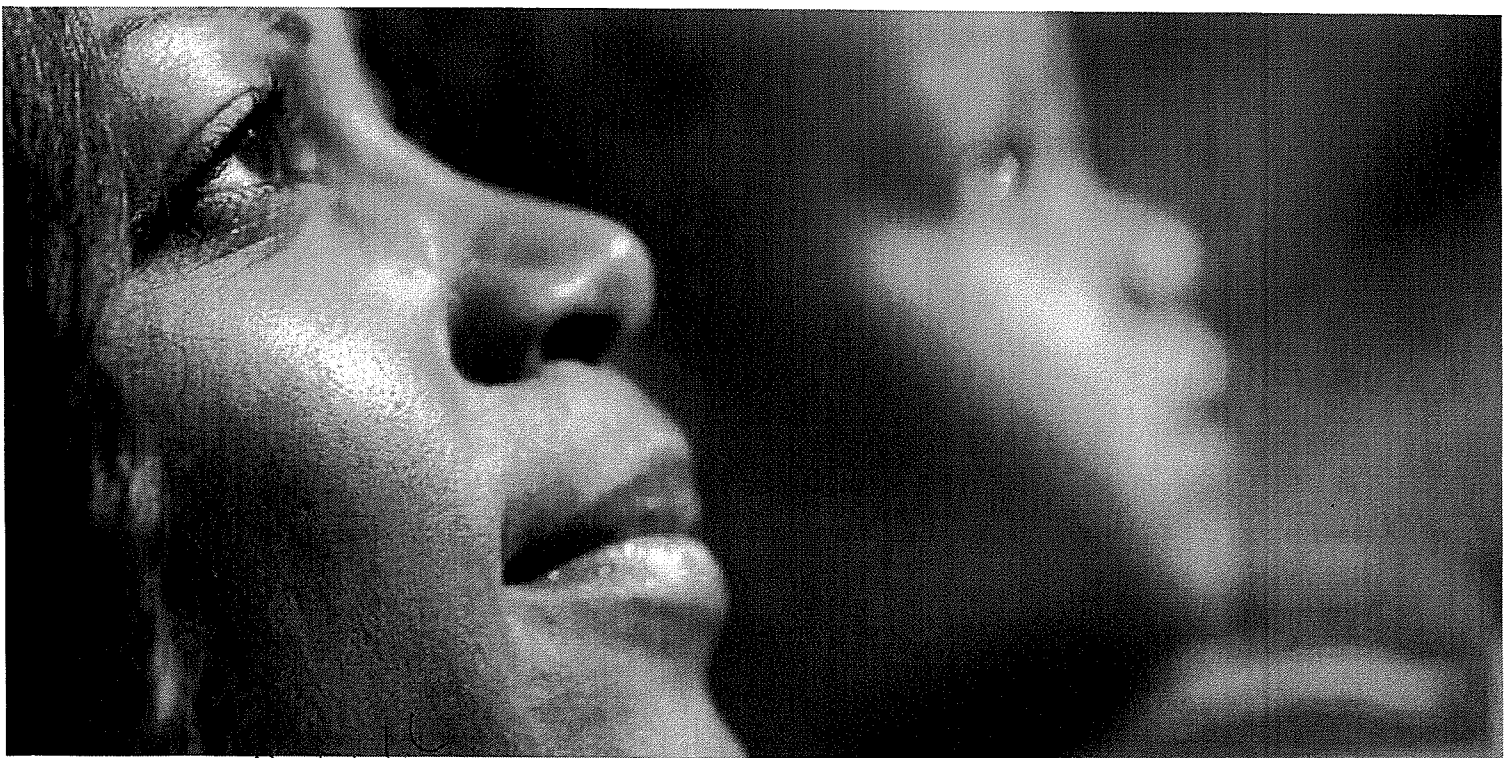
Although research has documented GBV in South Africa well, there remain some groups at the margin, one of which is domestic worker (DW)s. Currently it is estimated that over 90% of DWs are women. A significant number of them are foreign migrants, some undocumented. The probability of being treated unfairly from a labour rights perspective is obvious; the types of violence have not been sufficiently documented and insufficient interventions implemented. The incidences documented in this report are heart-breaking and reveal alarming levels of impunity by both employers and law enforcement agencies.

Although using a small sample size, this research report seeks to amplify the voices of DWs in the GBV discourse – to characterise the nature of GBV and sexual harassment they experience, and to explore how GBV services could become more accessible to them. Lastly this report will be a valuable resource for organisations and movement aiming to shape programmes that address GBV among vulnerable workers such as DWs.

All of the above points towards a need to dedicate resources to address the nuances of GBV in the domestic workplace.

Collaborations, such as this one, are important work for feminist movement building and inclusiveness. It is our hope that as the National Strategic Plan on Gender-Based Violence and Femicide is implemented, such research contributes to no women left behind in the various interventions.

Hlanganisa and Izwi



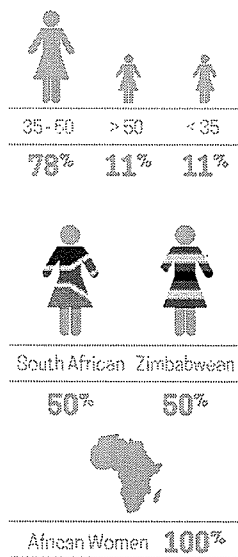
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RESEARCH FINDINGS

5.1 Demographics



- The majority of individual respondents were above 35 years old, and only 11% of the sampled respondents were below 35 years of age. Another 11% were above 50 years of age. The majority 78% were between 35 and 50 years of age.
- The individual respondents were 50% South African with another 50% being Zimbabwean.
- All the individual respondents were of African descent and were all women.
- The Focus Group Discussions had only 9% Zimbabwean and 91% South Africans. The Focus Group respondents were a mixture of African and "Coloured" women in Cape Town.

5.2 Knowledge of Gender Based Violence and how it manifests in the Domestic Work Sector

Amongst DWs, the understanding of GBV can be seen. However, 80% of the DWs see GBV as something that only occurs in intimate partner relationships. The respondents had to be prompted to think about how GBV manifests itself in the domestic work sector. One domestic worker said, that "some of us do not know that what the employer is asking you to do is GBV, we think it is his house mos, so I must do it". The key informants and the literature also touched on the insufficient understanding of GBV by DWs and most of the recommendations from different sources touched on the need for DWs to be educated on what GBV is and to get resources to help DWs either to respond to GBV or to report GBV and get help. The International DWs Federation indicates that GBV is violence that is directed against a woman because she is a woman or that affects women disproportionately. This includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

They also indicated that most of the GBV experienced in the domestic work sector is of a sexual nature. It involves the crossing of personal boundaries such as touching DWs on the shoulders, on the breasts, tapping or smacking them on the buttocks. DWs also spoke about the way a man would look at you.

One domestic worker reported a unique case of stalking, although she did not use that term. She indicated that the employer would find something to do outside the house so that he could watch when her boyfriend would come to visit and sometimes would watch when she and her boyfriend had differences (of opinion). He also befriended her on Facebook and commented on Facebook and to her about her relationship. "I then unfriended him on Facebook. One day he abused me physically and I got injured. Then I had to leave the job. During the CCMA hearings, it turned out that he could still access my Facebook and he brought material he should not have had access to, to the hearing".

Nomonde (name changed), a 41-year old DW, worked for a huge household with an extended family. She was approached repeatedly by the "Coloured" son of her employer who was also married who claimed that he loved her and would take good care of her. He would dress only in boxer shorts. She told him to stop bothering her or she would report him to the police, but he said that the police would not do anything. She threatened to report him to his mother and ended up telling his sister about the sexual harassment, who spoke to him about this behaviour. From that day onwards he did everything in his power to get his mother to fire Nomonde.

One key informant indicated that other DWs did succumb to these approaches as a result of poverty as they were promised extra income, but it always ended up badly for most of them except in one case where the wife ended up having to leave after she had tried to fire the then pregnant domestic worker without success. In the worst of such cases, one domestic worker agreed to have anal sex for extra income with one part of a gay couple and ended up contracting piles.

One domestic worker indicated that the back room that she was allocated in her employer's yard had a bathroom that did not give her total privacy i.e. someone could see you through the window from outside when doing your ablutions. She said, "One evening when I went into the bathroom I found him, out there, staring at me and I decided that I would take my bath later when I knew that they were already sleeping. This domestic worker's case of alleged rape is in court and has not yet been concluded after six years, as it occurred in 2014.

On the question of rape or sexual assault, four different cases were mentioned by DWs although one domestic worker related her first-hand experience of rape. The report cannot cover much of this incident as it is still in the court except to say that the domestic worker was also physically hurt in the incident, apart from the psycho-social scars that she carries and the additional detrimental impact to her personal and family life that she experienced as a result of this incident.

Other cases that have been reported to the union/other DWs/ NGOs; in one incident the domestic worker won her case in court and the employer-perpetrator is still behind bars.

In another case, the domestic worker was shown pornography by a man who wore women's clothes. He forced her to touch him and he assaulted her sexually, but she left the job. In another case the DW was forced to conduct a blow-job on the son of her employer. She reported this incident to the mother who accused her of abusing her son and to the union. This matter was not taken to court, but the domestic worker also lost her husband who blamed her for what had happened to her.

The research reiterated what was found in all the literature: that DWs do not report GBV incidents that they experience for many reasons that will be expanded on below.

"Women described employers and other male family members groping them, exposing themselves to them, chasing them around the house, and coming into their rooms late at night. They also said the perpetrators would threaten to dismiss them, or inform their wives that the domestic worker had seduced them to try to force them to sleep with them.

The impact of GBV covers the following aspects as mentioned in the Who Guidelines for Research into Violence Against Women:



More common are ‘functional disorders’— ailments that frequently have no identifiable cause, such as irritable bowel syndrome; gastrointestinal disorders; and various chronic pain syndromes, including chronic pelvic pain. Studies consistently link such disorders with a history of physical or sexual abuse. Women who have been abused also tend to experience poorer physical functioning, more physical symptoms, and more days in bed than do women who have not been abused....

“For many women, the psychological consequences of abuse are even more serious than its physical effects. The experience of abuse often erodes women’s self-esteem and puts them at greater risk of a variety of mental health problems including depression, anxiety, phobias, post-traumatic stress disorder, and alcohol and drug abuse.

DWs are much more likely to have had suicidal thoughts, or to have attempted to kill themselves....

Impact on pregnancies...



The above impacts have been mentioned in the WHO Guidelines and we were not able to determine from the fieldwork if the DWs experienced all of them. What we were able to glean from the research is that one DW had severe injuries from the rape that have necessitated that she attends physiotherapy on a regular basis, which she can no longer attend as a result of COVID-19. In addition, none of the DWs who experienced GBV were able to access professional psychosocial treatment.

Death/ Femicide as a result of GBV or as part of GBV has been reported in the South African context in the DW sector, the electrical generation sector, the political sector, the education sector and the mining sector.

2020 POWA GBV Advert on SA TV indicates that in South Africa 8 women are killed by men every day in South Africa.

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Annexure "FA2"

The Persistence of Private Power: Sacrificing Rights for Wages



A QUALITATIVE SURVEY OF HUMAN RIGHTS VIOLATIONS AGAINST
LIVE-IN DOMESTIC WORKERS IN SOUTH AFRICA

DECEMBER 2021



IZWI

Domestic Workers Alliance

P. J. M. 11

Research designed and conducted by Amy Tekie and Theresa Nyunion on behalf of Izwi Domestic Workers Alliance; legal analyses by Tinovimbanashe Gwenyaya, on behalf of Izwi Domestic Workers Alliance, and Ziona Tanzer, Solidarity Center.

IZWI DOMESTIC WORKERS ALLIANCE is a network of domestic workers in Johannesburg that advises workers on their labour rights, provides assistance with individual cases and conducts related advocacy and research work. Izwi also offers training to domestic workers and collects and shares workers' stories for media and advocacy.

The SOLIDARITY CENTER is the largest U.S.-based international worker rights organization helping workers attain safe and healthy workplaces, family-supporting wages, dignity on the job and greater equity at work and in their community. Allied with the AFL-CIO, the Solidarity Center assists workers across the globe as, together, they fight discrimination, exploitation and the systems that entrench poverty—to achieve shared prosperity in the global economy.

Design: Deepika Mehta
Editing: Rebecca Winzenried
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ON THE COVER:
Former domestic worker and IZWI employee Nomuhle Ndlovu is fighting for the rights of domestic worker rights in South Africa. Photo: A. Tekie

P. J. M

Introduction

Live-in domestic workers in South Africa frequently find themselves in the intractable position of having to forego their rights in order to retain their jobs. The unique conflation of the home and workplace in the domestic sector frequently leads to the entanglement of workplace rights and personal freedoms. In an industry that is historically underpinned by racism, sexism and classism, rights to privacy, freedom of movement and children's right to parental care are frequently sacrificed for wages and stable work. Often this leads to unchecked exploitation—regardless of constitutional protections and industry-specific labor regulations.

Indeed, domestic workers are included within the bulwark of South African labor protections, but these do not include sometimes crucial constitutional and human rights. While rights such as privacy and freedom of movement are entrenched in the South African Constitution, they are largely absent from labor legislation and have not been incorporated into Sectoral Determination 7 regulating domestic work.

The South African Constitutional Court has acknowledged the unique circumstances of domestic workers, who are primarily Black women. In the case of *Mahlangu v Minister of Compensation*, the Constitutional Court found that the state's exclusion of domestic workers from workers' compensation claims in cases of injury, illness or death violated their right to social security, dignity and equality rights.¹ It found that discrimination against domestic workers occurs at the confluence of intersecting grounds, and describes the pernicious impacts of colonialism and apartheid, which placed Black women at the bottom of the social hierarchy, doing the least paid, most insecure work. The Court articulates how domestic workers are denied both a family life and a social life, devoting more time to caring for their employers' children than their own.

P.J.M. 11

The COVID-19 pandemic has exacerbated the conditions of domestic work depicted by the Constitutional Court. Lockdown measures imposed by the state, and much more severe restrictions put in place by employers, were abrupt and continue to severely limit the movement of live-in domestic workers, denying them access to their families, health care, food and other basic needs during the pandemic.²

This study provides a qualitative exploration of the broader constitutional and human rights violations of domestic workers who live on their employer's premises. The research contributes to the understanding of intersectional discrimination experienced by domestic workers, as set out in the *Mahlangu* judgment, and sheds light on indignities that frequently rise to the level of rights violations but are invisible because of the private spaces in which they occur.

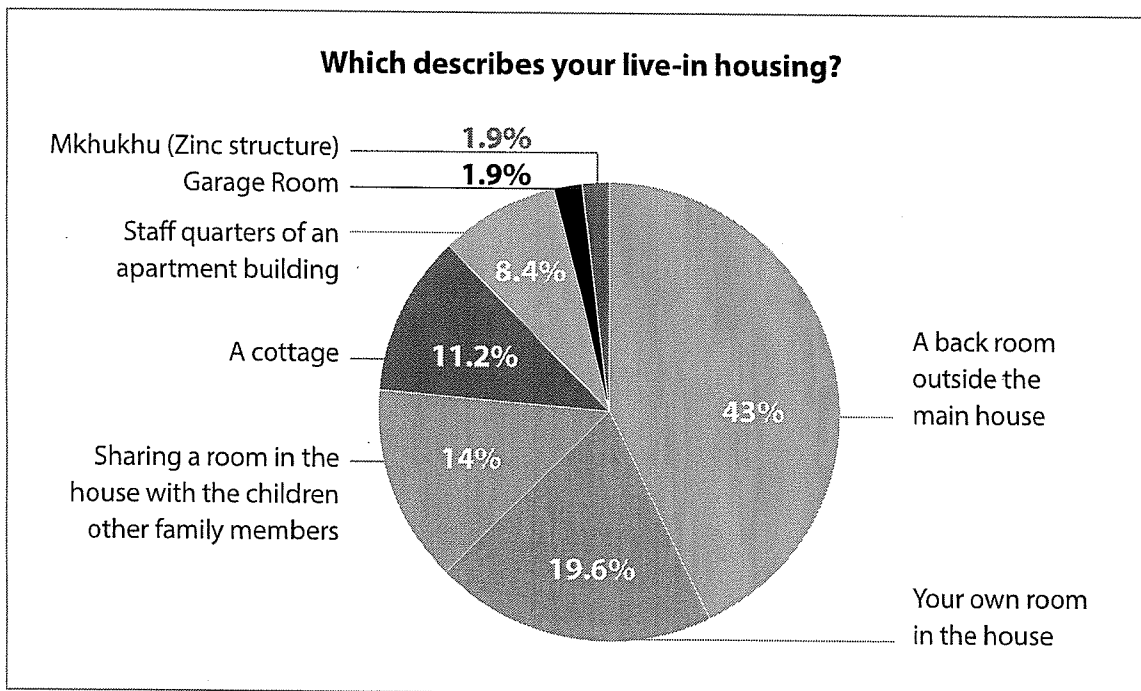
RIGHT TO ADEQUATE HOUSING

The South African Constitution guarantees the right of access to adequate housing. However, the term "adequate" has not been defined. Sectoral Determination 7 provides no minimum standards for domestic worker accommodation, except when the employer is deducting rent. In contrast, ILO guidelines set minimum standards for domestic worker accommodation. The International Covenant on Economic Social and Cultural Rights makes clear that privacy and dignity are core components of adequate housing and also recognizes that the right to food and water is part of the right to an adequate standard of living. Comparative regulation of domestic work addresses all three issues. Interviewees similarly highlighted the inter-relatedness of housing, privacy, food and water. Accordingly, these issues will be looked at together.



RESEARCH FINDINGS

Adequate Housing



Nearly a third (27 percent) of respondents report not having a home nearby other than the residence provided by the employer. The standards of staff accommodation provided for survey respondents vary, as detailed below:

- 26 percent of respondents cannot lock their room/cottage.
- 25 percent do not have their own toilet.

P. J. M. u

- 24 percent do not have their own/bath shower.
- 4 percent do not have windows that can be opened.
- 17 percent do not have curtains to protect their privacy.
- 6 percent do not have access to electrical outlets in their room.
- 7 percent do not have access to hot water.
- 9 percent report holes, leaks or other problems with the building.
- 9 percent share the room with at least one other worker.
- 36 percent are generally not happy with their living quarters.
- 77 percent are not allowed to have a family member or friend living with them.

Some of the comments from respondents on what was lacking in their accommodation included:

- Hot water, there was none. I had to carry it from another room to my room.
- It is not a room, it is a loft which is open and needs renovation.
- The room is too small, very hot and needs air conditioning.
- The room needs to be repainted and the windows need replacement.
- [I need] to have my own room; their kids are noisy and sleep late.
- It is a small and hot room; it's the baby's room, which is not designed for an adult.
- The room is small. I need a bigger space because I live with my child and am expecting another.
- [I need] a sink for dishes.
- The plugs needed to be fixed; the wall has cracks; and I need my boss to stop telling us to use five liters of water to bathe.
- Room was too small, and I had to cook my food in their kitchen.
- The toilet does not have a door and if someone uses it, the smell fills my room.
- My room needs hot water. I am tired of bathing with cold water even during winter.
- I have no access to hot water...the roof leaks and the room has lots of rats...and I live with my 2-year-old daughter in such conditions.
- Even if I wished to change something, they always shout at me. No one will listen so it is ok as it is.

In many cases, workers do not have a separate kitchen and are expected to use their employers' kitchen for cooking meals. This is often problematic as employers then can control when and even what workers can cook.

- Two workers (with separate employers) reported not being able to eat meat because it is against their employers' dietary regulations. They are not allowed to buy it with their own funds or cook it during off hours. "I love meat but because they don't want me to buy it...I end up eating things I don't want."
- An UDWOSA member was told she wastes her bosses' electricity using their kitchen stove to cook her meals. When she bought a paraffin stove for her room, they got angry and told her she would blow up their house with it.²⁷

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- One worker reported, "They complain of my use of water and electricity in my room, and she (the employer) is threatening to make me pay for it.... They buy me chicken braai pack and mealie meal only, no change of diet.... I once bought myself veggies and put them in their fridge as I do not have one in my room.... In the morning I found she had thrown them in the bin, saying she didn't like how they smelt."
- "[I want] to have my own kitchen so I can cook in my own room.... Their kitchen, if I cook late, they say they want to sleep and sometimes I sleep without cooking."

Domestic worker rights organizations report that this type of employer behavior is not at all uncommon. In Izwi's experience, employers often keep separate plates and cutlery for the domestic worker since they do not want her using theirs, which is understood as a remnant from apartheid-era discrimination. In some cases, this crockery is kept with the dog food or cleaning supplies.

Another common frustration for live-in workers is employers admonishing them for using too much water and electricity. As quoted above, one respondent was told that she should only be using five liters of water to bathe. An average bathtub one-third full uses 75 liters, and five liters would be the equivalent of barely over one minute in the shower.²⁸ It is unlikely that this amount of water would be considered "adequate" or "fit for purpose" for the employer's own bathing, but the definitions of "adequate" surely differ depending on the class or position of the individual in question. A live-in domestic worker represented by AVWO was told to stop using the shower and bath, and to use only a bucket to bathe. When she complained about this, she was dismissed.

Privacy

Survey and interview results revealed a host of frustrations about the lack of privacy afforded to workers in their off hours. Some of the comments included:

- I need to have my own space so I can rest and not be with the kids 24/7.
- I would love my own room because I always find my stuff searched.
- I need privacy and have none. Their kids go through my stuff.
- The room has no curtains and I need privacy.
- I need more privacy because I have a bathroom and toilet in my room, but if their toilet is being used, they come use mine without asking—they just barge in.
- I need to have a house so that I can protect my privacy, and so that my husband can visit or stay with me.
- I need to put curtains in my bathroom.
- If it was possible I do not like to share a kitchen with "the guy" though we each have self-contained rooms.
- Give me my own toilet.
- I need privacy; for them not to come to my house anytime, even if I am not around on a weekend they enter without my permission.
- I need at least to have keys for my security.
- I would love to have my own room and more privacy.
- Staying in you have no privacy...no peace....You are like a robot to them and they don't consider that you need rest.

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FREEDOM FROM VIOLENCE AND HARASSMENT

Abuse, harassment and bullying are some of the most commonly reported ways in which the basic human rights of domestic workers are violated, especially their right to dignity. Live-in domestic workers are especially vulnerable to such abuse because of shared living spaces, long working hours and intimate nature of the work and relationships. The full scope of sexual, physical, verbal and emotional abuse experienced by workers is beyond the capacity of this research.¹⁰¹



RESEARCH FINDINGS

In the current research, workers reported a variety of forms of abuse and harassment. Nearly a third (27 of 100 of respondents) have experienced an employer shouting at them or using foul language, while 13 of 98 respondents have experienced the employer using language that is clearly racist:

- She sometimes calls me stupid.
- She calls me *malcop*¹⁰² and I do not know what it means.
- There was the time my boss called me an “asshole” because I once forgot to tell his wife to pack his sunglasses in the car.
- One day as she was going to work, I was upstairs and took some time to collect the baby from her. She was angry and started shouting at me. Outside people gathered to listen to her and I was embarrassed.
- They call me stupid or idiot or if I do something wrong, they say “Fuck you.”
- You are abused. They insult you and say you must be grateful for free living space.
- They always talk badly to me and call me monkey...they misplace things and say I took them and when they find them, they do not apologize.
- She always says, “Can’t you hear what I tell you?...You are a monkey.”

Two out of 98 respondents have been hit or physically hurt by an employer. In 2017–2018, Izwi handled the case of a woman who was punched and knocked unconscious by her employer because she was late to work, as she had taken her child to the clinic. She was summarily dismissed and made to move out that weekend after returning from the hospital. She was granted three months’ compensation for the unfair dismissal at CCMA. The assault case went to court, where the employer was found guilty and given the choice of six months imprisonment or 60,000 rands in fine.

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN, JOHANNESBURG**

Case Number: JS 692/23
CCMA Case Number: GATW 14247-22

In the application of

UNITED DOMESTIC WORKERS OF SOUTH AFRICA

First Applicant for admission as *Amicus Curiae*

IZWI DOMESTIC WORKERS ALLIANCE

Second Applicant for admission as *Amicus Curiae*

SOLIDARITY CENTER

Third Applicant for admission as *Amicus Curiae*

INTERNATIONAL LAWYERS ASSISTING WORKERS NETWORK

Fourth Applicant for admission as *Amicus Curiae*

UNITED NATIONS SPECIAL RAPPOORTEUR FOR CONTEMPORARY FORMS OF SLAVERY

Fifth Applicant for admission as *Amicus Curiae*

In re: the matter between

BRENDA MAKAMBA

Applicant

and

FAHAD ALOTOAIBI

First Respondent

SARAH ALOTOAIBI

Second Respondent

ABDELASIS ALOTOAIBI

Third Respondent

EMBASSY OF THE KINGDOM OF SAUDI ARABIA

Fourth Respondent

**SUPPORTING AFFIDAVIT IN THE *AMICUS CURIA* APPLICATION OF THE
UNITED NATIONS SPECIAL RAPPOORTEUR FOR CONTEMPORARY FORMS OF SLAVERY**

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I, the undersigned,

CHARNÉ TRACEY


do hereby state under oath that:

1. I am an attorney of the High Court of South Africa and a practicing attorney with Lawyers for Human Rights, the attorneys of record for the United Nations Special Rapporteur for contemporary forms of slavery ("**the Special Rapporteur**") in this matter.
2. I have been duly authorised to bring this application on behalf of the Special Rapporteur. The facts deposed to herein are within my personal knowledge, save where otherwise stated, and are true and correct.
3. Given the facts below, I depose to this affidavit on behalf of the Special Rapporteur in his application to be admitted as a friend of this Court. A copy of the Special Rapporteur's supporting affidavit is attached marked Annexure "A". The facts contained therein are uncontroversial and have been settled in consultation with the Special Rapporteur.
4. Due to the Special Rapporteur's international location and current professional obligations, which include ongoing engagements with the Office of the High Commissioner for Human Rights and academic commitments, he is regrettably not in a position to complete the formal authentication process at this time. A copy of the thread of correspondence between Lawyers for Human Rights and the Special Rapporteur's advisors (Satya Jennings and Yuki Suzuki) in this regard is attached hereto marked Annexure "B".
5. In the aforementioned correspondence, the Special Rapporteur's advisor confirms that, in view of time and cost constraints, he is unable to authorise the affidavit through the formal processes currently, and that his involvement in this application should proceed through alternative means. The Special Rapporteur has expressed his full support for the submission of the unsigned affidavit and has indicated

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that he is open to verifying the authenticity of the document through other acceptable forms of supplementary evidence if required.

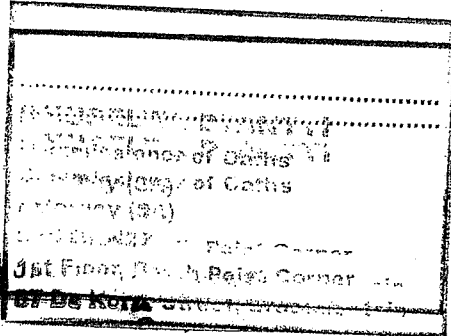
6. Rule 63(4) of the Uniform Rules of Court provides that a South African court may accept a document as sufficiently authenticated if it is satisfied by direct or circumstantial evidence that the document was in fact signed by the purported signatory, even if it does not comply with Rule 63(2). In *Janse van Rensburg v Obiang and Another* (A338/2018, 22470/2015) [2019] ZAWCHC 53, the Court confirmed that “*if the court is satisfied by circumstantial evidence that the signature is probably authentic, the need for its extracurial authentication in the manner allowed by rule 63(2) does not arise.*”
7. In light of the above, and in the interests of justice, I respectfully submit that the Special Rapporteur’s affidavit be accepted in its current form, pending the possible provision of further confirmatory documentation should the Court so require. Given the public significance of the issues raised, and the Special Rapporteur’s global mandate and voluntary role, I respectfully submit that there is good cause for the Honourable Court to condone any technical non-compliance with Rule 63.
8. Further, in light of the provisions of Rule 63(4) of the Uniform Rules of Court, which empower the Court to accept a document that has not been formally authenticated if its authenticity can be proved by other means, I respectfully submit that the Special Rapporteur’s supporting affidavit should be received and considered, pending the possible provision of supplementary verification evidence, should the Court require the same.
9. Accordingly, I respectfully request that the Honourable Court grant an order in terms of the notice of motion.



CHARNÉ TRACEY

JK

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Braamfontein on this the 19th day of May 2025, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

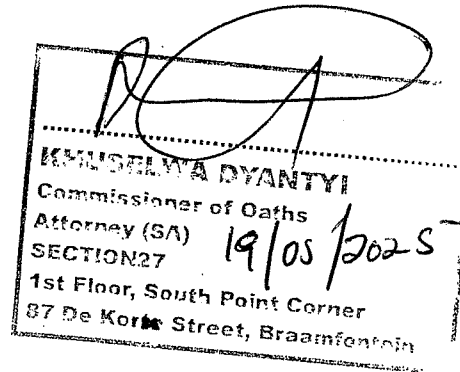
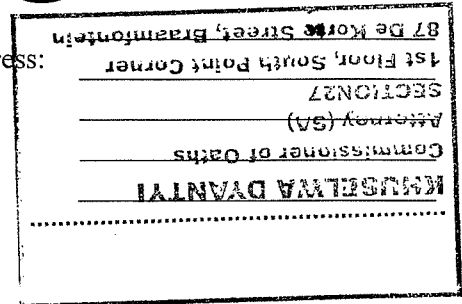
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EMBASSY OF THE KINGDOM OF SAUDI ARABIA

Fourth Respondent

**SUPPORTING AFFIDAVIT:
UNITED NATIONS SPECIAL RAPPOREUR ON CONTEMPORARY FORMS OF SLAVERY**

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I, the undersigned,

TOMOYA OBOKATA

do hereby make oath and state that:

1. I am the United Nations Special Rapporteur on Contemporary Forms of Slavery (“the Special Rapporteur”). I am an expert in the area of contemporary forms of slavery and seek to be admitted as the fifth *amicus curiae* in the main application.

INTRODUCTION TO THE MANDATE AS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF SLAVERY

2. This is a written submission by the United Nations Special Rapporteur on contemporary forms of slavery (“the Special Rapporteur”), in respect of this petition.
3. The Special Rapporteur is part of “[t]he system of Special Procedures” that “is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.”¹ The Special Rapporteurs serve as independent human rights experts selected for their “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”² They “undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith” and “not receive financial remuneration.”³ In the performance of his mandate, the Special Rapporteur is accorded certain privileges and immunities as an expert on mission for the United Nations pursuant to the

¹ Office of the High Commissioner for Human Rights (“OHCHR”), *Special Procedures of the Human Rights Council*, <https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx>.

² Human Rights Council, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 (June 18, 2007), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1

³ OHCHR, *Special Procedures of the Human Rights Council*.

Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, to which South Africa is a party since 30 August 2002.

4. The submission is submitted by the Special Rapporteur on a voluntary basis for the Court's consideration without prejudice to, and should not be considered as, a waiver, express or implied, of the privileges or immunities of the United Nations, its officials or experts on mission, which includes Special Rapporteurs, pursuant to 1946 Convention on the Privileges and Immunities of the United Nations.
5. Authorisation for the positions and views expressed by the Special Rapporteur, in the present submission, in full accordance with his independence afforded to his mandate, was neither sought nor given by the United Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.
6. Special Rapporteurs are independent and impartial experts on thematic human rights or country issues within the Special Procedures of the UN human rights system, and act in accordance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council ("HRC").
7. Special Rapporteurs are independent human rights experts mandated to report and advise on human rights issues from a thematic or country-specific perspective. They are part of the system of Special Procedures, a central element of the United Nations human rights machinery, which plays a critical role in monitoring, investigating, and addressing human rights violations worldwide.
8. As the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, my mandate was established by the Human Rights Council to focus on identifying, preventing, and addressing contemporary forms of slavery in all their manifestations. This includes, but is not limited to, issues such as forced labour, bonded labour, child labour, domestic servitude, and other exploitative practices.

9. My role involves engaging with States, civil society, workers organisations, survivors, academia, businesses and other relevant stakeholders to raise awareness, provide technical assistance, and make recommendations for the prevention and eradication of contemporary forms of slavery.
10. As Special Rapporteur, I undertake country visits, submit communications, and submit reports to the Human Rights Council and the UN General Assembly. I also issue communications to states and non-state actors regarding allegations of slavery-related practices and provide technical assistance to promote compliance with international standards.
11. Through this work, I aim to uphold and advance the fundamental human rights enshrined in international law, ensuring dignity and justice for those affected by contemporary forms of slavery.

MY INTEREST IN THE MAIN MATTER

12. The United Nations Special Rapporteur on contemporary forms of slavery, (**“the Special Rapporteur”**), established pursuant to Human Rights Council resolution 51/15⁴ is grateful to the Labour Court for the opportunity to submit this written intervention to the central question before the Court.
13. The UN Special Rapporteur is mandated to address contemporary forms of slavery, including domestic servitude, with a focus on vulnerable populations such as migrant domestic workers. This case aligns with the Special Rapporteur’s mandate and his mission to highlight and combat systemic exploitation and abuse in the context of domestic work.
14. This case is of particular relevance to my mandate, as it raises critical questions about the obligations of States to protect domestic workers from exploitation and ensure access to justice and a remedy for

⁴ <https://docs.un.org/en/A/HRC/RES/51/15>.

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victims of contemporary forms of slavery. It is my view that addressing these issues is essential to advancing the international community's commitment, including under the Sustainable Development Goals/target 8.7 to ending contemporary forms of slavery.

15. The recognition and protection of domestic workers' rights are pivotal in achieving this goal. Domestic workers represent one of the most vulnerable labour sectors globally, and their experiences often reveal systemic gaps in legal and institutional frameworks designed to combat contemporary forms of slavery. Ensuring accountability in cases like this sends a strong signal that slavery-like practices will not be tolerated and that victims will have access to justice.
16. In a report presented to the Human Rights Council in 2018⁵, the former UN Special Rapporteur on contemporary forms of slavery⁶ observed that the legal right of ownership distinguishes servitude from slavery, but that legal ownership has been replaced by many different forms of coercion and control, which are "*exacerbated in the case of migrant domestic workers in domestic servitude, who are in a foreign country and have irregular migrant status*".⁷
17. The UN Special Rapporteur report notes that women migrant domestic workers are discriminated against on the basis of factors such as sex, gender, race, ethnicity, national origin and social status, which leads to intersecting forms of discrimination.
18. Domestic work is an essential yet undervalued and often overlooked sector, characterized by informal labour arrangements, low wages, and limited access to social protections. Domestic workers, predominantly women, are frequently subjected to conditions that amount to forced labour or other forms of exploitation, such as excessive working hours, non-payment of wages, physical and

⁵ A/HRC/39/52.

⁶ 27 July 2018 A/HRC/39/52.

⁷ Id at Para 12.

emotional abuse, and restrictions on freedom of movement.

19. In many jurisdictions, domestic workers are excluded from labour law protections or lack mechanisms to enforce their rights, leaving them vulnerable to abuse and exploitation. Migrant domestic workers face particular risks in this regard, as their immigration status may be tied to their employer, further exacerbating their dependence and vulnerability.
20. Discriminatory migration policies limit women's access to safe and orderly migration pathways which in turn limits their job opportunities in transit and host countries. On that basis, many migrant women end up in informal employment particularly in domestic and care work.
21. The report notes that migrant domestic workers in an irregular situation are "*invisible*" to national authorities and often face language barriers, a lack of knowledge about their rights and often lack a safety net or a social network in the host country. Owing to fear of deportation, domestic workers tend to live in anonymity, which can lead to isolation and hence to an enabling environment for forced labour and servitude.⁸
22. The UN Special Rapporteur maintains that the right to freedom from servitude is violated when the State fails to take adequate measures to protect individuals from practices, including by private persons, that amount to servitude and further notes that as a global rise in anti-migrant sentiment, irregular migrants are likely to be treated as perpetrators of an immigration offence rather than the victim of domestic servitude entitled to protection, assistance and redress.⁹
23. The UN Special Rapporteur advises that "*access to decent work is the antidote to slavery and all forms of labor exploitation and human rights violations at work*".¹⁰ Among other recommendations, the UN

⁸ Id at para 38.

⁹ Id at VIII at A.

¹⁰ Id at para 15.

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Special Rapporteur recommends: -

- 23.1. Establishing a safe and effective complaint mechanism for victims of domestic servitude in order to increase the number of incidents reports and in destination countries;
 - 23.2. Clearly separate labour inspection, immigration and law enforcement; and
 - 23.3. Ensuring that the labour inspectorate is proactive, adequately resourced and entitled to conduct inspections in private households.
24. Courts in comparative jurisdictions have similarly addressed exploitation of migrant domestic workers which may amount to domestic servitude and which involves “*a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance*”.¹¹
25. By way of example, the Inter-American Court has similarly confirmed that the undocumented migrants occupy positions of subordination, but that States have an obligation to protect undocumented migrant workers in their jurisdiction from private employers, with particular reference to the prohibition against discrimination, which is embodied in the Universal Declaration of Human Rights and are not dependent on migration status.¹²

THE IMPORTANCE OF UPHOLDING INTERNATIONAL HUMAN RIGHTS NORMS AND STANDARDS

26. The mandate of the Special Rapporteur on contemporary forms of slavery places particular emphasis on ensuring access to fair and just conditions of work in all labour sectors, including domestic work.

¹¹ CN v UK App No 4239/08 In another case, the European Court of Human Rights found that irregular migrant workers were in a situation of vulnerability, since they were without resources and at risk of being detained, arrested and deported. *Chowdury v Greece* App No 21884/15.

¹² Juridical Conditions and Rights of Undocumented Migrants, Advisory Opinion OC-18/03 (17 September 2003) IACHR (2003).

PK
CT

27. Instruments such as the ILO Domestic Workers Convention¹³ establish clear obligations for States to ensure the effective promotion and protection of the human rights of all domestic workers.¹⁴
28. States have a responsibility to ensure that domestic workers are protected from contemporary forms of slavery through robust legal frameworks, effective enforcement mechanisms, and access to justice and remedy. Failure to do so not only perpetuates individual suffering but undermines international efforts to eradicate contemporary forms of slavery.

RECOMMENDATIONS AND CALL TO ACTION

29. In light of the above, the Special Rapporteur urges this Honourable Court to: -
 - 29.1. Fully investigate and address the allegations of exploitation and abuse raised in this case;
 - 29.2. Ensure that domestic workers who suffered human rights abuses, including contemporary forms of slavery, have access to justice, effective remedies and reparation;
 - 29.3. Strengthen legal protections and enforcement mechanisms to safeguard domestic workers from exploitation, in line with the ILO Domestic Workers Convention (C189); and
 - 29.4. Promote awareness raising and training among employers, workers, and the general public to challenge social norms that normalize or tolerate exploitative practices.

CONCLUSIONS

30. As the UN Special Rapporteur on contemporary forms of slavery, I submit this affidavit with the aim

¹³ 2011 (No. 189), accessed at https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189.

¹⁴ C189 - DOMESTIC WORKERS CONVENTION, 2011 (NO. 189), ART. 3.

PK
CT

of providing additional information and expertise to the Labour Court of South Africa at Braamfontein, Johannesburg. I strongly believe that combatting contemporary forms of slavery, including domestic servitude, requires a collective effort. This case is a key opportunity to ensure accountability and to give visibility to practices which commonly take place behind doors and which remain in impunity.

31. For the reasons stated above, I respectfully request that this Honourable Court admit the UN Special Rapporteur as the fifth *amicus curia*.



TOMOYA OBOKATA

Sunday, May 18, 2025 at 12:22:57 PM South Africa Standard Time

Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23
Date: Monday, 17 March 2025 at 14:29:31 South Africa Standard Time
From: Yuki Suzuki
To: Charne Tracey, Satya Jennings
CC: Kayan Leung
Attachments: image001.png, image002.gif, image003.gif, image004.gif, Amicus curiae.pdf

Dear Chane,

Thank you so much once again for this matter.

I discussed with the special rapporteur. Unfortunately, we are sorry to say that we may not be able to authorize the document we submitted to you, considering the time frame which has been presented and cost allocation.

However, if you would like to submit our amicus brief without authorization, we are happy in that way. **If you would like to proceed in this way, please let us know beforehand.** Attached is the version we deleted the notarization section.

Since we have decided as above, we do not need to ask your time for call today.

Thank you in advance for your consideration.

Sincerely,
 Yuki

From: Yuki Suzuki
Sent: Monday, 17 March 2025 10:45
To: 'Charne Tracey' <Charne@lhr.org.za>; Satya Jennings <satya.jennings@un.org>
Cc: 'Kayan Leung' <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charne,

I have reread your explanation, and there are a few more points I would like to discuss with you before checking with the Special Rapporteur. **Would you be available for a quick call, just 15 minutes?**

Could we schedule a Teams call for 15 minutes either before 14:00 Geneva time or after 15:00 (before 15:00 or after 16:00 South Africa time)?

I would like to discuss the following two points with you. Just to let you know, we do not need a detailed memo (the Special Rapporteur and I are not concerned about formality); we just want to have a casual discussion. Also, I would like to prioritize the response to No.1 below rather than other questions.

1. Necessity of authorization process

I fully understand that it may be preferable for the Special Rapporteur to cover the cost of the authorization. However, if that is not possible (as the Special Rapporteur does not receive a salary from OHCHR and works on a voluntary basis), is it correct to understand that the Amicus brief can still be submitted without the authorization, with only a slight reduction in its evidentiary weight, according to the following explanation from the South Africa courts you circulated? Or should we understand differently for this?

Please clarify this as a basis for discussing the cost with the Special Rapporteur.

In that case, instead of the PDF file we sent you the other day with the notarization section left blank, we will prepare a version that includes only the signature and not the notary section.

(the explanation in your email)

I also wanted to draw your attention to a matter where the Court held:-

"The rules relating to the authentication of a document executed in foreign countries have been designed to ensure that such documents are genuine before use can be made thereof in the Republic of South Africa. The prescribed

formalities are not mandatory, and the genuineness of such documents may be proved on a balance of probabilities by means of direct or circumstantial evidence or both."

2. Necessity of apostille

According to your memo, the rule of South Africa court is as follows.

Considering the fact that paper based apostille takes up to **15 working days** in the UK, couldn't we use the process prescribed in the Rule 63(2)(e)?

If we use the process in the Rule 63(2)(e), we can proceed without apostille and just need to take notary public's certification. Are you considering that this will be an option for the SR too?

According to Rule 63(2) of the Uniform Rules of Court, a document executed outside South Africa must be authenticated before it can be used in South African legal proceedings. Authentication can be done in one of the following ways:

According to Rule 63(2) of the Uniform Rules of Court, a document executed outside South Africa must be authenticated before it can be used in South African legal proceedings. Authentication can be done in one of the following ways: Rule 63(2)(b): The document can be authenticated by the signature and seal of office of a consul-general, consul, vice-consul, or consular agent of the United Kingdom (or any other person acting in these capacities);

Rule 63(2)(e): The document can be authenticated by the signature and seal of office of a notary public in the United Kingdom (or Zimbabwe, Lesotho, Botswana, or Swaziland);

Rule 63(2A) & the Hague Convention: If the document is authenticated in accordance with the Hague Apostille Convention, it is deemed sufficiently authenticated for use in South Africa, provided it originates from a country that is a party to the Convention (which includes the UK).

Best regards,
Yuki

From: Yuki Suzuki
Sent: Monday, 17 March 2025 09:53
To: Charne Tracey <Charne@lhr.org.za>; Satya Jennings <satya.jennings@un.org>
Cc: Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Chane,

Thank you so much for quickly confirming my clarification.

As I mentioned in previous email, paper based apostille takes up to **15 working days** in the UK ([Get your document legalised: Overview - GOV.UK](#)).

I understand that now we are on the same page – and we also need some time for certification by a Solicitor, which may take at least several days.

When is the actual deadline for submitting the documents to the court by electronic version (I understand that you supplement the original document later to the court from the memo you kindly prepared)? **Given the current situation, is there a realistic possibility of meeting the deadline if the Special Rapporteur handles this process?**

Although I will confirm this possibility, I regret to inform you that the OHCHR office may not be able to cover the cost of the authorization process. We will need to check whether the Special Rapporteur on slavery himself is willing to cover it. (Please note that the Special Rapporteur operates independently from our OHCHR office.) I will confirm this immediately after I sent this email to you.

Best regards,
Yuki

From: Charne Tracey <Charne@lhr.org.za>
Sent: Monday, 17 March 2025 09:36
To: Yuki Suzuki <yuki.suzuki@un.org>; Satya Jennings <satya.jennings@un.org>
Cc: Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Yuki and Satya,

Thank you for your detailed inquiries regarding the authentication process for the Special Rapporteur's affidavit. Please find attached a further memo that I have prepared for you, providing practical guidance on the authentication requirements for the Special Rapporteur's supporting affidavit in compliance with South African law, specifically Rule 63 of the Uniform Rules of Court, and the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Apostille Convention). It also addresses the inquiries raised in your previous correspondence.

I also wanted to draw your attention to a matter where the Court held:-

"The rules relating to the authentication of a document executed in foreign countries have been designed to ensure that such documents are genuine before use can be made thereof in the Republic of South Africa. The prescribed formalities are not mandatory, and the genuineness of such documents may be proved on a balance of probabilities by means of direct or circumstantial evidence or both."

In terms of the timeframes, please see paragraph 8 and 9 of the memo – I will prepare a cover affidavit to this effect to alleviate any pressure on the finalisation of authentication on your side.

Hopefully this answers all your questions, but please do let me know if anything contained in the memo is unclear and/or unaddressed.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

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I work flexibly and may send emails outside normal working hours. Your immediate response is not expected.



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From: Yuki Suzuki <yuki.suzuki@un.org>
Sent: Friday, 14 March 2025 13:03
To: Charné Tracey <Charne@lhr.org.za>; Satya Jennings <satya.jennings@un.org>
Cc: Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23
Importance: High

Dear Chane,

Thank you once again for your collaboration.

I understand that you must be extremely busy, and the confirmation of procedures would take time; however we highly appreciate if you could respond to us at your earliest convenience for our inquiry since we could not proceed without your reply to the following information.

Sincerely,
Yuki

From: Yuki Suzuki
Sent: Thursday, 13 March 2025 12:17
To: Charne Tracey <Charne@lhr.org.za>; Satya Jennings <satya.jennings@un.org>
Cc: Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Chane,

Thank you so much for your reply and for your support for this issue. I am Yuki Suzuki, working with Satya.

Regarding the following your instruction, can I further seek your advice and clarification?

Certification by Solicitor vs. Notary Public

Please see this website ([Get your document legalised: Overview - GOV.UK](#)).

I believe that FOCD said in this website that in order to make document legalised by apostille, the document should be (i) issued by a government or (ii) document certified by a UK 'public official', such as a UK notary or solicitor.

Since the affidavit is not issued by government, we need certification by a UK notary or solicitor.

Could you please let me know if you have any other observations? As far as I understand, apostille is the system that legalize the document issued by public institutions or certified by public institutions as it is clear from the text in the HCCH 1961 Apostille Convention.

Considering this requirement in UK law, we need to confirm whether South Africa court has any preference to the signer of the certification, as identified in the FOCD's website. I previously worked as a corporate lawyer and in some jurisdictions, there was a requirement that the certification should be done by a notary, not by a solicitor. Could you please confirm that there is no such requirement in South Africa court?

E- Apostille - I believe that UK government considers electronic apostille complies with Hague Convention because it is the program launched by the Hague Conference on Private International Law (HCCH) ([HCCH | Apostille Section](#)); however I am wondering whether South Africa court accept electronically signed apostille because they are not in the list of countries which implement e-apostille in the HCCH website ([Implementation chart of the e-APP](#)).

UK gov website says that whether legalized document can be accepted or not is the point to be confirmed by the recipient ([Get your document legalised: Overview - GOV.UK](#)). Could you please call to the court and confirm that there is no rule that South Africa court do not accept electronic signed, if required?

I am asking this point because paper based apostille takes up to **15 working days** in the UK, e-apostille only takes up to **2 working days** ([Get your document legalised: Overview - GOV.UK](#)).

Covering Authentication Costs and timelines: We sincerely apologize, but we would appreciate it if we could set the timelines after receiving responses to the above and confirming whether you would kindly bear the cost because depending the procedure we take, the time will be changed. We have conveyed the necessity of taking time on this issue to the Special Rapporteur.

As far as I check, the following is the estimated costs:

Notarization - The fees vary considerably. Solicitors typically charge £10 to £25 to sign a document. Notaries may charge anywhere from £50 to £100 for their signature according to this website : [Solicitor or Notary Certification - Apostille Service](#)

Apostille – £45, plus courier or postage costs (paper based) or e-Apostille (£35)

[Get your document legalised: Overview - GOV.UK](#)

Mailing cost – depending on the place

Best regards,
Yuki

From: Charne Tracey <Charne@lhr.org.za>
Sent: Thursday, 13 March 2025 10:41
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

Thank you for your message and for raising these pertinent questions regarding the authentication process for the Special Rapporteur's affidavit. Please find responses to your queries below:

Certification by Solicitor vs. Notary Public: Under South African law, authentication is typically achieved through an apostille, as per the Hague Convention of 5 October 1961, to which both South Africa and the United Kingdom are signatories. In the UK, an apostille is issued by the UK Foreign, Commonwealth & Development Office ("FCDO") and does not require prior certification by a notary public or solicitor. Therefore, the Special Rapporteur can send the signed affidavit directly to the FCDO for apostillation without additional certification. This process is recognised by South African courts as sufficient authentication.

Acceptance of E-Apostille: South Africa accepts apostilles in accordance with the Hague Convention. If the UK FCDO provides an e-apostille that complies with the convention's standards, it should be acceptable. However, it's advisable to confirm with the FCDO whether their e-apostilles meet these requirements.

Submission of Original Document vs. Electronic Copy: South African courts generally require the submission of original documents. While electronic filing has become more prevalent, especially during the COVID-19 pandemic, the acceptance of electronically signed and commissioned affidavits varies and may not be uniformly accepted across all courts. However, the electronic copy is suitable in the interim and I will chat to counsel about any concerns that the Court may raise and how to mitigate this.

Covering Authentication Costs: While our office is committed to facilitating this process, we are currently unable to cover these expenses directly – I will, however, discuss this internally and revert.

Deadline for Submission and Interim Measures: Considering the time required for the authentication process, we propose 21 March 2025 for completion of the apostillation process.

We will liaise with counsel to determine if filing a copy of the affidavit, and whether we need to facilitate delivery of the authenticated original, is permissible. This approach may allow us to meet procedural deadlines while accommodating the time required for authentication.

Please let us know if the Special Rapporteur is amenable to this proposed timeline or if there are any constraints we should consider. We are committed to assisting in any way possible to facilitate this process smoothly.

Thank you once again for your attention to these details. We look forward to your response.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

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4th Floor, Heerengracht Building
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From: Satya Jennings <satya.jennings@un.org>
Sent: Wednesday, 12 March 2025 12:38
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Thank you for your further message.

We have looked into the authentication process as applicable in the UK, where Tomoya Obokata is based, and we have some additional questions in this regard. Could you please clarify the following points:

- Can the document be certified by a solicitor or does it need to be a notary? The sample you shared seems to have been signed by a solicitor, so we understand that this is acceptable by South African courts? As you know, the SR on slavery is based in the UK, so he would need to do the certification there.
- Would an e-apostille be sufficient? This would be helpful, as the SR is based in Manchester and going personally to MFA in London for the apostille might not be realistic.
- Is the original document needed or would an electronic copy in PDF be acceptable?
- Finally, the authentication process implies some costs. Would your office be in a position to cover these, by any chance?
- Finally, could you please specify the deadline for submission? The above process might take some time, also depending on the need for an original document or not. And we need to see if the SR is willing/in a position to do the authentication process, as it can be a bit time consuming. Perhaps you could negotiate to first submit a copy to the court and then provide the authenticated original, if this is feasible?

With thanks in advance for your clarification of the above points and best regards,
Satya

From: Charne Tracey <Charne@lhr.org.za>
Sent: Tuesday, March 11, 2025 7:45 AM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

Thanks for your response. I'm glad we could clarify the authentication requirements. I have re-attached the memo I'd prepared for you on the process of authentication, as well as David Boyd's amicus application which contains a notarial certificate on page 5 for reference.

Regarding timing, it would be ideal to receive the authenticated affidavit as soon as possible to ensure timely filing – the end of this week would be great.

Looking forward to your update.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

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From: Satya Jennings <satya.jennings@un.org>
Sent: Monday, 10 March 2025 11:59

To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charne,

Thank you for your message and the update provided.

I do not think that we were aware of the requirements regarding the signed supporting affidavit, so thanks for the heads-up. Is there any particular form the Special Rapporteur would need to sign or should he sign at the bottom of the submission made? Grateful for your clarification in this regard before we send him respective instructions. Also, by when would you need the authenticated signature?

Best regards,
Satya



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Satya Jennings
Human Rights Officer
Groups and Accountability Section
Special Procedures Branch
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Facebook: [unitednationshumanrights](https://facebook.com/unitednationshumanrights)
Google+: [unitednationshumanrights](https://plus.google.com/unitednationshumanrights)

From: Charne Tracey <Charne@lhr.org.za>
Sent: Monday, March 10, 2025 8:55 AM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

I trust that you are well.

On Friday, I met with Pinky from UDWOSA to assist her in deposing to the main affidavit, which is now ready to be served and filed – I'll be able to attend to this upon receipt of the Special Rapporteur's signed supporting affidavit.

Just to clarify, under South African court rules, any affidavit signed outside of the country must be properly authenticated to be admissible in court. Typically, this involves either:

- Apostillation in terms of the Hague Convention (if applicable in the country where the affidavit is signed); or
- Legalisation through certification by a notary public and authentication by the relevant South African diplomatic or consular mission.

Given that the Special Rapporteur's affidavit will be executed abroad, this step would need to be handled on your end before it is sent to us for filing.

I'll continue to keep you updated as we move forward.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

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From: Satya Jennings <satya.jennings@un.org>
Sent: Friday, 07 February 2025 09:48
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Many thanks for your update, it is very helpful and well noted.

Regarding the authentication of the Special Rapporteur's supporting affidavit, I understand this will be done at your end but do let me know in case there is anything else we can do.

Thanks for keeping us posted on how the process moves forward.

With best regards,
Satya

From: Charne Tracey <Charne@lhr.org.za>
Sent: Friday, February 7, 2025 7:17 AM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

Thank you for your follow-up.

We have not yet filed the amicus curiae brief. This is because UDWOSA still needs to depose to the main affidavit, which is a necessary step before our submission. Additionally, the Special Rapporteur's supporting affidavit needs to be verified and authenticated as outlined in the memo I shared earlier (page 5 of David Boyd's affidavit, which I attached, is a notarial certificate as an example).

We are monitoring these developments closely and will keep you informed on the timelines as they evolve. We can discuss the appropriate time for publication on your website once the filing is finalized.

Please let me know if you have any questions or need further information.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program


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From: Satya Jennings <satya.jennings@un.org>
Sent: Thursday, 06 February 2025 13:16
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Hope your week is going well.

Just a quick follow-up message to ask if the *amicus curiae* brief of the SR on slavery has been submitted in the meantime? If so, would it be agreeable that we publish it on the Special Rapporteur's website (<https://www.ohchr.org/en/special-procedures/sr-slavery>) or should we perhaps wait until a later stage? Grateful for your advice in this regard.

With many thanks and best wishes,
Satya

From: Satya Jennings
Sent: Monday, February 3, 2025 2:23 PM
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Thank you very much for the clarifications provided in the memo and for sharing the previous *amicus curia* done with David Boyd. I believe it's clear now that neither the Special Rapporteur nor OHCHR are becoming a party to the proceedings and that the respective immunity from legal process is maintained.

Please keep us posted of the next steps in this process.

With best regards,
Satya

From: Charne Tracey <Charne@lhr.org.za>
Sent: Monday, February 3, 2025 2:00 PM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Hi again Satya,

Please find attached a detailed legal memorandum addressing:-

1. The role of an *amicus curiae* in South African legal proceedings, the applicable rules governing *amici* participation, and potential cost implications; and

2. The procedures for authenticating documents executed outside South Africa, including the Hague Convention process. I have also attached a previous *amicus curia* application that we did on behalf of the UN Special Rapporteur on Human Rights and the Environment as an example of this (*see page 5 in particular*).

We trust this will provide clarity and assist with your engagement regarding the Special Rapporteur's inquiry.

Please feel free to reach out if you have any questions or require further assistance.

Best,

Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

Johannesburg Office

4th Floor, Heerengracht Building
87 De Korte Street
Braamfontein


Tel: 011 339 1960
Fax: 011 339 2665
www.lhr.org.za

I work flexibly and may send emails outside normal working hours. Your immediate response is not expected.



LAWYERS FOR HUMAN RIGHTS

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From: Satya Jennings <satya.jennings@un.org>
Sent: Monday, 03 February 2025 14:45
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Many thanks for your update, it is well noted. And thanks so much for looking into our query, looking forward to your clarification in this regard.

All the best,
Satya

From: Charne Tracey <Charne@lhr.org.za>
Sent: Monday, February 3, 2025 1:02 PM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

Apologies for the delay.

I confirm that the Special Rapporteur's submission has not yet been filed. I am in the process of preparing a memo for you on your query below and will share it with you before close of business today.

Best,

Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

Johannesburg Office

4th Floor, Heerengracht Building
87 De Korte Street
Braamfontein

Tel: 011 339 1960
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From: Satya Jennings <satya.jennings@un.org>
Sent: Monday, 03 February 2025 11:31
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Hoping this finds you well, I am following up on the amicus curiae submission of the Special Rapporteur on contemporary forms of slavery. Could you please confirm if it has been submitted? Also, as noted, grateful if you could revert on the below question.

With many thanks again for the opportunity to contribute with an amicus brief and
Best regards,

Satya

From: Satya Jennings
Sent: Friday, January 31, 2025 4:56 PM
To: Charne Tracey <Charne@lhr.org.za>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

As promised, please find attached the signed amicus curiae submission of the Special Rapporteur on contemporary forms of slavery, Tomoya Obokata.

As noted in my previous message, most grateful if you could confirm that the submission can be filed in a manner that ***ensures that neither the Special Rapporteur nor the Organization/OHCHR is becoming a party to the proceedings or otherwise engages the Organization's or the Special Rapporteur's immunity from legal process.***

With many thanks and best wishes for the weekend,
Satya

From: Satya Jennings
Sent: Friday, January 31, 2025 10:10 AM
To: Charne Tracey <Charne@lhr.org.za>

Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: RE: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Charné,

Trust this finds you well.

Regarding the amicus submission of the Special Rapporteur on contemporary forms of slavery, Tomoya Obokata, I'm awaiting his signature before we submit this (hopefully later today, as agreed).

In the meantime, can you please confirm that the submission can be filed in a manner that ***ensures that neither the Special Rapporteur nor the Organization/OHCHR is becoming a party to the proceedings or otherwise engages the Organization's or the Special Rapporteur's immunity from legal process?***

Most grateful for your confirmation regarding this point.

With many thanks and kind regards,
Satya



**STAND UP
FOR HUMAN
RIGHTS**
#STANDUPHUMANRIGHTS

Satya Jennings
Human Rights Officer
Groups and Accountability Section
Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
E-mail: satya.jennings@un.org
Web: www.ohchr.org
Twitter: [UNHumanRights](https://twitter.com/UNHumanRights)
Facebook: [unitednationshumanrights](https://www.facebook.com/unitednationshumanrights)
Google+: [unitednationshumanrights](https://plus.google.com/+unitednationshumanrights)

From: Charne Tracey <Charne@lhr.org.za>
Sent: Friday, January 24, 2025 11:46 AM
To: Satya Jennings <satya.jennings@un.org>
Cc: Yuki Suzuki <yuki.suzuki@un.org>; Kayan Leung <kayan@lhr.org.za>
Subject: Supporting Affidavit | Brenda Makamba v Fahad Alotoaibi & Others, JS 692/23

Dear Satya,

Further to our earlier communication, kindly find the revised supporting affidavit attached for your review and consideration.

Best,
Charné Tracey-Mamdoo (she/her)
Attorney
Strategic Litigation Program

Johannesburg Office
4th Floor, Heerengracht Building
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**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN, JOHANNESBURG**

Case Number: JS 692/23
CCMA Case Number: GATW 14247-22

In the application of

UNITED DOMESTIC WORKERS OF SOUTH AFRICA

First Applicant for admission as *Amicus Curiae*

IZWI DOMESTIC WORKERS ALLIANCE

Second Applicant for admission as *Amicus Curiae*

SOLIDARITY CENTER

Third Applicant for admission as *Amicus Curiae*

INTERNATIONAL LAWYERS ASSISTING WORKERS NETWORK

Fourth Applicant for admission as *Amicus Curiae*

UNITED NATIONS SPECIAL RAPPOORTEUR FOR CONTEMPORARY FORMS OF SLAVERY

Fifth Applicant for admission as *Amicus Curiae*

In re: the matter between

BRENDA MAKAMBA

Applicant

and

FAHAD ALOTOAIBI

First Respondent

SARAH ALOTOAIBI

Second Respondent

ABDELASIS ALOTOAIBI

Third Respondent

EMBASSY OF THE KINGDOM OF SAUDI ARABIA

Fourth Respondent

SERVICE AFFIDAVIT

M.M. PIC

I, the undersigned,

MELISSA MUYAMBO

do hereby make oath and state that:

1. I am an adult female, employed as a Candidate Attorney at Lawyers for Human Rights ("LHR"), the attorneys of record for the first to fifth applicants for admission as *amicus curiae*.
2. Between 22 May 2025 and 23 May 2025, I attended to the service of the application for intervention on the four respondents as follows:

SERVICE ON THE FOURTH RESPONDENT (SAUDI ARABIA EMBASSY)

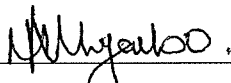
3. The Fourth Respondent is represented in this matter. Accordingly, I effected service of the application on the Fourth Respondent's attorneys of record via hand delivery and on the Department of International Relations and Cooperation ("DIRCO") as required.

ATTEMPTED SERVICE ON FIRST TO THIRD RESPONDENTS

4. The First to Third Respondents are not currently represented. However, we were advised to attempt service at their last known place of residence, situated at 5 Gleneagles Drive, Silver lakes, Pretoria, a residential complex.
5. Upon arrival at the said address at or about 11:10 am, I informed the security guards of the purpose of my visit. The guards declined to accept service, stating they are not permitted to receive legal documents on behalf of residents.
6. I informed them that I had been advised that the Respondents no longer reside at the premises. The security personnel, however, informed me that the Respondents in fact still reside there and were currently at home.

M.M.F.C.

7. I was granted access to the residential complex and approached the residence directly. There, I was received by a domestic worker who confirmed that the Respondents were indeed present at the premises. Nevertheless, she refused to accept the documents and stated that she had been instructed not to accept service on their behalf.
8. I respectfully submit that all reasonable efforts were made to effect service on the First to Third Respondents, and I was ultimately unable to do so due to their refusal via their domestic worker and the security personnel.
9. This affidavit is made in support of the application to intervene and to place on record the service efforts undertaken on behalf of our clients.



MELISSA MUYAMBO

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Braamfontein on this the 26th day of May 2025, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS
KHUSELWA DYANTYI

Full Name: **Commissioner of Oaths**

Business Address: **Attorney (SA)**

Designation: **SECTION 27**

Capacity: **1st Floor, South Point Corner**

Date: **87 De Korte Street, Braamfontein**

Date: _____