

ANNEXURE “KRK 1”

(SALC'S DEED OF TRUST)

CITED IN SOUTHERN AFRICA LITIGATION CENTRE'S

REQUEST FOR LEAVE TO SUBMIT *AMICUS CURIAE*

IN

THE PROSECUTOR vs. OMAR HASSAN AHMAD AL BASHIR, NO. ICC-02/05-01/09

(Decision Convening a Public Hearing for the Purposes of a determination under article
87(7) of the Statute with respect to the Republic of South Africa)

DEED OF TRUST

in respect of

THE SOUTHERN AFRICAN HUMAN RIGHTS LITIGATION CENTRE TRUST

(as amended with effect from

2016)

SPM

ENTERED INTO BETWEEN

SIPHOSAMI MALUNGA

for and on behalf of the Open Society Initiative for Southern Africa

and

MARK ELLIS

for and on behalf of the International Bar Association

and

KEITH BAKER

And

PHILLIP TAHMINDJIS

and

ZOHRA DAWOOD

and

BEATRICE MTETWA

and

RAHIM KHAN

and

STERNFORD MOYO

(hereinafter referred to collectively as **"the Trustees"**)

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1. Definitions

In this deed, unless the contrary appears from the context the following expressions shall have the following meanings:

- 1.1 Words importing the singular case shall include the plural case and vice versa and words relating to any gender shall include the other gender and vice versa; any reference to a natural person shall include the juristic person and vice versa;
- 1.2 The following words and expressions shall bear the meanings assigned to them and cognate words and expressions shall bear corresponding meanings, namely:-
 - 1.2.1 **“beneficiary”** shall mean the Southern African Human Rights Litigation Centre, which shall be established in terms of this deed of trust;
 - 1.2.2 **“Centre”** shall mean the Southern African Human Rights Litigation Centre / Southern Africa Litigation Centre (SALC);
 - 1.2.3 **“financial year”** shall mean the financial period of year ending on the last day of February each year;
 - 1.2.4 **“IBA”** shall mean the International Bar Association;
 - 1.2.5 **“OSISA”** shall mean the Open Society Initiative for Southern Africa;

1.2.6 "**SADC**" shall mean the Southern African Development Community;

1.2.7 "**trust**" shall mean the trust constituted in terms of this deed of trust as amended from time to time ;

1.2.8 "**trust assets**" shall mean all the income and capital of the trust and shall include:-

- (i) all receipts, accruals, assets and rights of whatsoever nature which the trustees may acquire in their capacities as such or which may accrue to or in favour of the trustees in their capacities as such, including without restricting the generality of the foregoing, any right of whatsoever nature in or to immovable property ,and
- (ii) all additions, accruals, income, profit or interest arising out of the receipts and accruals referred to in (i) above and/or the exercise by the trustees of their powers in terms hereof;

1.2.9 "**trustees**" shall mean the trustees for the time being of the trust.

2. **Recordal**

- 2.1 The founders recognise the lack of appreciation and involvement by litigation lawyers in cases involving the protection of human rights, and the promotion and advancement of constitutional and public interest matters;
- 2.2 The founders acknowledge and understand that the lack of involvement in such matters by lawyers may arise from a variety of factors, including but not limited to lack of proper training, litigation expertise, interest and self confidence;
- 2.3 To this end, OSISA entered into a grant agreement with the IBA in terms of which OSISA granted to the IBA funds to be utilised, for the establishment of the Southern African Human Rights Litigation Centre. To best achieve this objective OSISA and the IBA **procured the registration of** a trust, which **has been** responsible for the Centre **for the preceding 10 years**.
- 2.4 OSISA desires to relinquish all its rights under the trust deed and to cease to have involvement in the running or management of the Centre

3. Donation and Acceptance

- 3.1 The founders contributed jointly the sum of USD 200 000.00 (Two Hundred Thousand United States Dollars) to the Trust.
- 3.2 The trustees **confirm having received that donation and have applied it towards carrying out the terms, conditions, and stipulations contained in this deed.**

4. Name of trust

The trust is known, as **The Southern African Human Rights Litigation Centre Trust ("the trust"). In abbreviation it may also be known as Southern Africa Litigation Centre or SALC.**

5. Objects of the trust

- 5.1 **To promote and advocate human rights and democracy by the establishment and operation of the Southern African Human Rights Litigation Centre, in Johannesburg, Republic of South Africa in order to provide expert support to lawyers primarily in the Southern African region who litigate on human rights, constitutional and public interest matters. SALC may itself act as plaintiff, claimant, applicant, petitioner, intervener, amicus curiae or in any other capacity in all or any such litigation. SALC may also act in any other country in Africa as resolved by the trustees.**
- 5.2 To ensure that the Centre offer support in four broad areas, namely:-
- 5.2.1 To offer rapid response support on live cases to lawyers in the front line in human rights, constitutional and public interest litigation cases;
- 5.2.2 To support and act as a catalyst to lawyers on prospective cases for timeous preparation and resolution of cases;
- 5.2.3 To offer on-going training on constitutionalism, human rights and democracy, as well as sensitising judges on these issues and equipping them with skills to effectively preside

over these types of cases, subject to availability of resources;

- 5.2.4 To promote awareness on human rights litigation frontiers and capacity building and stimulate advocacy for law reform, human rights and constitutionalism.
- 5.2.5 **To carry out and commission research on the legal implications of infringements and potential infringements of human rights and democracy and on juridical measures to counteract such infringements.**
- 5.2.6 SALC may act and carry out such work which is necessary or desirable in pursuit of supporting and promoting human rights and the rule of law, as resolved by the Trustees from time to time.

6. Trust assets to vest in trustees

The trustees are hereby empowered to accept for the purposes of the trust any gift, bequest or payment of any nature whatsoever, from any person whether situate in the Republic of South Africa or not which may be given or paid to them. Any assets so accepted shall be administered and dealt with subject to the terms of this deed of trust.

- 6.2 All contributions and donations to and accepted by the trust shall be irrevocable and subject to the terms and conditions not inconsistent with this deed of trust as may be agreed between the trust and the donor. **The Trustees may not accept any donation which is subject to conditions which are designed to enable the donor (other than a donor that is an approved public benefit organisation), or any connected person in relation to the donor, to derive any direct or indirect benefit from then application of the donation**

7. Trustees

- 7.1 The trust shall be administered by a board of trustees, subject to the provisions of this deed of trust;
- 7.2 Subject to clause 7.4, the board of trustees shall be composed as follows:
 - 7.2.1 Three (3) trustees appointed from IBA;
 - 7.2.2 Five (5) trustees appointed by the majority of the trustees.



7.2.3 At all times at least three of the trustees shall be persons who are not connected persons in relation to each other as envisaged in section 1 of the Income Tax Act, and no single person may directly or indirectly control the decision making powers relating to the Trust.

7.3 The trustees shall appoint amongst themselves a trustee who shall be the chairperson of the board of trustees.

7.4 The trustees shall be competent to act, provided there are no less than four trustees in office at any time. If for any reason their number should fall below four the remaining trustees shall be empowered to act only in preservation of the trust assets, until the necessary vacancies have been filled.

7.5 The chairperson shall serve in office from the commencement of the financial year until the end of that financial year. A person may be eligible for re-appointment as chairperson. If no chairperson is appointed at the beginning of a financial year, the previous chairperson shall be deemed to have been re-appointed

7.6 The trustees of this trust at the date hereof shall be the following persons:

7.6.1 **Phillip Tahmindjis**
Date of birth: 03/09/1950

7.6.2 **Keith Baker**
Date of birth: 24/01/1944

7.6.3 **Zohra Dawood**
Date of birth: 23/08/1963

7.6.4 **Beatrice Mtetwa**
Date of birth: 30/11/1958

7.6.5 **Rahim Khan**
Date of birth: 11/01/1950

7.6.6 **Sternford Moyo**
Date of birth: 28/05/1956

7.7 Trustees shall hold office for three years and may be re-elected to serve for an additional period of three years.

7.8 By way of exception to the provisions of clause 7.7 above, the two continuing Trustees who have been longest in office will be entitled to serve as trustees until the conclusion of the first trustees' meeting to be held in 2018. The next two continuing Trustees who have been longest in office will

be entitled to serve as trustees until the conclusion of the first trustees' meeting to be held in 2020 and the final two continuing Trustees will be entitled to serve as trustees until the conclusion of the first trustees' meeting to be held in 2022. The current continuing Trustees will not be eligible for immediate re-appointment after the expiry of the term of office stipulated in this clause but may continue to provide assistance to the Centre in an advisory role.

7.9 Where a vacancy arises by virtue of Clause 18.7 or Clause 18.8 the departing trustee shall be replaced expeditiously but no resolution under clauses 17 or 21 may be considered or resolved on while a fresh appointment is being made or for a period of six months whichever is the shorter.

8. Trustees powers

Subject to the condition that

- the assets of the Trust may be used solely for the objects for which it has been established, and
- none of the funds of the Trust may be distributed to any person (otherwise than in the course of undertaking any public benefit activity),

in addition to the powers vested in them by law, the trustees shall have the widest powers and without prejudice to the generality of the foregoing they may exercise the following powers:

8.1 to open and operate a banking account

to be empowered to open and to operate a banking account or accounts in the name of the trust

8.2 to repair or improve

to pay out of the capital or, at their discretion, out of the income of the trust assets for any repairs, improvements or other works of whatsoever nature erected on any land included in the trust assets or on any buildings or other structures situated thereon;

8.3 to exercise voting powers

to exercise all the voting powers attaching to any shares, debentures or other securities at any time forming part of the trust assets;

8.4 to compromise and settle

to compromise and settle for such consideration and upon such terms and conditions as they may deem advisable all matters arising in relation to the trust and all such compromises and settlements shall be final and binding;

8.5 to consent to any re-organisation, arrangement or reconstruction

to consent to any re-organisation, arrangement or reconstruction of any company the securities of which form, from time to time, the whole or any part of the trust assets and to consent to any reduction of capital or other dealings with such securities as they may consider advantageous or desirable;

8.6 to pay rates, taxes, etc

to pay out of the income or, at their discretion, out of the capital of the trust assets all rates, taxes, duties and other impositions lawfully levied or imposed on the trust assets or income of the trust assets or any part thereof or on any beneficiary hereunder on account of his interest in the trusts hereby created or which may be imposed on the trustees in respect of matters arising out of the trust;

8.7 to decide whether moneys represent capital or income

to determine whether any sums received or disbursed are on account of capital or income or partly on account of one and partly on account of the other and in what proportions and the decision of the trustees whether made in writing or implied from their acts shall be conclusive and binding upon all the beneficiaries;

8.8 to apportion

to make all apportionment in the accounts of the trust which may be necessary;

8.9 to employ agents

to employ accountants, attorneys, agents, brokers, or such professional or other assistants as they may consider necessary to transact all or any business of whatsoever nature required to be done pursuant to this deed of trust and to pay all such fees, charges and expenses so incurred as a first charge, and they shall not be responsible for the default of such accountants, attorneys, agents, brokers, professional or other assistants or for any loss occasioned by such employment;

8.10 to determine questions

to determine all questions and matters of doubt which may arise in the course of their management, administration, realisation, liquidation, partition or winding-up of the trust assets;

8.11 to manage the trust assets

to purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, exchange, sell, alienate, insure, lease or otherwise deal with the trust assets, whether movable or immovable, whether corporeal or incorporeal and of whatsoever nature and wheresoever situate, as they in their sole and absolute discretion may deem fit, and in exercising any powers of sale, whether conferred in this sub-clause or otherwise, they shall be entitled to

cause such sale to be effected by public auction or by private treaty and in such manner and on such terms and conditions as they in their sole and absolute discretion may deem fit and, in exercising any powers of lease, they shall be entitled to cause any property to be let at such rental, for such period and on such terms and conditions as they, in their sole and absolute discretion may deem fit;

8.12 to reimburse themselves for expenses incurred

to reimburse themselves and pay and discharge out of any income accruing from the trust, all expenses which may be incurred by them in or about the execution of the trust and powers conferred upon them by this deed of trust;

8.13 to charge the cost of secretarial services

to have any secretarial services, which they consider necessary for the administration of the trust, carried out at the cost of the trust;

8.14 to pay costs

to pay out of the capital or income of the trust assets all expenses (including legal fees) incurred in the formation of the trust;

8.15 to enter into contracts of suretyship

to enter into indemnities, guarantees or suretyships of every description (either gratuitously or for a consideration) which they in their sole and absolute discretion may deem fit;

8.16 to engage in legal proceedings

to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary in the premises;

8.17 to execute documents

with regard to any immovable property or mortgage bond at any time forming part of the trust assets, to execute any act or deed relating to the alienation, partition, exchange, transfer, mortgage, hypothecation or otherwise, in any deeds registry, office or other public office dealing with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document for any purposes and generally to do or cause to be done any act whatsoever in any such office;

8.18 to accept further gifts

to accept and acquire for the purpose of the trust any gifts, bequests or payments from any person, firm, company or association that may be given, bequeathed or paid to them as an

addition or with the intention to add to the funds hereby donated to them, any additions so accepted and acquired shall be deemed to form part of the trust fund to be administered and dealt with subject to the terms of this deed;

8.19 General investment

To make such investments as they shall in their sole and entire discretion from time to time determine without derogating from the wide powers of investment hereinbefore granted to the trustees, they shall have the power to purchase and acquire immovable and movable property of every kind and description (expressly including a residence for occupation by any beneficiary); sell (by public auction or private treaty), exchange, let, repair, reconstruct, develop or otherwise deal with any immovable or movable property held in trust by them in such manner and at such times as they shall from time to time determine; pass mortgage bonds over any immovable property held in trust by them; invest in mortgage bonds (including participation mortgage bonds) over immovable property; purchase and acquire shares, debentures or loan stock in any company or other legal entity; lend and advance money to any person, company, institution or concern upon such terms as they shall determine; invest money on deposit or otherwise with any bank, building society, trust company or other financial institution; purchase and acquire the stock of any government, quasi-government body, municipality or any other body corporate and generally make such investments or re-investments as they shall from time to time deem fit. The trustees shall be entitled to realise in such manner as they shall determine any asset or investment held by them in trust from time to time and re-invest the proceeds in terms of the powers of investment hereinbefore and hereinafter granted to them;

9. Waiver of security

No original or subsequent trustee appointed or assumed under the above provisions shall be required to furnish security to the Master of the High Court of South Africa or any other official in terms of the Trust Property Control Act 57 of 1988 or any other legislation which may now be or which may hereafter become of force and effect; the intent and purpose being that no person who shall at any time be a trustee under this deed shall be required to give any security whatever in connection with or arising out of his appointment as such.

10. Accounts

10.1 The trustees shall keep true and correct books of account of their administration of the trust, in such manner and form to reflect fairly the position of the trust at all times. There shall be recorded in such

books and records, *inter alia*, any change of the trust assets from time to time, the income and expenditure in respect to the administration of the trust.

10.2 The trustees shall cause the trust's books of account to be audited by an independent practising chartered accountant and an annual income statement and balance sheet drawn reflecting the affairs of the trust including its assets and liabilities for the end of the financial year of the trust. The trustees and the auditors shall certify the income statements and balance sheets of the trust and copies thereof shall be sent to the founders, respectively.

10.3 The audit of the trust's books of account shall be carried out by auditors to be appointed from time to time by the trustees, who shall have the right to terminate any such appointment and to appoint any other auditors. The trustees shall take all necessary steps to procure the appointment of auditors of the trust as soon as is reasonably possible after the date of execution hereof and there shall at all times thereafter be auditors of the trust.

10.4 The trustees shall not be bound to file any liquidation, distributions or administration accounts with any officer, official or person except insofar as they may be obliged to do so in terms hereof or under the provisions of any law.

11. Procedures to be adopted

Subject to the terms and conditions of this deed of trust, the trustees shall, in administering the trust assets, adopt such procedures and take such administrative steps, as they may from time to time consider necessary and advisable.

12. Meetings

The trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. They shall take and maintain written minutes of all their meetings. An official minute book shall be retained at the trusts principal office.

13. Manner in which documents must be signed

All contracts, deeds, cheques and other documents, which require to be signed on behalf of the trust, shall be signed in such manner as the trustees may determine from time to time.

14. Decision of majority to prevail

14.1 In the event of any disagreement between the trustees at any time the decision of the majority of them shall prevail and be of the same force and effect as if it were a unanimous decision of all the trustees;

14.2 In the event of the trustees being equally divided in opinion, the chairperson shall have a second or casting vote.

15. Remuneration

The trustees shall not be entitled to receive a fee, in respect of services rendered in their capacities as trustees..

16. Indemnity

16.1 No trustee shall be answerable for or liable to make good any loss sustained by the trust save and except such loss as may arise from or be caused by his own dishonesty. The trustees shall be indemnified by and from the trust or any beneficiary against any loss or damage or claim whatsoever which might arise against them or any of them out of the bona fide administration by them of the trust.

16.2 The trustees shall be indemnified out of the trust fund against all claims of whatsoever nature that may be made upon them arising out of the exercise or purported exercise of any of the powers hereby conferred upon them subject, however, to the provisions of section 9 of the Trust Property Control Act 57 of 1988, which stipulate that a trustee shall in the performance of his duties and the exercise of his powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

16.3 If the trustees bona fide make any payment to any person whom they assume to be entitled thereto under the terms of this deed and it is subsequently found that some other person or persons is or are entitled thereto hereunder, the trustees shall nevertheless not be responsible for the moneys so paid.

17. Termination and distribution of trust assets

17.1 The trustees may terminate the trust if three quarters (3/4) of the trustees have voted in favour of such resolution; and

17.2 No resolution of the board of trustees to terminate the trust shall be valid unless twenty-eight (28) days' notice of the termination has

been given to all the trustees, which notice shall set out the grounds of such termination. The requirement for notice may be waived by the unanimous consent of all the trustees.

- 17.3 In the event that the trust is terminated, the trustees shall have the power to distribute the trust capital and assets after paying its debts to any non profit making organisation, or trust, or association in the Republic of South Africa with similar aims and objectives to those of the trust **and which has been approved as a public benefit organisation in terms of section 30 of the Income Tax Act.**

18. Loss of office

The office of trustee shall be vacated:

- 18.1 If the trustee resigns by written notice to his co-trustees; or
- 18.2 If the trustee is convicted of an offence of which dishonesty is an element; or
- 18.3 If the trustee becomes of unsound mind; or
- 18.4 If the trustee becomes unfit and/or incapable of acting as a trustee in any country; or
- 18.5 If the trustee becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 18.6 If the trustee shall become disqualified in terms of the Companies Act as amended from time to time to act as a director of a company; or
- 18.7 If the majority of the trustees in writing require the trustee to resign. Such a proposal may not be put forward while any resolution is pending under clauses 17 or 21 of this deed.
- 18.8 If the trustee appointed in terms of clause 7.2.1 vacates his position in IBA.
- 18.9 The IBA, at its absolute discretion, resolves to remove a trustee nominated by it under clause 7.2.1 and gives notice thereof to the Centre and the other trustees.

19. Duty to disclose

No trustee shall be disqualified by his office from contracting with the trust nor shall any contract entered into by or on behalf of the trust in which any trustee shall be interested, be declared null and void, nor shall any trustee so contracting be liable to account to the trust for any profit

realised by any such contract by reason only of such trustee holding that office provided that he shall have disclosed the nature of his interest on or before making of the contract or provided such interest shall already have been known to his co-trustees.

20. Registration of deed of trust

The trustees undertake to register this deed of trust and any amendment thereof or supplement thereto with the Master of the High Court of South Africa in terms of the Trust Property Control Act 57 of 1988 and the trustees shall be entitled to pay the costs of and incidental to the preparation and registration of this deed and any further requisite deeds out of the income and, if necessary, out of the capital of the trust assets.

21. Amendment of deed of trust

21.1 A resolution approved by three quarters (3/4) of the trustees then in office shall be required for any amendment to this deed of trust.

21.2 No resolution of the board of trustees to amend this trust shall be valid unless twenty-eight (28) days' notice of the amendment has been given to all the trustees. Such notice shall set out in detail the terms of the amendment.

21.3 In the event of the trust enjoying exemption from the income tax, donations tax, stamp duty or transfer duty, any such amendments shall be submitted to the South African Revenue Service.

22. Construction of deed of trust

This deed shall be construed and have effect in all respects as a settlement constituted under the laws of the Republic of South Africa and the trusts and provisions of this deed shall operate in accordance with such laws. The courts of the Republic of South Africa shall have exclusive jurisdiction to determine all questions and matters relative to this deed or arising out of it. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of the trust.

23. Addresses

23.1 Each party chooses the address set out opposite its name below as the address at which all notices, legal processes and other communications must be delivered for the purposes of this deed.

23.1.1 **The Southern African Human Rights Litigation Centre Trust**

2nd Floor, West Wing
1 Hood Avenue, President Place
Rosebank
Johannesburg
2196

23.1.2 **Phillip Tahmindjis**
10 St Bride Street, London EC4A 4AD, UK

23.1.3. **Keith Baker**
10 St Bride Street, London EC4A 4AD, UK

23.1.4. **Zohra Dawood**
60 Elgin Road, Rondelbosch, 7700 Cape Town, South Africa

23.1.5. **Beatrice Mtetwa**
2 Meredith Drive, Eastlea, Harare, Zimbabwe

23.1.6. **Rahim Khan**
Plot 50362, Showgrounds Office Park, Gaborone, Botswana

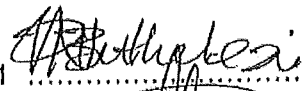

23.1.7. **Sternford Moyo**
CABS Centre, 74 Jason Moyo Avenue, Harare, Zimbabwe


24. **Acceptance by trustees**

The trustees hereby accept their appointment as trustees subject to the terms and conditions set out in this deed.

SIGNED at **JOHANNESBURG** on this the 12th August 2016 in the presence of the undersigned witnesses

AS WITNESSES:

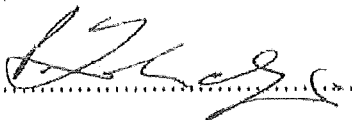
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SIPHOSAMLALUNGA
For and on behalf of OSISA

SIGNED at **LONDON** on this the 8TH JULY 2016 in the presence of the undersigned witnesses

AS WITNESSES:

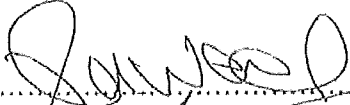
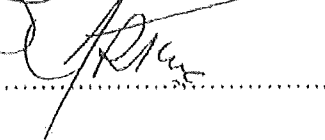
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 MARK ELLIS
 For and on behalf of IBA

SIGNED at **LONDON** on this the 8TH JULY 2016 in the presence of the undersigned witnesses

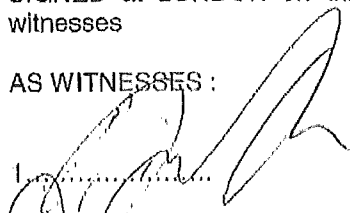
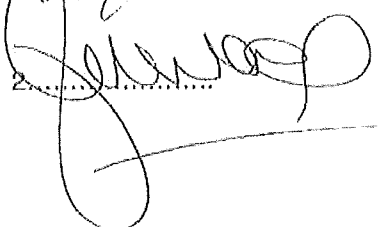
AS WITNESSES:

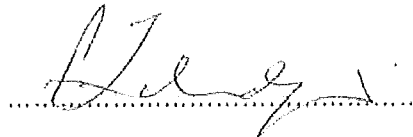
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 KEITH BAKER
 Trustee

SIGNED at **LONDON** on this the 8th JULY in the presence of the undersigned witnesses

AS WITNESSES :

1 
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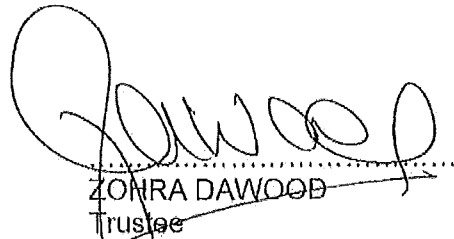


PHILLIP TAHMINDJIS
Trustee

SIGNED at **LONDON** on this the 8TH JULY 2016 in the presence of the undersigned witnesses

AS WITNESSES:

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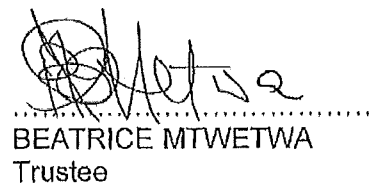


ZOHRA DAWOOD
Trustee

SIGNED at **LONDON** on this the 8TH JULY 2016 in the presence of the undersigned witnesses

AS WITNESSES:

1
2



BEATRICE MTWETWA
Trustee

SIGNED at **LONDON** on this the 8TH JULY 2016 in the presence of the undersigned witnesses

AS WITNESSES:

1
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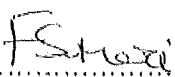


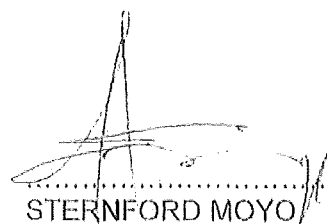
RAHIM KHAN
Trustee

SIGNED at HARARE on this the 11th July 2016 in the presence of the undersigned witnesses

AS WITNESSES:

1. 

2. 



STERNFORD MOYO
Trustee