

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

Case No:
2025-09298

In the application of:

CENTRE FOR APPLIED LEGAL STUDIES Applicant for admission as
Amicus curiae

In the matter between:

CAPE UNION MART First Applicant

INTERNATIONAL (PTY) LTD

PHILIP JOSEPH KRAWITZ Second Applicant

and

MAGHMUDA OCKARDS First Respondent

MUHAMMAD SHAFIQ GAMIET Second Respondent

MOHAMED ZAIN JEENAH Third Respondent

SHERAZAAD RAHIMA SYLVESTER Fourth Respondent

SAYED RIDHWAAN MOHAMED Fifth Respondent

**UNIDENTIFIED PROTESTORS
AT CAPE UNION MART PREMISES** Sixth Respondent

**PALESTINIAN SOLIDARITY CAMPAIGN,
CAPE TOWN** Seventh Respondent

**NOTICE OF MOTION:
APPLICATION TO BE ADMITTED AS AMICUS CURIAE**

TAKE NOTICE THAT the Centre for Applied Legal Studies (CALS) hereby makes an application to the above honorable Court for an order in the following terms:

1. That the late filing of this application is condoned;
2. That CALS is admitted as *amicus curiae*;
3. That CALS is granted leave to file written and oral submissions on a date to be determined by the Court;

PLEASE TAKE NOTICE FURTHER that if any of the parties intend to oppose the relief sought in this application, they are required to give notice of their intention to do so and file any answering affidavit on or by 20 February 2026 subject to any further directions issued by the above honourable Court in relation to these time periods or any further conduct in this application.

PLEASE TAKE NOTICE FURTHER that the affidavit of **CHRISTOPHER GEVERS** together with annexures will be used in support of this application.

PLEASE TAKE NOTICE FURTHER that the applicant will accept notice and service of all the documents in these proceedings at the address set out below.

S Mkhize

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Case No: 2025-09298

In the application of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant for admission as
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In re the matter between:

**CAPE UNION MART
INTERNATIONAL (PTY) LTD**

First Applicant

PHILIP JOSEPH KRAWITZ

Second Applicant

and

MAGHMUDA OCKARDS

First Respondent

AND 6 OTHERS

Second to Seventh Respondents

FOUNDING AFFIDAVIT

I, the undersigned

CHRISTOPHER GEVERS

do hereby state under oath that:

1. I am an adult male and the Director of the Centre for Applied Legal Studies ("CALS") and Associate Professor at the University of the Witwatersrand, situated at 1 Jan Smuts Avenue, Braamfontein.
2. The contents of this affidavit are all within my personal knowledge, and are both true and correct.
3. I am duly authorised to depose to this affidavit and to bring this application on behalf of CALS by virtue of my position as Director of CALS.
4. I am deposing to this affidavit in support of CALS's application for leave to intervene as *amicus curiae* in the above matter under case number: 2025-09298.
5. In this affidavit, I will deal with the following:
 - 5.1. The purpose of this application;
 - 5.2. CALS's interest in the proceedings;
 - 5.3. Submissions to be made by CALS.

PURPOSE OF THIS APPLICATION

6. This is an application for the admission of CALS as *amicus curiae*, in terms of Rule 16A of the Uniform Rules of Court (the Rules).



7. If CALS is granted consent, CALS is well placed to provide both written and oral submissions that are novel and that will assist the court in making a finding on the dispute between the parties.
8. Accordingly, CALS seeks leave to make both written and oral submissions during the hearing, currently awaiting a date for the hearing.
9. CALS files this application with the consent of the parties. On 18 December 2025, CALS filed its consent letter requesting admission as *amicus curiae*. The Respondents granted consent on the same day. The Applicants responded on 4 January 2026, indicating that they would consent to CALS's participation only on condition that CALS agree to file its written submissions by 23 January 2026. Copies of the correspondence referred to above are attached hereto, marked as annexures "CG1" and "CG2", respectively.
10. The parties and CALS have been engaged in discussion on timeframes for filing this application. As per the agreement between the parties, CALS will file this application by 13 February 2026.

CALS' INTEREST IN THE PROCEEDINGS

11. CALS is a registered law clinic with the Legal Practice Council, operating within the School of Law at the University of Witwatersrand. Established in 1978, CALS is recognised as one of South Africa's leading human rights organisations, focusing on research, advocacy, and strategic litigation.

12. The Civil and Political Justice programme (CPJ), amongst other things, works to promote civil and political rights, such as the right to protest and the right to freedom of expression. The programme works closely with the Right2Protest Project (R2P) a coalition of organisations seeking to promote and protect and promote the right to protest in South Africa.
13. R2P is based at CALS and together provides legal support to activists and human rights defenders who seek to assert their right to freedom of expression and the right to protest. Specifically, CALS and R2P provide legal representation to activists through a rapid response mechanism; conduct capacity building training and workshops, document all human rights violations experienced by activists in their exercise of the right to protest and freedom of expression.
14. In addition, CALS's CPJ Programme has been involved in cases before the High Court and Constitutional Court that seek to challenge conduct that infringes on the right to protest. These cases include the *Right to Know Campaign and others v City of Johannesburg Metropolitan Municipality* (49197/2021) [2022] ZAGP JHC 388 (the protest fees case) and *The Social Justice Coalition and others v Minister of Police and Others* (CCT 121/21) [2022] ZACC 27 (the SJC case).
15. CALS' work in its CPJ programme forms the basis for this intervention.

16. CALS has had the opportunity to review the founding and answering affidavits on record in the main application, and the Notice in terms of Rule 16A issued by the Respondents. After considering the papers filed by the parties, CALS accordingly seeks to make submissions that have not been raised by the parties, and we elaborate on these submissions hereafter.

SUBMISSIONS TO BE MADE BY CALS

17. CALS will make submissions on two narrow legal issues arising in this matter.
18. Firstly, CALS will assist the court in defining the line between robust, constitutionally protected speech and hate speech, including the history and meaning of the phrase "From the river to the sea", insofar as the Applicant alleges that this is a 'hateful slogan'. In advancing these arguments, CALS will refer to domestic jurisprudence, sections 39 and 233 of the Constitution, and draw on foreign and international law to assist the court in interpreting Section 16 in a manner consistent with constitutional values.
19. Secondly, CALS will present arguments on the prohibition on wearing face masks or elements that obscure facial recognition as set out in section 8 of the Regulation of Gatherings Act 205 of 1993 (RGA). CALS will argue that the right to protest as protected in section 17 of the Constitution is broad, extending a broad spectrum of protection, which allows protestors to exercise the right in an impactful manner that speaks to their cause, within the constraints of the law. The prohibition of face masks *per se* poses significant restraints on the ability

to express protest, particularly in situations where individuals wear masks or, in this instance, the hijab used for religious purposes to amplify their cause for protest. In other instances, activists are compelled to conceal their identities to protect themselves from victimisation, threats, or reprisals related to their participation in protests or the expression of dissenting opinions. In advancing these arguments, CALS will refer to domestic jurisprudence, sections 39 and 233 of the Constitution, and draw on foreign and international law to assist the court in interpreting section 17 of the Constitution and section 8 of the RGA in a manner consistent with constitutional values.

The context of these proceedings

20. These proceedings take place in the context of an ongoing humanitarian catastrophe in Gaza which is the result of Israel's military offensive, which began in October 2023, following the attacks carried out by Hamas and other armed groups which resulted in the death of 1200 people in Israel. To date, Israel's military offensive and has killed more than 71,000 Palestinians (UN OCHA, *Reported impact snapshot | Gaza Strip (14 January 2026)*), the majority of which have been women and children, and caused untold human suffering. The United Nations (UN) Secretary-General has declared that Gaza has become a graveyard for children.
21. The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (Commission of Inquiry) has concluded that "the State of Israel is responsible for the

commission of genocide against the Palestinians in Gaza". This has been affirmed by numerous UN-appointed independent human rights experts, NGOs (including Amnesty International and the leading Israeli human rights organisations) and scholars.

22. In December 2024, South Africa initiated proceedings against Israel at the International Court of Justice (ICJ) for violations of the Convention on the Prevention and Punishment of the Crime of Genocide. In granting South Africa's request for provisional measures, on three separate occasions, the ICJ has determined that Palestinians face a "real and imminent risk" of genocide (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, I.C.J. Reports 2024 (*South Africa v. Israel*), para. 61). As one Judge put it: "The alarm has now been sounded by the Court. All the indicators of genocidal acts are flashing red in Gaza" (*South Africa v. Israel*, Separate Declaration by Judge Yusuf, pp. 8 and 12).
23. In response to these developments and warnings – and in particular the horrific images that have emerged, daily – people across the world have mobilized to protest against the actions of Israel in Gaza, and for the end of the unlawful occupation of Palestine and the implementation of apartheid. They have been galvanized by a separate decision of the ICJ – handed down in July 2024 – that found Israel's occupation unlawful, and – along with its practices and policies – concluded that Israel had violated several 'peremptory norms' of international law, namely the prohibition of apartheid, the prohibition on the use of force in international relations, and the right to self-determination (*Legal Consequences*

Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (*'OPT Advisory Opinion'*)).

24. Unsurprisingly, South Africans have joined these protests, drawing on longstanding affinities between the freedom struggles of South Africans and Palestinians, and spurred on by their own government's actions at the international level, including at the ICJ and the International Criminal Court.
25. As the United States Court of Appeals (First Circuit) has recently pointed out – in a case arising from similar facts to the present matter – during these protests allegations have emerged of the use of “a litany of epithets and tropes widely understood as expressions of religious and racial animus”, rooted in the “sordid history of antisemitism” (*Stand With Us Center for Legal Justice v. Massachusetts Institute of Technology*, United States Court of Appeals, First Circuit, No. 24-1800 (21 October 2025), p. 27).
26. The jurisprudence of our Courts reveal that in the context of the “protracted feud between Israel and Palestine in the Middle East” – where “rights that carry unique and troubled pasts interwoven into the fabric of apartheid history” are at stake, including the rights to freedom of speech, equality and human dignity – Courts have the difficult task of drawing fine lines: between constitutionally protected speech and hateful, anti-Semitic tropes; as well as between constitutionally protected protest action and the dictates of public order and safety (*South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another*). It is a matter of great public interest Courts do so in a reasoned fashion, with clarity and precision, and with due

regard to these Constitutional rights, the history that informs them, as well as the relevant international legal obligations and relevant comparative foreign law. As the Constitutional Court noted in *Masuku* (para. 96):

“This country is still grappling with identifying where the bounds of freedom of expression lie, with the meaning of hate speech, and with the extent to which speech of an offensive and harmful nature can be tolerated. These are issues of broad public interest which remain as relevant today as they ever did.”

The right to freedom of expression

27. The Applicants requested relief impacts the Respondents’ freedom of expression in two broad respects: *First*, the Applicants seek an Order interdicting and restraining the Respondents “from making any claim that the First Application (Cape Union Mart) or one of its brands...are associated with the State of Israel in any way” (FA, para. 1.3). *Second*, the Applicants seek an Order curtailing how the Respondents prosecute their protest, both in broad terms (i.e. interdicting and restraining them “from publishing any defamatory statements regarding or concerning the applicants” (FA, para. 1.7), and in terms of specific expressions, namely interdicting and restraining the Applicants from:

27.1. “making any claim that the First Applicant (Cape Union Mart) or one of its brands...are funding 'genocide' or any military conflict in Gaza in any way” (FA, para. 1.4);

27.2. “making any claim that the Second Applicant is “funding genocide”, the Israeli army, or the conflict in Gaza in any way” (FA, para. 1.5); and

- 27.3. "claiming that the Applicants are killing children or are complicit in the killing of children" (FA, para. 1.6).
28. The relief must be read in the light of the expressions impugned in the FA, presumably as examples of the "defamatory statements" the Applicants seek to interdict and restrain. While the relief does not explicitly reference hate speech or section 16(2) in this regard, the FA claims that "[i]t is ... abundantly clear that Cape Union Mart and the [Second Applicant] are being targeted for being Jewish" (FA, para. 114), and that "the words and conduct of the protesters are inciting hatred of other persons and groups of persons on account of differences in religion and ethnic origin" (FA, para.128). The FA also indirectly alleges the protests amount to hate speech by seeking an Order that the Respondents "comply with the provisions of the Regulation of Gatherings Act 205 of 1993 by ...[i]n no manner inciting hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion" (FA, para. 1.8.2).
29. CALS submission aims to assist the Court in determining the second aspect of the Applicant's relief, namely the Order sought to restrain how the Respondents prosecute their protest. More specifically, CALS seeks to assist the Court in defining the line between robust, constitutionally protected speech and hate speech, in the light of the history of freedom of expression; the relevant jurisprudence on section 16 of the Constitution; the relevant international law; and comparable foreign law in respect of the specific impugned expression "from the river to the sea Palestine will be free".

The history of freedom of expression

30. The “troubled past” of the right to freedom of expression in this country is well known. As the Constitutional Court noted in *Islamic Unity Convention v Independent Broadcasting Authority and Others* (para 25):

“[W]e have recently emerged from a severely restrictive past where expression, especially political and artistic expression, was extensively circumscribed by various legislative enactments. The restrictions that were placed on expression were not only a denial of democracy itself, but also exacerbated the impact of the systemic violations of other fundamental human rights in South Africa. Those restrictions would be incompatible with South Africa’s present commitment to a society based on a ‘constitutionally protected culture of openness and democracy and universal human rights for South Africans of all ages, classes and colours’.”

31. In *Qwelane v South African Human Rights Commission and Another*, the Constitutional Court noted (para. 75):

“[T]he historical stains of our colonial and apartheid past reinforce the point that freedom of expression has a particularly important role to play in our constitutional democracy”

32. Finally, in *Economic Freedom Fighters v Minister of Justice and Correctional Services* the Constitutional Court noted the following, which is of particular relevance to the present matter (para. 2):

“Expression of thought or belief and own worldview or ideology was for many years extensively and severely circumscribed in this country. It was visited, institutionally and otherwise, with the worst conceivable punishment or dehumanising consequences. The tragic and untimely death of Steve Biko as a result of his bold decision to talk frankly and write as he liked, about the unjust system and its laws, underscores the point. This right thus has to be treasured, celebrated, promoted and even restrained with a deeper sense of purpose and appreciation of what it represents in a genuine constitutional democracy, considering our highly intolerant and suppressive past.”

33. The Court continued (para 42):

“A reminder of where we were just over 26 years ago is necessary for context. Then, expression was so extensively and severely circumscribed that a person could be arrested, banned, banished, or even killed by the apartheid regime for labelling as unjust what everyone now accepts is unjust. Inciting people to protest against apartheid – a crime against humanity – or to break its unjust laws, was not only criminalised but could also attract untold consequences. Thought control or enforced conformity was virtually institutionalised. Free expression is thus a right or freedom so dear to us and critical to our democracy

and healing the divisions of our past, that it ought not to be interfered with lightly – especially where no risk of serious harm or danger exists.”

Section 16 of the Constitution and hate speech

34. South Africa’s troubled past also informs the “boundaries beyond which the right to freedom of expression does not extend” (*Islamic Unity*, para. 30, see *Qwelane*, para. 81). Section 16 of the Constitution includes an internal limitation that excludes three categories of expression from constitutional protection (see Section 16(2)). The third of these is hate speech, defined as the “advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”.
35. The operation of section 16, read with section 10 of PEPUDA (see *Masuku*, para. 112), is well-established.
- 35.1. *First*, section 16(2) is “definitional” (*Islamic Unity*, para. 32): if speech falls within its terms (e.g. amounts to hate speech) then it is not protected and “can be prohibited ... without raising any constitutional concerns” (*Masuku*, para. 99). Conversely, if speech is not excluded under section 16(2) then it is protected speech and can only be limited in terms of section 36 of the Constitution.
- 35.2. *Second*, the test is objective. As the Constitutional Court noted in *Qwelane*, para. 96 (and endorsed in *Masuku*, para. 122):

"[I]t is plainly an objective standard that requires a reasonable person test...that considers the facts and circumstances surrounding the expression, and not mere inferences or assumptions that are made by the targeted group."

35.3. *Third*, context is key, as "context, to the objective person, is an important and instructive of meaning" (*Masuku*, para. 144).

36. As such, the test for whether the impugned expressions *in casu* is protected speech under section 16 or not is "whether a reasonable, objective and informed person" (*Masuku*, para. 144), viewing the expression in its context, "would have considered the impugned [expression] to have been based on Jewish identity and intended to incite harm or propagate hatred" (para. 153, emphasis added). Or, put differently, whether there are "contextual factors that indicate that a reasonable person who had sight of the [expression] would not have thought this the most probable meaning" (*ibid*, para. 157). If the answer is that an impugned expression is protected under section 16, it can only be limited in terms of section 36 of the Constitution.

The Masuku test

37. These issues before this Court have been canvassed by the Constitutional Court in detail in *Masuku*. While the meaning of the precise impugned expressions falls to be determined by this Court, taking into account their context, the Constitutional Court in *Masuku* set out certain bright lines in respect

of “the fine nuances between anti-Semitic and anti-Zionist tropes” that must guide this process.

37.1. First, the Constitutional Court found that criticism of Israel, the Israeli Defense Force (IDF) and “those who support Israel” – including “those who support Israel via their membership of the IDF and their support for pro-Israel organisations” is protected speech and not anti-Semitic (i.e. does not “singl[e] out Jewish people generally as an ethnic or religious group”), unless the context determines otherwise (*Masuku*, para. 165). Insofar as the IDF was concerned, the Court noted that while “[i]t was common cause that only Jewish families would send their children to join the IDF, ... it was unlikely that a Jewish person would join the IDF if they were not a Zionist-supporter”, so it was “not clear that a reasonable person would conclude that this reference was based on Jewish identity” (para. 164).

37.2. Second, and related to this, the Court found that criticism of Zionism is protected speech, with the proviso that “contextual factors” (e.g. references to Hitler) could transform an anti-Zionist statement into an anti-Semitic one (by “evok[ing] semantic associations with the entire global Jewish community, and not a specific faction thereof” (para. 156). However, leaving aside such exceptional circumstances, the Court repeatedly distinguished between protected anti-Zionist speech and anti-Semitism (see, for example, para. 145). In reaching this conclusion, the Court rejected the finding of the Equality Court that anti-Zionism was hate speech “because the majority of Jewish people are Zionists in South Africa and globally”, finding that this “would mean every mention of Zionism may potentially open itself to censure” (para. 156).

38. CALS submits that these guidelines can be applied to the impugned expressions *in casu* to distinguish between (i) those expressions that target Israel, the IDF, supporters of Israel, supporters of pro-Israel organisations, and Zionists – which are presumptively protected, unless “contextual factors” suggest otherwise; and (ii) other expressions that are “based on Jewish identity”. This will assist in determining which expressions fall outside the protection of section 16, and which are protected and can only be limited in terms of section 36.
39. The Court in *Masuku* singled out references to “Hitler”, “extermination” and “the Holocaust” (para. 154) as contextual factors that may result in expressions that would otherwise be protected under section 16 falling outside its boundaries (i.e. because “a reasonable person would have considered [them]...to have been based on Jewish identity and intended to incite harm or propagate hatred” (para. 153). CALS submits that the same approach can be applied to the impugned expressions, with the proviso that – in the context of a protest against genocide – a “reasonable, objective and informed person” might understand some of these expressions differently than how they were interpreted in the context *Masuku*.

The meaning of the phrase “from the river to the sea Palestine will be free”

40. The phrase “from the river to the sea Palestine will be free” – characterised by the Applicants as “hateful” (FA, para. 84) – has a complex history, having been

used over decades by various actors to articulate different aspirations, ranging from Palestinian self-determination and calls for equal rights to broader demands for liberation or changes in territorial governance. Its meaning is not fixed; it is informed by the identity of the speaker, the audience, and the specific political and social context surrounding its use.

41. Courts have recognised that such phrases often carry symbolic, metaphorical, or hyperbolic weight, and that literal interpretation can be misleading. Determining whether the phrase falls outside the boundaries of protected speech requires the same contextual method that courts apply to politically charged slogans and liberation-movement songs, primarily because its meaning and implications are deeply shaped by historical usage and the circumstances in which it is expressed (see *AfriForum v Economic Freedom Fighters and Others* 2024 (6) SA 1 (SCA))
42. In *AfriForum v Economic Freedom Fighters*, the Supreme Court of Appeal emphasised that the hate-speech inquiry is fundamentally contextual and cannot be resolved through the literal interpretation of contested words alone. Instead, the meaning and legal effect of the impugned expression must be assessed within its historical, political, and performative setting. The Court's reasoning demonstrates that the question is not whether words such as "kill" appear on their face to advocate violence, but whether, when situated within their full political and historical context, they would reasonably be construed as evincing a clear intention to incite harm and propagate hatred on a prohibited ground.

43. When one applies the Court's reasoning in *AfriForum v Economic Freedom Fighters* to “from the river to the sea Palestine will be free”, the first point of analysis is semantic, the second is contextual. The phrase refers geographically to the territory between the Jordan River and the Mediterranean Sea. It does not explicitly identify a protected group as its target. Rather, it expresses a claim about land, sovereignty, or political arrangement within that territory. Although critics argue that the phrase implies hostility toward Jewish Israelis or the elimination of Israel, its meaning is not fixed or singular. It has been used by different actors across decades to convey different aspirations, including:
- 43.1. In support of Palestinians' right to self-determination under international law, in general.
 - 43.2. In support of the proposal for a single democratic state with equal rights for all; and
 - 43.3. In support of broader calls for liberation.
44. CALS submits that because the phrase is capable of multiple interpretations, the Court must decide whether a “reasonable, objective and informed person” (*Masuku*, para. 144), viewing the slogan in its context, “would have considered the impugned [expression] to have been based on Jewish identity and intended to incite harm or propagate hatred” (para. 153, emphasis added).
45. Courts recognise that political speech occupies a privileged position in constitutional democracies, particularly where struggle songs are concerned in light of the historical outline above. Recall, in particular the Constitutional

Court's reminder in *Economic Freedom Fighters v Minister of Justice and Correctional Services*, that under apartheid "a person could be arrested, banned, banished or even killed by the apartheid regime for labelling as unjust, what everyone now accepts is unjust", including "[i]nciting people to protest against apartheid – a crime against humanity", and as a result of this the right to freedom of expression is "so dear to us and critical to our democracy and healing the divisions of our past, that it ought not to be interfered with lightly – especially where no risk of serious harm or danger exists" (para 42).

46. Expression relating to contested questions of sovereignty, land, and governance is at the core of democratic discourse. Even speech that is unsettling, offensive, or provocative remains protected unless it crosses the line into advocacy of hatred that incites harm. The fact that a slogan is divisive or emotionally charged does not suffice. What matters is whether a reasonable observer would understand it as hate speech or as political advocacy.
47. As Courts have noted, the identity of the speaker and the circumstances of use are critical (*Qwelane*, para. 176). When the phrase is chanted at protests calling for Palestinian self-determination, equality, or an end to unlawful occupation, a reasonable listener might understand it as a political demand regarding territorial governance or state structure. In such contexts, it functions as rhetorical shorthand for a contested political vision, not necessarily as an incitement to harm any protected group. Conversely, if used alongside explicit calls for violence or in settings where violence is clearly endorsed, the interpretation might shift. The legal classification is therefore situational rather than categorical.

48. *AfriForum v Economic Freedom Fighters* illustrates the constitutional balancing exercise between dignity and equality on the one hand, and freedom of expression and political participation on the other. The Court recognised that political speech occupies a protected core within section 16 and section 19 of the Constitution, especially where expression forms part of contestation over land, economic justice, and historical redress. Consequently, even provocative or deeply offensive speech will not meet the threshold of hate speech unless it can reasonably be construed as demonstrating a clear intention to incite harm and promote hatred. The decision thus signals judicial reluctance to curtail political expression absent a demonstrable nexus between the speech and the constitutional definition of hate speech.
49. CALS submits that this framework provides a direct analytical lens through which the present issue must be assessed. As in *AfriForum v Economic Freedom Fighters*, the central question is whether the impugned expression, when evaluated in its full context, would be understood by a reasonable and informed observer as an actual incitement to violence or hatred, or rather as symbolic or political rhetoric embedded in a broader historical discourse. The SCA's insistence on contextual interpretation and its rejection of purely literal readings suggest that any evaluation must move beyond textual surface meaning and interrogate the social function, audience, and political purpose of the speech in question.

50. CALS submits further that this reasoning supports the conclusion that “from the river to the sea Palestine will be free” when used as a slogan for political change or national self-determination, and unless “contextual factors” indicate otherwise, falls within the ambit of protected expression. It expresses a viewpoint about territorial and political arrangements in a region marked by violent long-standing and conflict. Constitutional frameworks typically protect even deeply controversial viewpoints on such matters, recognising that democratic deliberation requires space for robust, and sometimes uncomfortable, political speech. To prohibit a slogan solely because it is capable of being interpreted in a hostile way would risk suppressing legitimate political advocacy and narrowing the scope of public debate.
51. Moreover, the requirement that speech demonstrate a clear intention to incite harm sets a high threshold. Ambiguity generally weighs against a finding of hate speech, because the law targets expression that unmistakably promotes violence or discrimination against a protected group. Where a phrase admits of multiple plausible interpretations (some of which are political rather than violent) the presumption tends to favour protection, particularly in the realm of political discourse. The constitutional commitment to freedom of expression demands tolerance of speech that is disturbing, unpopular, or unsettling, provided it does not cross into hate speech.
52. CALS submits that a contextual, objective analysis supports the view that the phrase is not inherently or invariably unlawful. In many settings it functions as political speech concerning self-determination, sovereignty, and statehood. These are all issues at the core of democratic debate. Only where the phrase

is used in a manner that clearly and reasonably conveys an intention to promote hatred against a protected group and to incite harm would it fall outside constitutional protection. In the absence of such contextual indicators, it remains within the boundaries of protected political expression under section 16.

53. The sections that follow outline the relevance of international law and foreign law for this determination by the Court.

The relevant international law

54. Section 39 of the Constitution provides: "When interpreting the Bill of Rights, a court, tribunal or forum must consider international law".

55. Section 233 further provides that,

"When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law."

56. As noted above, the protests giving rise to these proceedings take place against determinations by multiple international courts, independent UN bodies and experts, and the leading international human rights organisations have determined that Israel has systematically violated multiple peremptory norms of international law (*jus cogens*). These include the prohibition of apartheid, the

prohibition of crimes against humanity, the prohibition on the use of force in international relations, the right to self-determination, and the basic rules of international humanitarian law.

57. As the Constitutional Court has recalled, international crimes like genocide and apartheid, and violations of peremptory norms, threaten “the good order not only of particular states but of the international community as a whole” (*National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* 2015 (1) SA 315 (CC), para. 35).
58. Under international law, all states are obliged not to “render any aid or assistance in maintaining” Israel’s violations of these peremptory norms of international law, and “cooperate to bring [them] to an end through lawful means” (Article 41, Articles on the Responsibility of States for Internationally Wrongful Acts (2001)). The ICJ set out these obligations in the *OPT Advisory Opinion*, and the General Assembly has elaborated on them in its Resolution ES-10/24 (18 September 2024). States are also under obligations to prevent and punish violations of the Genocide Convention.
59. CALS will make submissions on the relevance of these international obligations for the interpretation of the right to freedom of expression. Their relevance for the right to protest is outlined further below.
60. On the relevance of international law, for present purposes it suffices to note the following in particular:

60.1. The Commission of Inquiry, in response to the OPT Advisory Opinion, determined that under international law all States are obliged:

“[T]o examine private enterprises incorporated in the State and non-profit or non-governmental organizations registered in the State and their dealings with the State of Israel and the Occupied Palestinian Territory. These entities include trading firms, manufacturing enterprises, investment funds and banks facilitating money transfers. States must require a thorough due-diligence review of these entities and ensure that they are not engaging in any business, activity or financial support that maintains the unlawful occupation or contributes to maintaining it. If a State finds that such entities are engaging in activities that maintain the unlawful occupation, the State must take all reasonable measures to prevent the activities, such as revoking a corporation’s articles of incorporation or revoking a non-profit organization’s registration in that State.

With respect to non-profit or non-governmental organizations, States must carefully review any organization that is financially or politically supporting the unlawful occupation. States shall not give support to these organizations, for example through allowing the organization to have tax-exempt status or providing tax deductibility for donations to the organization and must ensure that financial contributions to support the unlawful occupation, including settlements and settlers, cease.”

61. The UN Special Rapporteur called on “trade unions, lawyers, civil society and ordinary citizens to monitor States’ actions ..., and to continue to press institutions, Governments and corporations for boycotts, divestments and sanctions, until the end of the Israeli illegal occupation and related crimes” (*Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese – Gaza genocide: a collective crime* (20 October 2025), para. 74).
62. The ICJ has determined that Israel’s prolonged occupation of Palestine violates the right of Palestinians to self-determination, a peremptory norm of international law. In setting out the legal consequences of this determining, the ICJ noted as follows (*OPT Advisory Opinion*, para. 275):

“With regard to the right to self-determination, the Court considers that, while it is for the General Assembly and the Security Council to pronounce on the modalities required to ensure an end to Israel’s illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination, all States must co-operate with the United Nations to put those modalities into effect. As recalled in the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*,

‘[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities

entrusted to it by the Charter regarding the implementation of the principle” (General Assembly resolution 2625 (XXV)).

63. The *Declaration on Principles of International Law concerning Friendly Relations* further elaborates on the rights of peoples deprived of “their right to self-determination and freedom and independence” as follows:

“In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”

64. If admitted, CALS will make submissions on the impact of these international legal obligations, and rights, on the interpretation of whether the impugned expressions are protected political speech under section 16, with particular regard to references to genocide and apartheid, and slogans in support of the right to self-determination of the Palestinians.

Foreign Law

65. Section 39(1)(c) of the Constitution provides: “When interpreting the Bill of Rights, a court, tribunal or forum...may consider foreign law”.
66. CALS will make submissions on comparable foreign law on the phrase “from the river to the sea Palestine will be free”. In particular, recent decisions of

courts in the United States, Germany, the Netherlands and Estonia will be placed before the Court for consideration in line with section 39(1)(c).

67. The recent decision of the US Court of Appeals in *Stand With Us Center for Legal Justice v. Massachusetts Institute of Technology* is of particular relevance, as the Court in that case dealt with similar issues in a similar context, including (1) the relationship between anti-Zionist political speech and anti-Semitism, and (2) the meaning of the phrase "from the river to the sea Palestine will be free", and (3) the claim that accused Israel of committed genocide is anti-Semitic. In doing so, the Court found (pp. 30-31):

"Th[e] absence of consensus reflects ongoing debate as to the relationship between anti-Zionism and antisemitism – a debate that our constitutional scheme resolves through discourse, not judicial fiat. Indeed, the debate on occasion has been formal and high profile. ...We decline to interpret [the relevant law] as arming either side of that debate with the powers of a censor....This is not to say that anti-Zionism is never wielded as a tool of the antisemite. See *Gartenberg v. Cooper Union for the Advancement of Sci. & Art*, 765 F. Supp. 3d 245, 269 (S.D.N.Y. 2025) (finding that "From the river to the sea, Palestine will be free" graffiti on a bathroom stall that was "made to resemble the stylized font commonly associated with Hitler's *Mein Kampf*" could be used, among other evidence, to show antisemitic motivation). It is to say, instead, that one person does not lose the right to express a political opinion on a matter of public concern merely because another who expresses the same view does so for condemnable reasons."

68. In respect of the claim that the allegation of genocide against Israel and the phrase "from the river to the sea Palestine will be free" are anti-Semitic, the Court found (pp. 34-35):

"[P]laintiffs point to the fraught subject of genocide. First, plaintiffs claim that accusing Israel of committing genocide against Palestinians is antisemitic. But even prominent Israelis have lodged the same accusation. See, e.g., Omer Bartov, Opinion, I'm a Genocide Scholar. I Know It When I See It, N.Y. Times (July 15, 2025)... Second, plaintiffs claim in their brief that some protestors called for the genocide of the Jewish people. But there are no factual allegations supporting this claim. Rather, plaintiffs say that we should construe chants of "from the river to the sea, Palestine will be free" and "intifada revolution" as calls to wipe out the Jewish people as such. But neither slogan says as much on its face, nor do plaintiffs allege facts suggesting that either chant was commonly construed by the protestors in that way. So, plaintiffs must again rely on a theory that they can dictate the interpretation of the protestors' speech to suppress it, without any facts suggesting that the protestors were using these slogans in the way plaintiffs claim. In reviewing these claims, our role is not to approve or disapprove of the protestors' strident advocacy, nor of the ideas they so vigorously expressed. We do not question the anguish plaintiffs felt at hearing a few of their peers justify the October 7 massacre or deny Israel the right to defend itself. But our Constitution bars the government from forcing a private university to prohibit students from voicing vehement support for, or opposition to, the policies and conduct of the United States and its allies. For these reasons, we decline plaintiffs' invitation to hold that the protestors' speech

constituted antisemitic harassment actionable under Title VI merely because it was stridently pro-Palestinian and anti-Zionist.”

The right to protest

69. Section 17 of the Constitution protects the right of everyone, peacefully and unarmed, to assemble, demonstrate, picket, and present petitions, and gives constitutional expression to the right to protest as a distinct and indispensable feature of South Africa’s democratic order.
70. The Constitutional Court has consistently affirmed that section 17 protects protest as a distinct and indispensable democratic practice, particularly for those excluded from formal channels of political power. *“It exists primarily to give a voice to the powerless. This includes groups that do not have political or economic power, and other vulnerable persons” (South African Transport and Applied Workers Union v Garvas and Others (Garvas)).*
71. In *Garvas*, the Court emphasised that section 17 plays a foundational role in participatory democracy. Importantly, the Court made it clear that constitutional protection is lost only where the protestors themselves lack an intention to act peacefully, and not merely because a protest is disruptive or uncomfortable.
72. The Court further highlighted the historical nature and importance of protest in South Africa, holding that:

“Under apartheid, the State took numerous legislative steps to regulate strictly and ban public assembly and protest. Despite these measures, total repression

of freedom of expression through protest and demonstration was not achieved. Spontaneous and organised protest and demonstration were important ways in which the excluded and marginalised majority of this country expressed themselves against the apartheid system, and were part and parcel of the fabric of the participatory democracy to which they aspired and for which they fought. So the lessons of our history, which inform the right to peaceful assembly and demonstration in the Constitution, are at least twofold. First, they remind us that ours is a 'never again' Constitution: never again will we allow the right of ordinary people to freedom in all its forms to be taken away. Second, they tell us something about the inherent power and value of freedom of assembly and demonstration, as a tool of democracy often used by people who do not necessarily have other means of making their democratic rights count. Both these historical considerations emphasise the importance of the right."

73. Similarly, *Mlungwana and Others v S and Another*, the Court rejected a formalistic approach to protest and stressed that the right must be interpreted generously and not restrictively.
74. These cases support the proposition that section 17 protects not only the fact of assembly, but also the manner in which protest is carried out, provided it remains peaceful and unarmed. Protest is not merely physical presence; it is communicative action. The impact of protest often lies in its symbolism, collectivity, and visibility. These elements shape how protestors amplify their message, assert solidarity, and draw public attention to their cause, and they form an integral part of the exercise of the right protected under section 17 of the Constitution.

75. The Constitutional Court has often cautioned against the interpretation of constitutional rights that strips them of practical effect. In *South African National Defence Union v Minister of Defence*, the Court held that constitutional rights must be interpreted in a generous manner, in order to ensure that they are real and not illusory. This principle requires courts to be attentive not only to the formal availability of a right, but also to whether the conditions imposed on its exercise undermine its substance.
76. CALS submits that an interpretation of section 8 of the Regulation of Gatherings Act that categorically prohibits the wearing of a “disguise or mask or any other apparel or item which obscures his facial features and prevents his identification” risks hollowing out the right to protest. Such an approach limits the ways in which protestors may visually and symbolically express dissent, disproportionately burdens certain groups of protestors, and deters participation through fear of identification, surveillance, or reprisal. The result is a formal recognition of the right to protest that is materially diminished in practice.
77. Further, the prohibition on face coverings raises acute constitutional concerns where religious dress or attire is implicated. For some protestors, covering the face or head is not incidental, but a manifestation of religious identity and belief (for instance, the wearing of a hijab as practiced by Muslim women), which is independently protected under section 15 of the Constitution. In *MEC for Education: KwaZulu-Natal v Pillay*, for example, the Constitutional Court affirmed that the Constitution protects voluntary religious and cultural practices,

even where such practices are not mandatory or universally observed within a particular faith. The Court held that “[t]he protection of voluntary as well as obligatory practices also conforms to the Constitution’s commitment to affirming diversity. It is a commitment that is totally in accord with this nation’s decisive break from its history of intolerance and exclusion.”

78. In the present matter, some members of the Seventh Respondent would have been seen wearing a keffiyeh, which is a recognised symbol of political solidarity and dissent, and its use in the context of the pro-Palestine protests serves to visually and symbolically communicate the protestors’ message. Therefore, it is the wearing of a keffiyeh that is part of the manner in which the right to protest is expressed, rather than conduct extraneous to that right.
79. CALS submits that the wearing of a keffiyeh during a protest constitutes protected expressive conduct falling within the scope of sections 16 and 17 of the Constitution. CALS further submits that the mere fact that a keffiyeh may, in certain instances, obscure facial features does not render a protest unlawful, nor does it justify automatic reliance on section 8 of the RGA. There is no evidence that the wearing of a keffiyeh, in and of itself, demonstrates an intention to act violently, intimidate others, or evade lawful accountability. As the Constitutional Court has made clear, protestors lose the protection of section 17 only where they themselves lack an intention to act peacefully, and not because of symbolic attire or expressive appearance.

80. In addition, CALS submits that the wearing of a keffiyeh may serve multiple constitutionally legitimate purposes simultaneously: it may function as political expression, cultural or identity-based symbolism, and, in some circumstances, a means of protecting personal safety by limiting exposure to surveillance or reprisals. Treating such attire as inherently suspicious or unlawful risks collapsing expressive symbolism into illegality, contrary to the Constitutional Court's insistence that constitutional rights must be interpreted generously and in a manner that preserves their practical effect.
81. A mechanical application of section 8 of the RGA to symbolic attire such as a keffiyeh is overbroad and thus constitutionally impermissible. It disproportionately burdens peaceful protestors, risks excluding individuals from participation in protest, and has a chilling effect on the exercise of section 17 rights. Any limitation on the wearing of symbolic attire during protest must therefore be carefully justified under section 36 of the Constitution, based on demonstrable risks and context-specific considerations, rather than assumed unlawfulness. CALS submits that there is no such limitation and section 8 of the RGA does not seek to limit this right. Significantly, the RGA predates the promulgation of the Final Constitution.
82. The generous interpretation of section 17, advanced above, is further reinforced by international and regional human-rights law, which South African courts are constitutionally obliged to consider when interpreting the rights in the Bill of Rights.

83. In the context of freedom of assembly, international and regional instruments and jurisprudence consistently affirm that peaceful protest must be protected in a manner that is inclusive, proportionate, and attentive to the realities faced by protestors, particularly where issues of symbolism and vulnerability arise. The international and regional legal framework below, therefore, provides important interpretive guidance for assessing the scope of section 17 and the constitutionality of restrictions such as those imposed by section 8 of the RGA.

Regional and international law

84. CALS submits that section 8 of the RGA should be interpreted in a manner consistent with regional and international law standards on freedom of assembly. As set out below, regional and international law favours a broad interpretation of the right to freedom of assembly.
85. The right to freedom of assembly is protected by regional and international law. South Africa is a party to key regional and international instruments that protect the right to peaceful assembly. At the international level, this right is affirmed in the following instruments:
- 85.1. Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Regionally, it is safeguarded by Article 11 of the African Charter on Human and Peoples' Rights, adopted in 1981.
- 85.2. Article 20(1) of the Universal Declaration of Human Rights provides that
"Everyone has the right to freedom of peaceful assembly and association."

The Universal Declaration of Human Rights thus establishes freedom of peaceful assembly as a foundational and universally recognised human right.

85.3. The right to freedom of assembly is further affirmed by Article 21 of the ICCPR, which provides that *"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others."*

85.4. The right to freedom of assembly, like other rights, is not absolute and can be subject to certain restrictions. According to Article 21, such restrictions are only permissible when they are lawful, necessary, and intended to safeguard important interests. These interests include national security, public safety, public order, public health, public morals, or the rights and freedoms of others.

85.5. Article 11 of the African Charter on Human and Peoples' rights (African Charter) regional affirms the right to freedom of assembly and provides that *"Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics, and rights and freedoms of others."*

Regional and International Law Standards on the Prohibition of Masks or Face Coverings During Assemblies

UN Human Rights Committee – General Comment No. 37 (2020) on Article 21

86. International law affords a broad interpretation to the right to freedom of assembly, recognising that it extends beyond mere participation in assemblies. The right to freedom of assembly encompasses the various ways in which individuals express themselves, such as through their choice of clothing and apparel. International law accordingly acknowledges that participants in peaceful protests may elect to wear face coverings or disguises, like hoods or masks, as a legitimate form of expressive conduct.
87. The United Nations Human Rights Committee emphasises that participants in peaceful assemblies should be permitted to maintain a certain degree of anonymity unless their actions raise legitimate grounds for arrest or there are compelling circumstances justifying identification, including situations in which particular symbols may lawfully be restricted. Importantly, the UN's General Comments caution against assuming that the use of disguises inherently indicates a violent intent among protesters.

The Office of the UN High Commissioner for Human Rights (OHCHR)

88. The Office of the United Nations High Commissioner for Human Rights (OHCHR) similarly recognises a broad interpretation of the right to protest, which includes the right of participants to enjoy some degree of anonymity during peaceful assemblies.

89. According to the OHCHR, participants in peaceful assemblies have traditionally been afforded a measure of anonymity for a variety of reasons, including the increasing use of surveillance technologies through which data may be collected and used to identify, target, or intimidate those participating in such assemblies. This, in turn, may deter individuals from demonstrating in public spaces and from freely expressing their views where they fear that they could be identified and suffer negative consequences.

UN Special Rapporteur on Freedom of Peaceful Assembly

90. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly has repeatedly affirmed that the right to freedom of assembly must be interpreted as broadly as possible, and that participants in assemblies are free to determine and express the content of their message. This includes the choice to wear masks or face coverings as part of the manner in which expressive conduct is conveyed.
91. According to the Special Rapporteur, any restrictions on the content or manner of assemblies, including restrictions on the wearing of masks or face coverings, must fall within the narrow and legitimate limitations recognised under international law, such as advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.

The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights.

92. Under regional law, the right to freedom of assembly is similarly afforded a broad interpretation. The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights provide that national constitutions must guarantee the right to freedom of assembly in a manner consistent with both regional and international human rights standards. Where a constitution provides that the essence of a right shall be defined by law, this should not be interpreted as permitting unreasonable or disproportionate limitations on that right.
93. The Guidelines recognise that the right to assembly encompasses the wearing of masks and face coverings, and that participants in peaceful assemblies may convey their message not only through their physical presence but also through symbols, banners, posters, and other expressive conduct. They stress that any restrictions on these rights must be necessary, proportionate, and directed towards legitimate purposes, such as preventing hate speech or incitement to violence, and must not unduly undermine the expressive content of the assembly.
94. CALS submits that an interpretation of section 8 of the RGA that limits the right under section 17 of the Constitution is not only inconsistent with the Constitution, but is also inconsistent with regional and international law standards, as it does not accommodate circumstances in which masks or face

coverings are worn for religious reasons, public health concerns, or to protect participants against digital surveillance and targeting. While regional and international law standards recognises that restrictions on the wearing of masks or face coverings may, in certain instances, be justified, it simultaneously requires that exceptions be made where prohibitions would otherwise unjustifiably undermine the right to freedom of assembly.

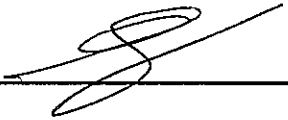
95. CALS submits that the most reasonable interpretation that can be afforded to section 8 of the Regulation of Gatherings Act is an interpretation that recognizes that the right to freedom of assembly encompasses a variety of expressive conduct, including the wearing of masks and the covering of faces, beyond mere participation in an assembly.

CONCLUSION

96. I contend that CALS' submissions are relevant, distinct, and novel. I believe, given a court's obligation to consider regional and international law, that the submissions sought to be made will be of assistance to the court in determining the issues at hand.
97. Accordingly, CALS believes that it has established a case for leave of this Court to be granted to intervene as *amicus curiae*.

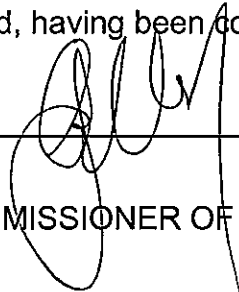
98. Given the complexity, importance, and breadth of the issues arising in the main application, CALS respectfully prays that it be admitted and granted leave to make written and oral submissions at the hearing.

WHEREFORE, CALS seek the relief as prayed for in the notice of motion to which this affidavit is attached.



CHRISTOPHER GEVERS

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 13th day of February 2026, 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

Full Names:

Full Names: Celeste Jadine Moodley
 Advocate of the High Court of South Africa
 Ex-Officio Commissioner of Oaths
 1st Floor, Suite 1B
 1 Kingsmead Boulevard
 Kingsmead Office Park
 Durban, KwaZulu-Natal

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Capacity:



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Ref: S Mkhize
18 December 2025

To: Hurter Spies Inc.
Applicants Attorneys
Attention: Wian and Amo
Per email: wian@hurterspies.co.za / amo@hurterspies.co.za
Your ref: W SPIES/MAT0963

AND TO

To: Ashraf Mahomed Attorneys
Attorneys for the 1st to 5th and 7th Respondents
Attention: Ashraf Mahomed
Per email: ashraf@amattorneys.co.za
Your ref: A Mahomed

**RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE
FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL
(PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS
CASE NO: 2025-092980.**

Introduction

1. The Centre for Applied Legal Studies (CALS) wishes to be admitted as an *amicus curiae* in the above-mentioned proceedings before the Western Cape High Court. The request for intervention is made in terms of Rule 16A (2) of the Uniform Rules of Court. As such, CALS seeks written consent to intervene as amicus to present both written and oral submissions in the proceedings.
2. CALS is well placed to provide submissions that are relevant and that will assist the court in making a finding on the dispute between the parties. If consent is obtained, CALS will file a substantive application followed by written submissions on a suitable date and time as agreed upon between the parties, guided by the Court rules.
3. This letter will address the following: CALS' interest in the case, legal submissions

Faculty of Commerce, Law and Management
University of the Witwatersrand



S Mkhize



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Legal submissions that CALS intends to make

10. This matter raises important questions about the scope and content of the right to assemble, demonstrate, and picket as outlined in section 17 of the Constitution. What needs to be determined is which interests, needs, and purposes this right serves and the extent of its protection.
11. It raises important questions about the relationship between the right to freedom of expression and the right to protest, especially concerning which types of speech made during a protest are constitutionally protected.
12. Resultantly, CALS seeks consent from the parties to intervene as an *amicus curiae* in the present matter, as follows:
 - 12.1 To present written and oral arguments on the right to freedom of expression under section 16 of the Constitution of the Republic of South Africa 1996 (the Constitution) and assist the court in defining the line between robust, constitutionally protected speech and hate speech. For instance, the history and meaning of the phrase '*From the river to the sea*', insofar as the Applicant alleges that this is a 'hateful slogan'.
 - 12.2 In advancing these arguments, CALS will reference Section 39 of the Constitution of the Republic of South Africa, 1996, and draw on foreign and international law as well as comparative jurisprudence, to assist the court in interpreting Section 16 in a manner consistent with constitutional values.
 - 12.3 To present both written and oral arguments on the prohibition on wearing face masks or elements that obscure facial recognition as set out in section 8 of the Regulation of Gatherings Act 205 of 1993. CALS will argue that the right to protest as protected in section 17 of the Constitution is broad, extending a broad





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Sincerely,

Mkhize

Ms. Sithuthukile Mkhize

Head: Civil and Political Justice Programme

[Unsigned due to electronic communication]

Direct Tel: 011 717 8607 / Email: sithuthukile.mkhize@wits.ac.za



ASHRAF MAHOMED ATTORNEYS
PROTECTING YOUR RIGHTS

Our Ref: A Mahomed - Cape Union Mart/PSC

18 December 2025

CENTRE FOR APPLIED LEGAL STUDIES

c/o Ms Sithuthukile Mkhize

Head: Civil and Political Justice Programme

Per email: sithuthukile.mkhize@wits.ac.za; mazi.choshane@wits.ac.za;
felix.quibe@wits.ac.za

HURTER SPIES INC.

c/o Mr. Wian Bester

Per email: wian@hurterspies.co.za; arno@hurterspies.co.za

Dear Ms. Mkhize

RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE
FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL
(PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS
CASE NO: 2025-092980

We refer to above matter, and your letter dated the 18th instant.

We hereby consent to the admission of the Centre for Applied Legal Studies (CALS)
as an *amicus curiae*, and with it the written and oral submissions.

Please be reminded that the matter is set down for hearing on **16 and 17 February
2026** in the Western Cape High Court.

We advise accordingly.



ASHRAF MAHOMED ATTORNEYS
— PROTECTING YOUR RIGHTS —

Yours sincerely

ASHRAF MAHOMED ATTORNEYS

Per: A Mahomed

 Outlook

Re: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

From Aqeela Bean <aqeela.bean@wits.ac.za>

Date Mon 05 Jan 2026 09:13

To Wian Spies <wian@hurterspies.co.za>; Arno Kruger <Kruger@hurterspies.co.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Cc Willie Spies <Willie@hurterspies.co.za>

Dear Wian,

We acknowledge receipt of this email and have noted the contents thereof.

Kind regards,
Aqeela

From: Wian Spies <wian@hurterspies.co.za>

Sent: Sunday, 04 January 2026 18:24

To: Aqeela Bean <aqeela.bean@wits.ac.za>; Arno Kruger <Kruger@hurterspies.co.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Cc: Willie Spies <Willie@hurterspies.co.za>

Subject: RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

CAUTION: External email - verify sender before opening links or attachments. Report issues to ithelp@wits.ac.za.

Dear Aqeela,

Subject to CALS agreeing to file their written argument by **Friday 23 January 2026** in order to avoid delaying the main application, our client does not oppose the entry of CALS as an *amicus*.

Kind regards,

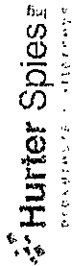
Wian Spies
Senior Associate / Senior Assosiaat

Tel: 012 941 9239 / 012 664 0708

Faks/Fax: 012 644 1997 • E-pos/E-mail: wian@hurterspies.co.za

Posadres/Postal Address: Posbus/PO Box 14505, Lyttelton, 0140

Adres/Address: Unionlaan 54 Union Avenue, Kloofsig, Centurion



Baie dankie vir u ondersteuning.
Mag u 'n geseënde Kersseisoen en voorspoedige nuwe jaar hê.
Ons kantore sluit op 24 Desember 2025 en sal op 5 Januarie 2026 heropen.

Thank you for your support.
Wishing you a blessed festive season and a prosperous New Year.
Our offices will close on 24 December 2025 and reopen on 5 January 2026.

From: Aqeela Bean <aqeela.bean@wits.ac.za>

Sent: Thursday, December 18, 2025 6:23 PM

To: Wian Spies <wian@hurterspies.co.za>; Arno Kruger <kruger@hurterspies.co.za>

Cc: Sithuthukile Mkhize <sithuthukile.mkhize@wits.ac.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Subject: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

Dear Colleagues

Kindly note attached, request for consent in intervention as amicus curie for Centre for Applied Legal Studies in the matter : CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

We kindly request that you confirm receipt of this email and respond by **6 Jan 2026**.

Warm regards,
Aqeela

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Centre for Applied
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Tel + 27 11 717-8600 Fax + 27 11 717 1702
www.law.wits.ac.za/cals

Ref: S Mkhize
18 December 2025

To: Hurter Spies Inc.
Applicants Attorneys
Attention: Wian and Amo
Per email: wian@hurtspies.co.za / amo@hurterspies.co.za
Your ref: W SPIES/MAT0963

AND TO

To: Ashraf Mahomed Attorneys
Attorneys for the 1st to 5th and 7th Respondents
Attention: Ashraf Mahomed
Per email: ashraf@amattorneys.co.za
Your ref: A Mahomed

RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

Introduction

1. The Centre for Applied Legal Studies (CALS) wishes to be admitted as an *amicus curiae* in the above-mentioned proceedings before the Western Cape High Court. The request for intervention is made in terms of Rule 16A (2) of the Uniform Rules of Court. As such, CALS seeks written consent to intervene as amicus to present both written and oral submissions in the proceedings.
2. CALS is well placed to provide submissions that are relevant and that will assist the court in making a finding on the dispute between the parties. If consent is obtained, CALS will file a substantive application followed by written submissions on a suitable date and time as agreed upon between the parties, guided by the Court rules.
3. This letter will address the following: CALS' interest in the case, legal submissions





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Legal submissions that CALS intends to make

10. This matter raises important questions about the scope and content of the right to assemble, demonstrate, and picket as outlined in section 17 of the Constitution. What needs to be determined is which interests, needs, and purposes this right serves and the extent of its protection.
11. It raises important questions about the relationship between the right to freedom of expression and the right to protest, especially concerning which types of speech made during a protest are constitutionally protected.
12. Resultantly, CALS seeks consent from the parties to intervene as an *amicus curiae* in the present matter, as follows:
 - 12.1 To present written and oral arguments on the right to freedom of expression under section 16 of the Constitution of the Republic of South Africa 1996 (the Constitution) and assist the court in defining the line between robust, constitutionally protected speech and hate speech. For instance, the history and meaning of the phrase '*From the river to the sea*', insofar as the Applicant alleges that this is a 'hateful slogan'.
 - 12.2 In advancing these arguments, CALS will reference Section 39 of the Constitution of the Republic of South Africa, 1996, and draw on foreign and international law as well as comparative jurisprudence, to assist the court in interpreting Section 16 in a manner consistent with constitutional values.
 - 12.3 To present both written and oral arguments on the prohibition on wearing face masks or elements that obscure facial recognition as set out in section 8 of the Regulation of Gatherings Act 205 of 1993. CALS will argue that the right to protest as protected in section 17 of the Constitution is broad, extending a broad



CALS

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Sincerely,

Mkhize

Ms. Sithuthukile Mkhize

Head: Civil and Political Justice Programme

[Unsigned due to electronic communication]

Direct Tel: 011 717 8607 / Email: sithuthukile.mkhize@wits.ac.za



Our Ref: A Mahomed - Cape Union Mart/PSC

18 December 2025

CENTRE FOR APPLIED LEGAL STUDIES

c/o Ms Sithuthukile Mkhize

Head: Civil and Political Justice Programme

Per email: sithuthukile.mkhize@wits.ac.za; mazi.choshane@wits.ac.za;
felix.quibe@wits.ac.za

HURTER SPIES INC.

c/o Mr. Wian Bester

Per email: wian@hurterspies.co.za; arno@hurterspies.co.za

Dear Ms. Mkhize

**RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS
CASE NO: 2025-092980**

We refer to above matter, and your letter dated the 18th instant.

We hereby consent to the admission of the Centre for Applied Legal Studies (CALS) as an *amicus curiae*, and with it the written and oral submissions.

Please be reminded that the matter is set down for hearing on **16 and 17 February 2026** in the Western Cape High Court.

We advise accordingly.



ASHRAF MAHOMED ATTORNEYS
— PROTECTING YOUR RIGHTS —

Yours sincerely

ASHRAF MAHOMED ATTORNEYS

Per: A Mahomed



084 580 1245

086 538 3662 (fax)



ashraf@amattorneys.co.za

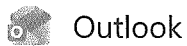


www.amattorneys.com



40 Keert de Koe Road, Rondebosch, Cape Town, 7700

Proprietor: Ashraf Mahomed BA LLB (UCT) Attorney of the High Court
Legal, Mediation and Arbitration Services



Re: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

From Aqeela Bean <aqeela.bean@wits.ac.za>

Date Mon 05 Jan 2026 09:13

To Wian Spies <wian@hurterspies.co.za>; Arno Kruger <Kruger@hurterspies.co.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Cc Willie Spies <Willie@hurterspies.co.za>

Dear Wian,

We acknowledge receipt of this email and have noted the contents thereof.

Kind regards,
Aqeela

From: Wian Spies <wian@hurterspies.co.za>

Sent: Sunday, 04 January 2026 18:24

To: Aqeela Bean <aqeela.bean@wits.ac.za>; Arno Kruger <Kruger@hurterspies.co.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Cc: Willie Spies <Willie@hurterspies.co.za>

Subject: RE: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

CAUTION: External email - verify sender before opening links or attachments. Report issues to ithelp@wits.ac.za.

Dear Aqeela,

Subject to CALS agreeing to file their written argument by **Friday 23 January 2026** in order to avoid delaying the main application, our client does not oppose the entry of CALS as an *amicus*.

Kind regards,

Wian Spies
Senior Associate / Senior Assosiaat

Tel: 012 941 9239 / 012 664 0708

Faks/Fax: 012 644 1997 • E-pos/E-mail: wian@hurterspies.co.za

Posadres/Postal Address: Posbus/PO Box 14505, Lyttelton, 0140

Adres/Address: Unionlaan 54 Union Avenue, Kloofsig, Centurion



From: Aqeela Bean <aqeela.bean@wits.ac.za>

Sent: Thursday, December 18, 2025 6:23 PM

To: Wian Spies <wian@hurterspies.co.za>; Arno Kruger <kruger@hurterspies.co.za>

Cc: Sithuthukile Mkhize <sithuthukile.mkhize@wits.ac.za>; Mazi Choshane <mazi.choshane@wits.ac.za>; Felix Quibe <felix.quibe@wits.ac.za>; Robert Krause <Robert.Krause@wits.ac.za>

Subject: REQUEST FOR CONSENT: INTERVENTION AS AMICUS CURIAE- CENTRE FOR APPLIED LEGAL STUDIES IN RE: CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

Dear Colleagues

Kindly note attached, request for consent in intervention as amicus curie for Centre for Applied Legal Studies in the matter : CAPE UNION MART INTERNATIONAL (PTY) LTD, PHILIP JOSEPH KRAWITZ // MAGHMUDA OCKARDS AND OTHERS CASE NO: 2025-092980.

We kindly request that you confirm receipt of this email and respond by **6 Jan 2026**.

Warm regards,
Aqeela

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