

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case no.: _____

In the matter between:

BLIND SA

Applicant

and

MINISTER OF TRADE, INDUSTRY AND COMPETITION

First Respondent

**MINISTER IN THE PRESIDENCY FOR WOMEN, YOUTH
AND PERSONS WITH DISABILITIES**

Second Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Third Respondent

**MINISTER OF INTERNATIONAL RELATIONS AND
COOPERATION**

Fourth Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fifth Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Sixth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Seventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

VOTELWA MAJOLA

do hereby make oath and state that:

- 1 I am an adult female, currently employed as the Chief Executive Officer of Blind SA, the applicant in this matter. I am authorised to initiate these proceedings on its behalf. In this regard, I attach a copy of a resolution of Blind SA's Executive Committee dated 8 September 2026 as annexure "**FA1**".
- 2 The contents of this affidavit fall within my personal knowledge, except where otherwise stated, or indicated by the context, and are to the best of my belief both true and correct.
- 3 Where I make legal submissions, I do so on the advice given by Blind SA's legal representatives, which advice I believe to be correct, and in respect of which I do not waive privilege.

INTRODUCTION

- 4 This application concerns a decision taken by the Minister of Trade, Industry and Competition ("the Minister" or "Minister Tau") to place on hold South Africa's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled ("the Marrakesh VIP Treaty") pending the enactment and coming into force of an Act of Parliament that amends the Copyright Act 98 of 1978.

- 5 The Marrakesh VIP Treaty, which came into force on 30 September 2016, requires contracting parties – in their national copyright laws – to “*facilitate the availability of [literary and artistic] works in accessible format copies for ... persons [with visual and print disabilities].*” This much is made clear in Article 4(1)(a) of the Treaty. And in terms of Article 5(1), contracting parties are required to facilitate the cross-border exchange of accessible format copies.
- 6 The provisions dealing with cross-border exchange, once domesticated, open up access to digital libraries across the world. But there is a catch: in order for a person in one part of the world to be able to access a title in a digital library in another, both countries must be party to the Marrakesh VIP Treaty. The largest digital libraries are based in the United States of America, which has signed and ratified the agreement; South Africa has not.
- 7 Ever since the Marrakesh VIP Treaty was adopted by the World Intellectual Property Organization (“WIPO”), on 27 June 2013, South Africa has made clear its intention to accede to the international agreement. That position has not changed. What has changed is the law, albeit not in the manner that would have been contemplated at the time. Instead of the coming into force of legislation that amends the Copyright Act, the change has been effected by an order of court.
- 8 But according to the Minister, South Africa cannot lawfully accede to the Marrakesh VIP Treaty until a Bill that appropriately amends the Copyright Act has been enacted, and is in force. He has advised Blind SA’s attorneys that this position is informed by legal opinions sought by the dtic from the Department of

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International Relations and Cooperation (“DIRCO”) and the Department of Justice and Constitutional Development (“the DoJ&CD”).

- 9 The amendment Bill contemplated by the Minister has yet to be tabled in the National Assembly, let alone published by his department (“the dtic”) for public comment. And he has yet to make public the nature and extent of this Bill. It is possible that it may be limited to giving domestic legislative effect to the Marrakesh VIP Treaty. But it is also possible that it may deal with other issues in respect of which interested parties have contested for years.
- 10 In contrast to the Minister, Blind SA takes the view that the Copyright Act has already been amended appropriately: by paragraphs 2 and 3 of the order of the Constitutional Court in *Blind SA v President of the Republic of South Africa and Others* [2025] ZACC 9; 2025 (7) BCLR 757 (CC) (“*Blind SA II*”), a unanimous judgment handed down on 7 May 2025, some 16 months ago. In relevant part, paragraphs 2 and 3 provide:

- “2. Pending the coming into force of legislation remedying the constitutional defects in the Copyright Act 98 of 1978 as identified by this Court’s judgment and order of 21 September 2022, the Copyright Act 98 of 1978 shall be deemed to include a section 19D reading as follows
3. The reading-in of section 19D shall remain in effect until the remedial legislation contemplated in paragraph 2 comes into force.”

- 11 The reference in paragraph 2 of the order to the “Court’s judgment and order of 21 September 2022” is a reference to its unanimous judgment in *Blind SA v Minister of Trade, Industry and Competition and Others* [2022] ZACC 33; 2023

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(2) BCLR 117 (CC) (*“Blind SA I”*), with the reference to section 19D being a reference to the full text of a proposed new section 19D contained in the Copyright Amendment Bill [B 13F—2017] (*“the CAB”*).

- 12 As noted by the Constitutional Court in *Blind SA II*, section 19D *“establishes a comprehensive scheme aligned with contemporary disability rights jurisprudence.”* Not only does it incorporate *“essential cross-border provisions mandated by the Marrakesh VIP Treaty, enabling international exchange of accessible format copies”*, but it also *“carefully balances accessibility requirements with copyright protections through specific attribution requirements and detailed safeguards against misuse, particularly in international transfers.”*
- 13 A copy of the CAB is attached as annexure **“FA2”**. It was the subject of further proceedings before the Constitutional Court, following its referral to that Court by the President in terms of section 79(4)(b) of the Constitution. In its judgment in *Ex parte President of the Republic of South Africa: In re Constitutionality of the Copyright Amendment Bill and the Performers' Protection Amendment Bill* [2026] ZACC 26, the Court found sections 12D(1)-(5) of the CAB unconstitutional.
- 14 I am advised that as a result of this finding, which had nothing to do with section 19D, the CAB cannot be assented to and signed into law in its current form. Nor is it automatically referred back to Parliament for the offending five subsections to be amended. Given the Constitutional Court’s silence on what should now happen, it must follow that the ball is back in the Minister’s court, awaiting a decision as to what will be tabled in the National Assembly, and by when.

- 15 Of course, the Minister is free to reintroduce the CAB with all of its current provisions except for those five subsections declared invalid by the Constitutional Court. I am advised that given the extensive consultation processes that Parliament has already conducted, as well as the Constitutional Court's findings in respect of all other provisions of the CAB that were the subject of the President's referral, this would be a constitutionally-appropriate route to take.
- 16 But even if the Minister follows this route, the version of the CAB that he tables will then be subjected to the ordinary processes by which Parliament develops and passes Bills, and thereafter sent to the President for his consideration. How a Bill is tagged has significant implications for how it is processed in the National Council of Provinces (NCOP). A section 76 Bill (such as the CAB) requires the participation of all nine provincial legislatures, which is time consuming.
- 17 Without further clarity from the Minister, it is presumably only once the section 76 process has been completed, whenever that may be, and however long it may take, that he will begin taking steps to facilitate South Africa's accession to the Marrakesh VIP Treaty. In the meantime, notwithstanding the inclusion in our law of section 19D of the CAB, persons with print and visual disabilities will continue to be denied access to literary and artistic works in accessible formats.
- 18 It is for this reason that Blind SA has been compelled to bring this application. Despite his stated intention to accede to the Marrakesh VIP Treaty, the inclusion of section 19D in our law by way of a reading-in remedy, and the urgent need to

bring an end to the multiple, ongoing violations of the rights of persons with visual and print disabilities, the Minister wishes to place accession on indefinite hold. That, with respect, is unlawful.

19 In what follows below, I address the following six issues in turn:

19.1 First, a description of the parties;

19.2 Second, the factual background to this application;

19.3 Third, the process in terms of which accession takes place;

19.4 Fourth, why accession to the Marrakesh VIP Treaty is required;

19.5 Fifth, Blind SA's grounds of review; and

19.6 Finally, appropriate relief.

THE PARTIES

20 The applicant is Blind SA, a registered non-profit organisation whose offices are located at 5 Fuchs Street, Alrode, Alberton. A copy of Blind SA's registration certificate is attached as annexure "**FA3**".

- 21 Blind SA's purpose is to end the cycle of poverty for blind South Africans by empowering them with knowledge and information through education, braille, and developmental services. Blind SA seeks to break down barriers, provide opportunities, and improve the quality of life for members of the blind community, to enable them to live the lives they choose.
- 22 Blind SA's objective, as set out in paragraph 2 of its constitution, is to promote the interests of all blind people in South Africa by (a) combatting poverty, (b) empowering blind people, and (c) *"[a]cting as a pressure group with regard to any matter concerning blind people."* A copy of Blind SA's constitution is attached as annexure **"FA4"**.
- 23 Blind SA brings this application in three capacities:
- 23.1 First, in the interest of the individual members of Blind SA's member organisations, each of whom has a personal interest in being able to obtain accessible format copies of literary and artistic works from digital libraries across the globe;
- 23.2 Second, in the interest of persons in South Africa with visual and print disabilities who are not members of such organisations, each of whom also has the personal interest described in paragraph 23.1 above; and
- 23.3 Third, in the public interest, as it seeks to give full and meaningful effect to the Constitutional Court's decisions in *Blind SA I* and *Blind SA II*.

24 The first respondent is the Minister, who is cited in his official capacity as the member of the national executive responsible for –

24.1 the administration of the Copyright Act; and

24.2 requesting the Speaker of the National Assembly (“the Speaker”) and the Chairperson of the NCOP to table the Marrakesh VIP Agreement for purposes of accession.

25 The Minister’s address for service is 77 Meintjies Street, Block A, Floor 3, Sunnyside, Pretoria.

26 The second respondent is the Minister in the Presidency for Women, Youth and Persons with Disabilities (“the Minister in the Presidency”), who is cited in her official capacity as the member of the national executive with political responsibility for the department mandated *“to lead on socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities through mainstreaming, advocacy, monitoring and evaluation.”* The Minister in the Presidency’s address for service is 268 Lillian Ngoyi Street, Fedsure Building, 1st Floor, Pretoria.

27 The third respondent is the Minister of Justice and Constitutional Development (“the Minister of Justice”), who is cited in her official capacity as the member of the national executive responsible for the government department that plays a

central role in the ratification of and accession to international agreements. The Minister of Justice's address for service is Momentum Centre, 17th Floor, 329 Pretorius Street, Pretoria.

- 28 The fourth respondent is the Minister of International Relations and Cooperation ("the DIRCO Minister"), who is cited in his official capacity as the member of the national executive responsible for the government department –

28.1 under whose direction South Africa negotiates and enters into international agreements; and

28.2 that plays a central role in the ratification of and accession to such agreements.

- 29 The DIRCO Minister's address for service is OR Tambo Building, 460 Soutpansberg Road, Rietondale, Pretoria.

- 30 The fifth respondent is the Speaker, who is cited in her official capacity as the head of the first of the two houses of Parliament that considers and votes on any resolution to accede to an international treaty in terms of section 231(2) of the Constitution. The Speaker's address for service is Parliament Building, Parliament Street, Cape Town.

- 31 The sixth respondent is the Chairperson of the NCOP, who is cited in his official capacity as the head of the second of the two houses of Parliament that

considers and votes on any resolution to accede to an international treaty in terms of section 231(2) of the Constitution. The Chairperson of the NCOP's address for service is also Parliament Building, Parliament Street, Cape Town.

- 32 The seventh respondent is the President, who is cited in his official capacity as the person who provides formal executive authorisation for acceding to (or ratifying) an international agreement, by signing a President's Minute. The President's address for service is The Presidency, Union Buildings, Government Avenue, Pretoria.

FACTUAL BACKGROUND

- 33 On 27 June 2013, WIPO adopted the Marrakesh VIP Treaty. The groundbreaking nature of the agreement was highlighted in the closing statement made on behalf of South Africa at the WIPO Diplomatic Conference held in Marrakesh:

"The name Marrakesh will forever resonate with this landmark treaty that seeks to address the balance between private and public interests in line with the principles of the United Nations Convention on the Rights of Persons with Disabilities and the Universal Declaration of Human Rights.

Persons with disabilities across the world in both developed and developing worlds have fought long and hard to have access to knowledge in accessible formats. This treaty creates an enabling legal framework to do so. It provides an impetus for a rights based approach and the full inclusion of disabled persons in society.

...

This treaty will have a meaningful impact on the lives of millions of blind and visually impaired persons both in the developed and developing world. The treaty will unlock access to education, news, cultural materials and entertainment.

...

The Marrakesh Treaty will forever be remembered as the first WIPO treaty that reaffirms exceptions and limitations in the copyright regime, but also as a means to end the book famine that has long plagued people with visual impairment and print disabilities.

South Africa is embarking on the process of reviewing its copyright legislation and will accede to the Treaty when all internal processes are concluded.

In conclusion, South Africa continues to attach great importance to a balanced approach between intellectual property right holders and public interest and it is within this context, that we reaffirm our support and commitment to this treaty.” (My emphasis)

- 34 A copy of the statement is attached as annexure “FA5”.
- 35 South Africa’s approach to accession has remained consistent: unless and until the Copyright Act has been amended to give domestic legislative effect to the Marrakesh VIP Treaty, the international agreement will not be acceded to. This approach was made clear by the dtic in a presentation on accession to WIPO treaties made to the Select Committee on Trade and International Relations in the NCOP on 26 March 2019:

“The [DOJ & CD] is of the view that the Marrakesh Treaty should only be acceded to once the Copyright Amendment Bill gets passed into law and

provided that it is passed with the provisions giving effect to the provisions of the Marrakesh Treaty.”

“DIRCO has also conformed with DOJ and CD’s legal opinion and requested to be furnished with confirmation that South African Law is complian[t] with the Treaty prior to facilitating accession.”

“On finalisation of the Copyright Amendment Bill, the process to accede to the Marrakesh Treaty will be resuscitated.”

36 A copy of the relevant slides of the presentation is attached as annexure “**FA6**”.

37 At that stage, no-one would have thought that the Copyright Act would effectively be amended by way of a judicial reading-in remedy that is both compliant with the Marrakesh VIP Treaty, and give full effect to its provisions. Rather, what the dtic must have had in mind is that the version of the CAB that was to be passed by the NCOP just two days later (on 28 March 2019) would be signed and assented to by the President, and then brought into force.

38 Regretfully, that did not happen. Instead, the Bill languished on the President’s desk for over a year. it would take more than 14 months for him to make and communicate his decision on the Bill’s fate. And he would do so only after Blind SA had approached the Constitutional Court for help. Brought in terms of section 167(4)(e) of the Constitution, Blind SA’s application sought – among others – an order directing the President to sign the Bill within ten days, and to ensure that “the implementation of section 19D ... not be deferred to a later date”. A copy of Blind SA’s notice of motion in that case is attached as annexure “**FA7**”.

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- 39 Less than three weeks later, in a letter to the Speaker dated 16 June 2020, the President expressed reservations about the constitutionality of the Bill (and the Performers' Protection Amendment Bill [B 24B—2016] ("the PPAB")). He referred both bills back to the National Assembly to be considered "*afresh so that their objectives can be realized speedily and without the risk of any constitutional challenge.*" A copy of the President's letter is attached as annexure "**FA8**".
- 40 By this time, the copyright law reform process had already been running for almost a decade. That process first gave rise to a draft Copyright Amendment Bill on 27 July 2015, which was published by the then Minister of Trade and Industry for public comment. Among other things, the draft Bill included a new section 19D headed "*General exceptions regarding protection of copyright work for a person with disability*". Copies of the relevant notice and proposed text of the new section are attached as annexures "**FA9**" and "**FA10**" respectively.
- 41 Mindful that the referral to the National Assembly was likely to delay the law reform process for some time, Blind SA initiated legal proceedings in this Court seeking various forms of relief, including a declarator regarding the Copyright Act's inconsistency with the Constitution, and an order –

"[d]eeming the Copyright Act to read as if it contains the proposed new section 19D contemplated by clause 20 of the Copyright Amendment Bill [B 13B—2017] ... pending a decision of the Constitutional Court, in confirmation proceedings, on the validity of the Copyright Act; and ... pending Parliament's remedying of the defect giving rise to the unconstitutionality, in the event the Constitutional Court confirms the declaration of invalidity".

42 Having largely secured the relief it sought in this Court, Blind SA initiated confirmation proceedings in the Constitutional Court in accordance with the provisions of section 172(2)(d) of the Constitution. In its judgment in *Blind SA I*, which was handed down on 21 September 2022, that Court declared certain provisions of the Copyright Act to be –

“unconstitutional, invalid and inconsistent with the rights of persons with visual and print disabilities, as set out in sections 9(3), 10, 16(1)(b), 29(1) and 30 of the Constitution, to the extent that these provisions ... limit the access of such persons to published literary works, and artistic works as may be included in such literary works, in accessible format copies.”

43 The Court also suspended the declaration of invalidity *“for a period of 24 months to enable Parliament to cure the defect in the Copyright Act giving rise to its invalidity”*, and, to cover the period of suspension, read in a new section 13A titled *“Exceptions applicable to beneficiary persons”*. Although more focused than the provisions of section 19D (as it read at the time), the new section 13A – in large part – sought to have the same effect. Notably, the court-crafted section 13A drew heavily on the Marrakesh VIP Treaty.

44 Although Parliament managed to pass the revised Bill well within time, it too – like its predecessor – languished on the President’s desk for months. By the time the 24-month period of suspension came to an end, which was accompanied by the automatic expiry of section 13A, the President had yet to make a decision in terms of section 79(4) of the Constitution. Once again, he had to be prodded into action, once again by Blind SA approaching the Constitutional Court directly.

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- 45 In an urgent application, Blind SA sought an order declaring that the President had “*failed to fulfil the constitutional obligation imposed on him by section 79(4) of the Constitution, read with section 237, in respect of the ... [CAB]*”. In addition, it sought an order directing him to assent to and sign the CAB, as he would have been entitled to do in terms of section 79(4)(a) of the Constitution. A copy of the notice of motion, dated 25 September 2024, is attached as annexure “**FA11**”.
- 46 In the alternative, Blind SA sought an order reading in the provisions of the Court’s previously-crafted section 13A, to remain in force pending the enactment and commencement of legislation that cures the constitutional defect identified in paragraph 2 of the Court’s order in *Blind SA I*. In the hearing of the matter held on 28 November 2024, much of the debate focused on whether it would be preferable to read in the final text of section 19D of the CAB.
- 47 On 10 October 2024, almost two weeks after Blind SA filed its urgent application, the President finally took a decision on the fate of the CAB, electing to refer it to the Constitutional Court in terms of section 79(4)(b) of the Constitution for a decision on its constitutionality. In a supplementary affidavit dated 18 October 2024, deposed to by one of Blind SA’s attorneys, the implications of this new development were explained:

“10 What is now abundantly clear is that the provisions of the proposed new section 19D (and related definitions), which address the constitutional defect identified by this Court in 2022, and would have come into effect immediately upon the CAB’s enactment and subsequent publication in the Government Gazette, do not form any part of the President’s referral.

And yet their coming into force is held hostage by the referral proceedings.

11 *The President's decision to refer the CAB means that it is no longer open to Blind SA to pursue the mandatory relief sought in prayer 3 of its notice of motion. And now that that prayer has correctly been abandoned, Blind SA accepts – as it must – that there is also no basis for pursuing the declaratory relief sought in prayer 2 on an urgent basis. That said, Blind SA remains concerned about the President's conduct, and is still of the view that he acted unlawfully.*

12 *That then leaves prayers 1, 4, and 5 in place, with prayer 4 no longer being sought in the alternative, but rather as the primary (and only) form of substantive relief still being sought by Blind SA. In short, Blind SA seeks an order that –*

12.1 *results in this application being heard in terms of rule 12, pursuant to directions issued by the Chief Justice;*

12.2 *brings back the provisions of section 13A, previously read in by this Court on an interim basis, to remain as part of the Copyright Act for as long as it takes for legislation that cures the constitutional defect identified by this Court in 2022 to be enacted, and to come into force; and*

12.3 *awards costs, including the costs of two counsel, on a punitive scale.” (Emphasis in original)*

48 A copy of the supplementary affidavit, without any annexures, is attached as annexure “**FA12**”.

49 In its judgment in *Blind SA I*, the Constitutional Court had confirmed the purpose of an earlier version of section 19D of the CAB as “*legislation intended to permit South Africa to ratify the Marrakesh Treaty*”. In its judgment in *Blind SA II*, the

Court chose to read in the provisions of section 19D of the CAB. These are now deemed to be part of the Copyright Act for as long as it takes for that statute to be amended. And as already noted, the Court is satisfied that section 19D –

49.1 *“provides a more comprehensive framework aligned with both constitutional imperatives and international obligations, particularly the Marrakesh VIP Treaty”;*

49.2 *“establishes a comprehensive scheme aligned with contemporary disability rights jurisprudence”;*

49.3 *“incorporates essential cross-border provisions mandated by the Marrakesh VIP Treaty, enabling international exchange of accessible format copies”; and*

49.4 *“carefully balances accessibility requirements with copyright protections through specific attribution requirements and detailed safeguards against misuse, particularly in international transfers.”*

50 In a letter to the Minister dated 17 July 2025, Blind SA and its attorneys noted that *“the section 19D exception now included in the Copyright Act incorporates those legislative changes required by the Marrakesh Treaty”*. We pointed out that *“South Africa is now perfectly positioned to ratify the Marrakesh Treaty, which will ensure and facilitate access to hundreds of thousands of titles for persons with disabilities in accessible formats through cross-border exchange.”*

- 51 A copy of the letter is attached as annexure “**FA13**”. I am advised that the letter refers to ratification in error, and that the correct process to be followed in respect of an international agreement such as the Marrakesh VIP Treaty (which South Africa has not signed) is accession. I am further advised that this inadvertent error is not material, and that those in government who read the letter would have understood its true import.
- 52 Towards the end of the letter we urged the dtic to prioritise ratification, and to advise us of two things: first, their “*progress thus far in ratifying the Marrakesh Treaty*”; and the steps they planned to take to complete the process. It would take the Minister almost eleven months to respond, by which time Blind SA’s attorneys had also sought to engage the Department of Women, Youth and Persons with Disabilities (“DWYPD”), and to meet with all relevant parties.
- 52.1 In a letter to the Minister in the Presidency dated 29 October 2025, Blind SA’s attorneys identified the steps that they had taken to engage with the dtic, including their various efforts in August and September 2025 to follow up on their letter to Minister Tau dated 17 July 2025. In that letter, a copy of which is attached as annexure “**FA14**”, our attorneys explained the importance of accession to the Marrakesh VIP Treaty.
- 52.2 After noting key aspects of the DWYPD’s mandate, the letter ended with the following request:

“SECTION27 and Blind SA call on the DWYPD to play a proactive role in facilitating the immediate ratification of the Marrakesh Treaty by coordinating and supporting engagement between the DTIC, DIRCO, and the Department of Justice and Constitutional Development. Ratification of the Treaty is essential to realising the rights of persons with disabilities, addressing the ‘book famine’, and ensuring South Africa meets its international human rights obligations. We trust that the DWYPD’s involvement in the matter will prompt the expeditious finalisation of the process.”

- 52.3 In responding to a follow-up email dated 11 November 2025, Ms Simmi Pillay – director of planning, monitoring, evaluation and research in the DWYPD – advised that the department would “*revert shortly*”. A copy of her email exchange with our attorneys is attached as annexure “**FA15**”.
- 52.4 Our attorneys received a response two months later. In an email dated 13 January 2026, the DWYPD’s Dr Praveena Sukhraj-Ely advised that the departments had prepared a letter to share with the dtic, and that the two departments’ ministers would be meeting to discuss the way forward. A copy of the email is attached as annexure “**FA16**”. Since July, Dr Sukhraj-Ely has been the acting Director-General of DWYPD.
- 52.5 Just a week later, on 20 January 2026, our attorneys received an other email from the DWYPD, noting that the two ministers had met, and that they would receive a report on the outcome of the meeting. No such report was ever received from the DWYPD. A copy of the email is attached as annexure “**FA17**”.

52.6 In a letter dated 30 March 2026, which was addressed to Minister Tau, the Minister in the Presidency, their deputies, and various senior officials in the dtic and the DWYPD, our attorneys requested two things:

52.6.1 First, *“a report outlining the outcomes of the recent meeting”* between the two ministers; and

52.6.2 Second, a meeting with both departments *“to discuss the current status of the accession process and to determine the next steps.”*

52.7 A copy of the letter is attached as annexure **“FA18”**.

53 In a letter dated 10 June 2026, responding to our attorneys’ *“correspondence of 17 July 2025, follow up correspondence dated 30 March 2026 and other follow up emails regarding the accession to the Marrakesh Treaty”*, Minister Tau recorded that the dtic had advised the DWYPD of its *“position to adhere to the legislative process of the Copyright Amendment Bill (the Bill) underway.”*

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54 In his letter, a copy of which is attached as annexure **“FA19”**, the Minister set out the dtic’s position on accession:

“The feedback is that the status of the legislative process on the Bill has not changed since the President has referred the Bill to the Constitutional Court. The Department has sought legal opinions from the Department of Justice and Constitutional Development and the Department of International Relations and Cooperation. The legal opinions have advised of the importance of the Bill to be enacted and to be in force prior [to] accession to the Treaty. The Department is encouraged that the remedy to read in section 19D of the Bill provided by the Constitutional [C]ourt will remain in place until the domestic law is in force. We

have been advised by both Departments of the importance to ensure that the Bill is amended in order for South Africa to meet its international obligations.

the dtic remains committed to advancing the accession to the Marrakesh Treaty. We note the urgency and importance of the accession to the Treaty but we must also ensure consistency and adherence to the legal processes.”

55 On 26 June 2026, the Constitutional Court handed down its judgment on the constitutionality of the CAB. Recognising the implications of the Court’s limited finding of unconstitutionality (in respect of five subsections of section 12D), our attorneys sent a further follow-up letter on 9 July 2026. In their letter, a copy of which is attached as annexure “FA20”, they noted that it would be “*both morally and legally untenable*” for Blind SA and its members to have to wait even longer:

“6. *There is nothing in the referral judgment that obliges you to table the CAB, either at all, or within any particular timeframe. That said, there remains an obligation on Parliament to pass legislation that remedies the constitutional defects in the Act identified in the Court’s order of 21 September 2022 in Blind SA I. If Parliament is to discharge that obligation, you will need to table an appropriate amendment Bill.*

7. *At this stage, we do not know whether you intend to table a Bill that deals only with the issues addressed by section 19D (which could be fast-tracked through Parliament), or an amended version of the CAB that addresses the Court’s findings on sections 12D(1)-(5), whilst leaving all other provisions untouched. We also do not know how long it will take for a Bill to be tabled, processed, and assented to and signed, and to come into force.*

8. *What we do know is that whatever you decide, there will inevitably be a delay in the coming into force of amendments to the Act dealing with the constitutional defects identified in Blind SA I. Having waited for 13 years since the Marrakesh VIP Treaty was adopted, Blind SA and its members*

are now expected to wait even longer for the state to discharge its constitutional obligations. This is both morally and legally untenable.”

56 The letter also set out the legal basis upon which our attorneys submitted that the Minister had been wrongly advised:

- “9. *It is with this in mind that we record our disagreement with the position taken in your letter dated 10 June 2026, namely that accession to the Marrakesh VIP Treaty must await the enactment of the CAB. As we have not been provided with copies of the two opinions on which you rely, we do not understand the basis upon which your assertion is made. We understand, and are advised, that this position has no basis in law.*
10. *In our view, South Africa already has the domestic legislative provision needed to give effect to the Marrakesh VIP Treaty’s access requirements for blind, visually impaired, and otherwise print-disabled persons: the text of section 19D that was read into the Act in Blind SA II. Continuing to insist that accession is contingent on the enactment of the CAB will unnecessarily delay the extension of the benefits of the Marrakesh VIP Treaty to those it was designed to serve.*
11. *A delay in accession is not a neutral administrative decision. Rather, it constitutes a continuing infringement of the rights to equality, dignity, and access to information of blind, visually impaired and print disabled persons, who remain unable to access published works on the same terms as everyone else.*
12. *Accession to the Treaty would give blind, visually impaired, and print-disabled persons in South Africa access to the cross-border exchange of accessible-format works, including through international bodies such as Bookshare and the Accessible Books Consortium, which, between them, hold millions of accessible-format titles.*
13. *Without accession, South Africans who are blind, visually impaired or otherwise print disabled remain excluded, regardless of what domestic*

exceptions may exist. Any further delay in acceding to the Marrakesh VIP Treaty unreasonably and unjustifiably compounds the harm already caused by the delay in finalising the CAB."

- 57 The letter ended with a request that the Minister reconsider his position on the accession process, and advise our attorneys of his plans *"in this regard"*:

"We remain available to meet to discuss next steps. Should it be made clear that accession will remain on indefinite hold, or should you fail to respond timeously, our client may have no option but to approach a court for appropriate relief."

- 58 The Minister was asked to respond *"by no later than the close of business on **Friday, 17 July 2026**"*. The following day, Ms Marlene Ernest – a director in the Office of the Minister – confirmed receipt of the letter to Minister Tau. A copy of her email is attached as annexure **"FA21"**. To date, there has been no substantive response to the letter.

- 59 In an email dated 20 July 2026, a copy of which is attached as annexure **"FA22"**, our attorneys followed up on their unanswered letter:

"Dear Minister Tau,

We refer to our letter dated 9 July 2026, attached again for ease of reference.

In light of the ongoing delay and its impact on the rights of blind, visually impaired and print-disabled persons, we respectfully request your urgent attention to this matter.

We look forward to your urgent response.

Sincerely,
Faatima Laher

60 That email solicited a quick response from the Minister's spokesperson, Mr Kaamil Alli. In his email also dated 20 July 2026, a copy of which is attached as annexure "FA23", Mr Alli stated that he would *"follow up with the team on delays."* To date, neither they nor Mr Alli have responded, despite being sent a follow-up email on 31 July 2026 asking by when our attorneys *"might expect a substantive response from the Department"*. A copy of that email is attached as annexure "FA24".

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61 In another email to the dtic, dated 4 August 2026, Blind SA's attorneys once again asked by when they could expect a response to their email dated 20 July 2026. In Ms Ernest's response received shortly thereafter, they were advised that *"[t]he matter is currently under consideration", and that "[a] response will be provided in due course."* A copy of the email exchange with Ms Ernest is attached as annexure "FA25".

62 To date, no further response has been received.

THE PROCESS IN TERMS OF WHICH ACCESSION TAKES PLACE

63 The Constitution governs South Africa's relationship with international law. When the South African government decides that it intends to accede to a treaty that is already in force, as is the case with the Marrakesh VIP Treaty, there are broadly two types of procedures that it needs to set in motion: domestic, and

international. These procedures are governed by international law, constitutional law, and national government policy.

64 The international procedures include the deposit of an instrument of accession with the treaty depositary by a full powers representative of the government, signifying that South Africa consents to be bound as a party to the treaty on the international plane. I am advised that these procedures are strictly governed by international law – the Vienna Convention on the Law of Treaties in particular.

65 International law does not ordinarily prescribe the domestic procedures that must be followed to give domestic effect to a treaty to which a state seeks to become a party. It leaves to the discretion of every state how and (crucially) when to determine to give such effect to a treaty to which it intends to accede, in line with its own legal system. This process is known as domestication.

66 International law is silent on whether domestication should take place first, before accession, or whether accession should take place first, and then domestication within a reasonable period of time to ensure that a state is not in breach once it deposits its instrument of accession on the international plane. It is domestic law that ordinarily prescribes these steps.

67 What then does South African law say about the domestic procedures to be followed for the Marrakesh VIP Treaty to bind the country on the domestic plane? Since the Marrakesh VIP Treaty is one that allows states to sign and accede to it, it would be characterised as a section 231(2) treaty in the constitutional

scheme: an international agreement that *“binds the Republic only after it has been approved by resolution in both the National Assembly and the ... [NCOP]”*.

68 A close reading of the Constitution indicates that while it is the national executive that is empowered to negotiate and sign treaties on the international plane, in terms of section 231(1), it is Parliament that is obliged, in terms of section 231(2), to table a resolution (in each of its two houses) to approve a treaty in order to bind South Africa domestically.

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69 There is nothing in the text of the Constitution that requires those resolutions to be tabled and approved either prior to the act of depositing an instrument of accession on the international plane, or after such deposit. Equally, there is nothing in section 231(4) that requires domestication to take place either prior to or after Parliamentary approval contemplated in section 231(2), or indeed the deposit of an instrument of accession on the international plane.

70 That said, I am advised that while not constitutionally required, it is nevertheless reasonable for the dtic to insist that domestic procedures for accession be followed prior to the international procedures described above. This position aligns with DIRCO's practice as detailed on pages 19 and 61 of its *2019 Directive for the Conclusion of International Agreements* (*“the 2019 DIRCO Directive”*), and Parliament's practice as detailed in its *2011 Guide to Tabling of Papers in Parliament*. Copies of the two documents are attached as annexures **“FA26”** and **“FA27”** respectively.

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- 71 In sum, these domestic procedures may broadly be understood in two parts: the tabling of the treaty in Parliament for its approval, and the domestication of the treaty in South African law. It is here that Blind SA and the dtic are at odds. What is clear, as I have already noted, is that the treaty has been domesticated; the Copyright Act has been sufficiently transformed through the Constitutional Court's order to meet the requirements set out in Articles 4(1)(a) and 5(1)(a) of the Marrakesh VIP Treaty.
- 72 Regarding the tabling of an international agreement in Parliament, the 2019 DIRCO Directive (and the DIRCO website) set out the following steps to be taken:
- 72.1 First, the relevant department (here the dtic) must request the State Law Adviser to the DOJ&CD to provide a legal opinion concerning the consistency of domestic law with the treaty to which accession is sought.
- 72.2 Second, the same department must request the State Law Adviser to DIRCO to provide a legal opinion considering the consistency of the treaty with South Africa's international obligations and international law.
- 72.3 Third, the dtic must submit these legal opinions, a cabinet memorandum, and an indication of whether there are any self-executing provisions, to the Cabinet Secretariat (for Cabinet approval) and the Presidency (to obtain a President's minute).

72.4 Fourth, once in receipt of Cabinet approval and a signed President's minute, the dtic must then table the treaty in Parliament for approval.

72.5 Finally, once Parliament approves the treaty, the dtic must then approach DIRCO for assistance with depositing the instrument of ratification on the international plane.

73 A copy of the undated DIRCO website entry, titled "Ratification/accession", is attached as annexure "FA28".

ACCESSION TO THE MARRAKESH VIP TREATY IS REQUIRED

74 While one key component of the Marrakesh VIP Treaty is for states parties to transform their domestic copyright laws to permit accessible format shifting within their national borders, a second equally essential component is international cooperation aimed at increasing access to already-available accessible format copies of works under copyright. As a 2016 WIPO leaflet explains (at page 3):

"The Treaty has a single objective: to increase access to books, magazines and other printed materials for people with print disabilities. It aims to achieve this by making it easier for accessible copies to be created and shared across international borders." (My emphasis)

75 A copy of the leaflet is attached as annexure "FA29". If given legal effect, the mechanisms for sharing across borders is likely to have a significant impact on people with disabilities living in resource-constrained conditions.

- 76 The preamble to the Marrakesh VIP Treaty also highlights “*the need to both expand the number of works in accessible formats and to improve the circulation of such works*”, recognising the fact that –

“many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts”. (My emphasis)

- 77 While the Constitutional Court’s reading-in of section 19D of the CAB in *Blind SA II* should be hailed as a landmark development, going a long way towards rectifying the constitutional defects identified in *Blind SA I*, it cannot – without accession – deal decisively with the “book famine”.

- 78 At the moment, our access to accessible format works is limited to resource-intensive and time-consuming options: either fresh accessible copies made or shared within South Africa; or a case-by-case request (by an individual or an authorised entity) to entities abroad requesting access to specific works. Once the entity abroad receives such a request, it must go through a process of verification that South Africa’s copyright laws and its own country’s copyright laws permit cross-border exchange of accessible works before providing such access. This causes further delay, and uncertainty of eventual and timely access.

79 Acceding to the Marrakesh VIP Treaty would do what the inclusion of section 19D in our law cannot do alone:

79.1 It would expand access to the universe of accessible materials that are already available internationally (which itself is a fraction of the material that people without disabilities have access to), giving effect to the cross-border exchange provisions in section 19D in a meaningful way that aligns with South Africa's obligations to ensure that intellectual property laws do not act as an unreasonable barrier to access under the United Nations Convention on the Rights of Persons with Disabilities.

79.2 In doing so, it would reduce duplication and the unnecessary use of scarce funds by resource-constrained organisations (like Blind SA) to make accessible format copies of works that are already available in such formats abroad that we could simply borrow or share. Put simply, it would ensure that persons with visual and print disabilities, and in particular those living in poverty, have access to works under copyright.

79.3 It would significantly reduce delays and uncertainty of access, and increase timely and effective access, by clarifying to the 16 signatories and 89 states parties to the Marrakesh VIP Treaty that South Africa's domestic laws permit cross border exchange in a manner that is compliant with the same treaty standards that bind them.

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79.4 Practically, it would allow authorised entities in South Africa (such as Blind SA) to provide direct and immediate access for every individual with a visual and print disability who is a member of the authorised entity, to a pooled (and ever-growing) catalogue of accessible works compiled by the Accessible Book Consortium (“ABC”), to which contributions are made – in large part (although not exclusively) – by authorised entities located in states that are party to the Marrakesh VIP Treaty.

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79.5 Set up by WIPO and partners, the ABC describes its role as “*support[ing] the goals of the Marrakesh VIP Treaty at a practical level*”. It describes its ever-growing catalogue as follows:

“A participating authorized entity contributes its catalogue and may request accessible digital books contributed by other organizations for the purpose of supplementing its collection and distributing to people who are blind, visually impaired or otherwise print disabled”.

79.6 A copy of this excerpt from ABC’s website is attached as annexure “**FA30**”.

79.7 One of the key difficulties for persons with visual and print disabilities in South Africa today is that while an authorised entity may access the catalogue, individuals cannot benefit from direct access to the ABC book service, as ABC requires accession to the Marrakesh VIP Treaty by the state in which the authorised entity (and its members) is located as a precondition for access. The excerpt from ABC’s website to which I have already referred makes this clear.

80 For these reasons, I submit that it would be irrational to delay accession to the Marrakesh VIP Treaty in circumstances where the domestic law has already been sufficiently transformed, albeit not in the manner contemplated by the Minister. All that such a delay achieves is to place on ice, indefinitely, the full and meaningful realisation of our rights, as entrenched in the Constitution, and as recognised under binding international human rights law.

BLIND SA'S GROUNDS OF REVIEW

81 At the heart of this matter lies the Minister's position, purportedly based on legal opinions provided by the DoJ&CD and DIRCO, that unless and until Parliament amends the Copyright Act to give legislative effect to the Marrakesh VIP Treaty, the accession process cannot begin. In his letter to Blind SA's attorneys dated 10 June 2026, he states that the amendment is required "*in order for South Africa to meet its international obligations*".

82 I am advised that such advice is incorrect for at least two reasons:

82.1 First, there is no requirement under the Marrakesh VIP Treaty (or indeed the Constitution) for the Copyright Act to be amended prior to acceding to the international agreement. That said, Blind SA has always been willing to accept the state's pragmatic desire to have its legislative ducks in a row before embarking on the accession process. Practically, this appears to make much sense.

82.2 Second, the legal effect of the reading-in order in *Blind SA II* was to amend the Copyright Act in the manner that Parliament has chosen, was approved by the Constitutional Court, and gives domestic effect to the Marrakesh VIP Treaty. Accordingly, the eventual amendment of the Copyright Act by way of an amendment Bill, at some indeterminate time in the future, should have no practical effect on the text of section 19D; it should remain substantially (if not entirely) the same.

83 I am further advised that the Minister's position constitutes a material error of law that is reviewable under the principle of legality, in particular its requirements of both lawfulness and rationality. (*Blind SA* does not rely on the Promotion of Administrative Justice Act 3 of 2000 because it has been advised that the type of decision made by the Minister does not constitute administrative action as contemplated by that Act.)

84 The Minister's decision gives rise to an error of law because it is based on a misunderstanding of the law: that the legislative framework does not yet give domestic effect to the provisions of the Marrakesh VIP Treaty. This error of law is material because it lies at the heart of the decision: but for the error, the Minister would not be insistent on the purported need for the Copyright Act to be amended by an Act of Parliament.

85 Just as the Constitutional Court is empowered to strike down unconstitutional legislation, it is equally empowered to read provisions into statutes where

deemed necessary (and appropriate) to remedy a constitutional defect. There is no material difference between the legal effect of a Constitutional Court order reading in or striking down legislation, and the amendment of that legislation by Parliament; it is all law in the Republic. The Minister's error is thus grave – it irrationally misconstrues the effect of the Constitutional Court's orders.

- 86 In the end, what we have here is an executive decision with adverse consequences for persons with visual and print disabilities, implicating a host of entrenched fundamental rights, that was taken on the basis of a fundamentally flawed understanding of the law. That, I am advised, renders the decision both unlawful and irrational, providing the basis for this Court to review and set aside the Minister's decision.

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APPROPRIATE RELIEF

- 87 I am advised that once a court determines that a decision is unlawful or irrational (or both), the provisions of section 172(1) of the Constitution govern the grant of appropriate relief. In so far as it is relevant to this case, that section provides that *"[w]hen deciding a constitutional matter within its power, a court ... must declare that any ... conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and ... may make any order that is just and equitable"*.
- 88 I am advised that if the Minister's decision to place the accession process on hold indefinitely is found to have breached the principle of legality, it must be declared invalid in accordance with section 172(1)(a) of the Constitution. The

only just and equitable order that could then follow is one that results in the accession process moving forward. That is what prayers 3 and 4 of the notice of motion seek to do. They also seek to ensure openness and accountability.

89 Collectively, prayers 3 and 4 seek to ensure –

89.1 the development of a reasonable plan that results in the Marrakesh VIP Treaty being tabled in Parliament;

89.2 the taking of reasonable steps to implement the plan within a reasonable period of time; and

89.3 that Blind SA is provided with a copy of the plan, as well as regular updates on its implementation.

90 In the alternative to prayer 1, which deals with the reviewing and setting aside of a decision to place accession on hold indefinitely, prayer 2 contemplates the reviewing and setting aside of any failure on the part of the Minister to take all reasonable steps aimed at ensuring timely accession to the Marrakesh VIP Treaty. Prayer 2 would only come into force should this Court be unable to determine whether the Minister has in fact taken any decision.

91 At this stage, the correspondence between the dtic and Blind SA's attorneys strongly suggests that the Minister has taken a decision to place accession on hold indefinitely, regardless of the impact of the Constitutional Court's judgment

in the CAB referral. I am advised that should the record delivered in terms of rule 53 show that a final decision in this regard has yet to be taken, prayer 2 of the notice of motion would then kick in, based on our law's recognition that a failure to take a decision may itself constitute a reviewable decision.

CONCLUSION

92 In the result, I pray for the relief sought in the notice of motion.

VOTELWA MAJOLA

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at _____ on this the ____ day of **SEPTEMBER 2026**.

COMMISSIONER OF OATHS