

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

Case No: 24561/21

In the matter between:

PROF. J PIETER PANSEGROUW

1st Applicant

SOLIDARITY

2nd Applicant

and

DEPARTMENT OF WATER AND SANITATION

1st Respondent

**THE MINISTER OF HUMAN SETTLEMENTS WATER
AND SANITATION N.O.**

2nd Respondent

ENGINEERING COUNCIL OF SOUTH AFRICA

3rd Respondent

FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

DEBORAH MOCHOTLHI

hereby declare under oath as follows:

1.



- 1.1 I am a major female, the Acting Director-General of the Department of Human Settlements, Water and Sanitation, of address Sedibeng Building, No. 185 Francis Baard Street, Pretoria, Gauteng.
- 1.2 The facts deposed to herein are within my personal knowledge, save where otherwise stated and are true and correct.
- 1.3 I am duly authorised to depose to this Affidavit on behalf of the First Respondent (*"the Department"*) and the Second Respondent (*"the Minister"*) and to do all things necessary to oppose the Applicants' Application.
- 1.4 Insofar as I make submissions of a legal nature, I have done so on the advice of the First and Second Respondents (to be collectively referred to as *"the Respondents"* where applicable) legal representatives and have accepted that the advice is in accordance with the prevailing law in South Africa.

2. Before dealing with the merits of the Application, it is necessary to deal with certain *in limine* aspects, as is set out in more detail hereinafter.

A. NON-JOINDER OF NECESSARY PARTIES

3. I have been advised by the legal representatives of the Respondents that the Applicants' application is materially defective for failing to have

joined all parties who have a direct and substantial interest in the matter. These parties are:

- 3.1 the President of the Republic of South Africa;
 - 3.2 the Minister for International Relations and Cooperation;
 - 3.3 the Government of the Republic of Cuba; and
 - 3.4 the 25 Cuban Engineers who form the subject of this Application.
4. I now proceed to motivate the direct and substantial interest of these parties.
5. The President of the Republic of South Africa (*"the President"*) has a direct and material interest as the Head of the Executive of the Republic of South Africa, as provided for in section 83 of the Constitution of the Republic of South Africa, 1996 (*"the Constitution"*). Furthermore, section 85 of the Constitution provides that the Executive Authority of the Republic of South Africa vests in the President.
6. Section 85(2) empowers the President to exercise executive authority, together with the other members of the Cabinet through the development and implementation of national policy.

7. Since the advent of the democratic dispensation in South Africa after the first democratic elections were held, South Africa has fostered a close relationship with the Republic of Cuba ("*Cuba*"). A Cooperation Agreement was entered into between Cuba and South Africa during the first term of the Democratic Government of South Africa under the leadership of the late President Nelson Mandela.
8. This Cooperation Agreement has been extended from time to time and is still valid between the countries of Cuba and South Africa.
9. The current cohort of Cuban Engineers are working in South Africa in terms of a Cooperation Agreement concluded between Cuba and South Africa on the cooperation in the fields of water resources management and water supply ("*the Agreement*"). The Agreement was concluded at Johannesburg on 6 February 2020, and the Minister represented the Government of the Republic of South Africa in the conclusion of the Agreement.
10. A copy of this Agreement is annexed hereunto as annexure "**AA1**" and the whole of the content of the Agreement is incorporated into this Affidavit through reference.
11. I will return in more detail to the provisions contained in the Agreement, but specifically refer the above Honourable Court to Article 4, secondment of specialists, as contained in the Agreement.

12. Being an Agreement concluded with a foreign government, it involves the foreign policy of the Government of South Africa. Therefore, the Minister of International Relations and Cooperation also has a direct and substantial interest in the matter.
13. This Application has already caused considerable embarrassment to the Government of the Republic of South Africa in Cuba and to the Cuban Government. Any fallout from this Application will be dealt with by the Department of International Relations and Cooperation who will also keep the Cuban Government apprised of the developments in this matter.
14. Furthermore, it behoves no argument that the Cuban Government is a directly affected entity in this Application. The 25 Cuban Engineers are in South Africa on the strength of the Agreement, annexed hereunto as annexure "AA1". Being party to this Agreement, the Cuban Government no doubt should have been cited as a party in this Application.
15. Furthermore, it is equally evident that the 25 Cuban Engineers should also have been cited as Co-Respondents.
16. The Applicants seek drastic and far-reaching relief against the 25 Cuban Engineers in prayers 2, 3 and 4 of the Notice of Motion. The effect of the order will be that the Cuban Engineers will be summarily rendered unemployed, with no residence or any income of whatsoever

nature. It is, therefore, self-evident that they should at least have been granted the opportunity to be heard by the above Honourable Court before such a drastic order is made.

17. Therefore, at the hearing of the Application argument will be advanced on behalf of the Respondents that until such time as all interested parties have been joined in this Application, that the Applicants cannot be heard and the above Honourable Court should strike the matter from the roll with costs.

B. ABSENCE OF URGENCY

18. Succinctly summarised the Applicants base the alleged urgency of the Application on the following allegations:

- 18.1 that the Department will continue to utilise monies that have been ringfenced for the Cuban Engineers' project to pay the salaries and other expenses pertaining to the Cuban Engineers;
- 18.2 that such monies could and should have been paid to qualified South African engineers following an appropriate and Constitutional procurement process; and
- 18.3 therefore, the Respondents have breached the right of the Applicants and the citizens of South Africa to efficient, fair and transparent governance.

19. No allegation whatsoever is made by the Applicants why the Applicants will not receive proper redress in the ordinary course. But it goes further than this, namely the Applicants have failed to make out a case why, pending a Review Application (which is, with respect, doomed to failure) an interim order should be granted. I will deal with this aspect in more detail hereinafter.
20. It is evident that the main complaint of the Applicants is based on the payment which the Department will make to the Cuban Engineers in terms of the Employment Contracts, and, although commercial considerations may render an Application urgent, this is not the kind of Application where the payment of monies, which the Department is contractually bound to pay, can constitute urgency.
21. Furthermore, and as is set out in more detail hereinafter, the Respondents have not breached any of the provisions of the Engineering Professions Act, No. 46 of 2000 (*"the EPA"*) when deploying the engineers from Cuba.
22. Over and above the absence of any sufficient ground to render the matter urgent, the Applicants furthermore abuse the provisions of Rule 6(12) of Uniform Rules of Court and the Practice Directives of this Honourable Court in the manner that this Application was brought. The Application was served on Wednesday 19 May 2021 at approximately 12h40. Thereafter, the matter had to be allocated to

one of the attorneys in the Office of the State Attorney and after the matter was allocated to the responsible State Attorney, counsel to represent the Respondents were identified and briefed on Thursday 20 May 2021.

23. Due to prior commitments by both counsel the first available opportunity a consultation could be conducted was on Saturday 22 May 2021. The attendance of the consultation was furthermore complicated by the COVID-19 pandemic. Due to risk factors, some of the witnesses could not attend a physical consultation, and the consultation was therefore conducted physically with some of the officials of the Department, and other officials dialled in to an electronic platform.
24. During the consultation, which lasted for several hours, certain documentation and information was identified to be supplied to the Respondents' legal representatives to prepare the Opposing Affidavit. An email setting out the information and documentation was circulated by counsel to the State Attorney and the officials during the course of Saturday evening 22 May 2021.
25. As is common knowledge the State machinery normally does not operate over a weekend, but due to the urgency of the matter, and the fact that the documentation and information was requested on a very urgent basis, the officials of the Department attempted their level best

in order to obtain and furnish same to Respondents' legal representatives.

26. In the meantime the drafting of the Opposing Affidavit, in a rough draft format was commenced with during the course of Saturday evening of 22 May 2021, and, after receipt of the information and documentation finalised at the first available opportunity.
27. The Respondents have been gravely prejudiced by the manner in which this Application was brought and the fact that the Respondents were granted a period of 4 court days to give notice of their intention to oppose the Application, and to serve and file any Answering Affidavit. Due to the magnitude of the Application (consisting of approximately 200 pages) as well as the importance of the matter, it was grossly unreasonable and an abuse of the process to have allowed the Respondents such a short period of time to prepare the Answering Affidavit.
28. During the hearing of the matter reference will be made by counsel representing the Respondents to the well-known judgment of the Honourable Mr Justice Weppener, sitting in the Gauteng Local Division, Johannesburg regarding this kind of conduct by an applicant in an urgent Application.
29. Therefore, having regard to the foregoing, it is respectfully submitted that the above Honourable Court should, over and above the fact that

there is a material non-joinder, also strike the matter from the roll with costs due to the absence of urgency and the abuse of the process by the Applicants.

C. THE APPLICANTS FAILED TO PROVE THAT THEY ARE ENTITLED TO ANY RELIEF

30. The Applicants purport that this Application is an application to obtain an Interim Interdict pending the institution of a Review Application. It is not even set out in the Notice of Motion what alleged decision the Applicants wish to take on review, or why the aforesaid decision is reviewable.
31. But even assuming (without conceding) that the Applicants will institute an application for Review, that is not enough to entitle the Applicants to bring an Application for relief pending the outcome of the Review application. More is required of the Applicants. The Applicants have to establish that unless interim relief is granted, the Applicants will suffer irreparable harm if no interim relief is granted, and should the Applicants succeed with the application for review. The Applicants failed to establish such a case and in fact such a case cannot be made out.
32. The high watermark of the Applicants' case is the allegations that the Department will continue to make payments for the expenses and

salaries of the engineers from Cuba and that it should be stopped immediately.

33. However, in the event of the Applicants instituting a review application, and in the unlikely event that such an application is upheld, the above Honourable Court has the power to make whatever order it deems appropriate under the circumstances of the matter, in terms of the provisions of section 8(1) of the Promotion of Administrative Justice Act, 3 of 2000 (*“the PAJA”*). No allegations have been made by the Applicants why, they cannot in the event of a review application being brought, and in the event of it being upheld (which is denied), why an order pertaining to the payment of salaries and expenses to the engineers from Cuba will not suffice.
34. In fact, the Applicants seek that the above Honourable Court, sitting as an Urgent Court, usurp the powers of the Court which will, in the event of the review application being brought, hear such review application.
35. Therefore, the Applicants failed to establish a case that the Applicants will not receive proper redress if they simply brought the review application without having resorted to this Application.
36. Further argument will be advanced on behalf of the Respondents in this regard at the hearing of the Application.

**D. THE RELIEF SOUGHT IN PRAYERS 2, 3 AND 4 ARE NOT INTERIM
IN NATURE, BUT FINAL**

37. It is trite that the above Honourable Court will, when assessing whether the relief sought by the Applicants is interim in nature, not have regard to the manner in which the relief is couched, but whether the effect of such relief is interim or final in nature. The Applicants premise their case solely thereon that the relief sought is interim in nature.

38. It is not, because:

38.1 the Applicants seek relief that the Respondents be interdicted from proceeding with or implementing any portion of the Agreement entered into between the Cuban and South African Governments in respect of the engineers from Cuba;

38.2 furthermore, the Applicants seek an order interdicting the engineers from Cuba from conducting any work on the water and sanitation infrastructure of South Africa; and

38.3 interdicting the Respondents from making any payment or continue to make any payment towards the engineers from Cuba for accommodation, goods, services and/or salaries and/or any or all costs associated with the Cuban Engineers.

39. Properly analysed:

- 39.1 the Agreement concluded between the Governments of Cuba and South Africa, is therefore brought to an abrupt halt;
- 39.2 the engineers from Cuba then may not render any services to the Department in respect of the water and sanitation infrastructure of the Department;
- 39.3 the contract of service/employment of the Cuban Engineers is terminated; and
- 39.4 the engineers from Cuba will not be paid, and the Respondents are interdicted from paying any amounts pertaining to the remuneration and expenses of the aforesaid engineers.
40. It is evident that the effect of this relief is final in that it renders the engineers summarily unemployed, without an income and with no access to housing, food and other necessities in order to survive in South Africa.
41. It therefore behoves no argument that the relief sought by the Applicants is final in nature, and the Applicants have failed to even attempt to establish a case that the Applicants are entitled to a final order.

42. Therefore, and for this reason alone, and in the event of the above Honourable Court entertaining the merits of the Application, it should be dismissed on this basis alone with costs.

E. THERE IS NO ADMINISTRATIVE DECISION THAT CAN BE TAKEN ON REVIEW

43. Properly analysed it is evident that the Applicants seek relief pertaining to the employment of the engineers from Cuba.

44. As already set out hereinbefore the employment of the Cuban Engineers is governed by the Agreement concluded between the governments of Cuba and South Africa which Agreement is dated 20 February 2020.

45. The preamble to the Constitution provides *inter alia*:

"We therefore, through our freely elected representatives adopt this Constitution as the supreme law of the Republic so as to –

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations."

46. Section 231 of the Constitution deals with international agreements, such as the Agreement concluded between the Governments of Cuba and South Africa on 6 February 2020. It provides as follows:

- 46.1 the negotiating and signing of all International Agreements is the responsibility of the National Executive; and
- 46.2 an International Agreement of a technical, administrative or executive nature, entered into by the National Executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the assembly and the council within a reasonable time.
47. It is, therefore, evident that the conclusion of International Agreements falls within the sole domain of the National Executive. The National Executive of the Republic of South Africa is the President together with the other members of Cabinet, as provided for in section 85 of the Constitution.
48. The conclusion of the Agreement between the Governments of Cuba and South Arica constitutes the development and implementation of national policy by the Executive of the Republic of South Africa. It furthermore also is the exercise of an executive authority as provided for in section 231 of the Constitution.
49. It is, therefore, evident that when the Agreement was concluded for the employment of the engineers from Cuba, the Minister exercised her executive authority in terms of section 85(2)(b) and/or (e) of the Constitution.

50. Section 1 of the PAJA defines administrative action by, *inter alia*, excluding executive powers or functions of the National Executive as contemplated in, *inter alia*, sections 85(2)(b) and (e) of the Constitution.
51. Therefore, it is evident that any decision taken by the Minister and the Department in concluding the Agreement which forms the basis for the deployment of the Cuban Engineers, does not constitute administrative action as defined in PAJA.
52. Therefore, any purported review application based on the provisions of PAJA is not permissible.
53. If so required further argument will be presented in this regard, and also in respect of the consequences that the decisions do not constitute administrative action.

F. BACKGROUND

54. It is necessary to give the background to the deployment of the current cohort of Cuban Engineers to the Department in South Africa. In fact, Cuban Engineers have been seconded to South Africa over a period of approximately 19 years.
55. South Africa and Cuba have enjoyed strong bilateral relations in the field of water and sanitation since 2001 when the first Agreement was signed during 2001. Since then a further two Agreements have been

entered into and to date 82 Cuban Engineers and Scientists have been seconded to the Department.

56. The first Agreement, concluded during December 2001, was valid from April 2002 to August 2007. Two groups, made up of 9 and 13 Cuban specialists, for a period of two years and three years, respectively, were deployed to South Africa. The second Agreement, concluded during September 2014, was valid for the period September 2014 to March 2019. 35 Cuban Engineers and Scientists were deployed to the Department.

57. The third and current Agreement concluded on 6 February 2020 is valid for the period August 2021 to August 2024, and 25 Cuban Engineers and Scientists have been deployed to the Department.

58. I annex hereunto as annexure "AA2" a list of details of the 25 Engineers and Scientists.

59. The profile of the 25 engineers and scientists is:

59.1 a group of hydraulic engineers, where there is no identical qualification in South Africa. In accordance with the input obtained from the South African Qualifications Authority ("the SAQA") this is the equivalent of a B. Tech qualification in Civil Engineering with specialisation in water;

- 59.2 the report obtained from the SAQA is annexed hereunto as annexure “AA3(a)” to “AA3(e”;
- 59.3 some of the engineers are qualified mechanical engineers in Cuba assisting the Department in the maintenance of infrastructure and specifically large pump stations;
- 59.4 there are also electrical engineers who work closely together with electrical and mechanical engineers in the Department; and
- 59.5 lastly, there are scientists responsible for analysis of data in the Strategic Asset Management Directorate of the Department.
60. The Department sent a team of representatives to Cuba during 2018 to interview and identify the suitable candidates to be deployed to South Africa. Upon its return the team prepared a report, a copy of which is annexed hereunto as annexure “AA4”. The above Honourable Court is respectfully referred thereto. The team consisted of a variety of experts, including a Human Resources Specialist. The Honourable Deputy Minister Tshwete also accompanied the team to Cuba.
61. The team of engineers and scientists arrived in South Africa on/or about 19 August 2020 and the Department entered into employment

contracts with the aforesaid 25 individuals. An example of one of the service contracts (they are similar if not identical in nature) is annexed hereunto as annexure "AA5".

62. The Department signed the Agreement which seeks to cooperate in the field of Water Resources, to tap in the skills of seconded Cuban water experts with a view to strengthen the capacity for the South African water and sanitation sector. The core objective of the exchange programme is in the area of infrastructure maintenance and operation skills throughout the water value chain - from source to tap. This will be achieved through skills transfer, particularly to young graduate trainees and candidate engineers and further to capacitate identified municipalities that are grappling with service delivery challenges in the provision of water and sanitation services.

63. The mutual benefits to South Africa and Cuba can be summarised as follows:

63.1 Cuba benefits from having experienced engineers and scientists being exposed to fairly advanced technology and programmes in South Africa which influences development when they return to Cuba; and

63.2 RSA benefits from the expertise being shared with local engineers and scientists and graduates working in the Department. As a result of the decades long embargo and the

lack of financial resources, Cuban engineers were “forced” to focus on maintenance, rehabilitation and refurbishment of infrastructure in order to prolong the life span of assets.

64. The programme by which the Cuban engineers and scientists are deployed to the Department is meant to assist the Department in the following areas:

64.1 Geo-hydrology and engineering services in rural and other disadvantaged areas where such services are inadequate;

64.2 exploitation of available water resources;

64.3 water supply infrastructure;

64.4 capacity building through training and support of local staff;
and

64.5 water management and water supply.

65. When the first agreement lapsed the Department conducted a further needs analysis to establish if there was still a need to continue with the Cuban Secondment Programme to complement critical technical gaps in the Department. The subsequent negotiations were only concluded some 6 years later and the Agreement finalised in March 2013.

66. The second South African/Cuban Co-operation Agreement was signed on 09 September 2013 between the Department and the Institute of National Hydraulic Resources ("*INHR*") of the Republic of Cuba. This Agreement led to the secondment of 35 Cuban engineers who specialised in different fields ranging from hydraulic engineering, hydrologists, mechanical and electrical engineering. In terms of this Agreement:

66.1 6 Cuban engineers terminated their secondment contracts due to ill health and/or family challenges that required them to return to Cuba in February 2017;

66.2 contracts of the remaining 29 Cuban Engineers expired at the end of June 2018; and

66.3 following engagements with the Cuban Embassy 14 of the Cuban engineers returned to Cuba at the end of June 2018, while the contracts for the remaining 15 were extended to 30 March 2019.

67. Following the successful implementation of the previous two agreements, during the technical capacity needs assessment carried out by the Department's regional and cluster offices, the need for the following Cuban technical skills were identified: mechanical engineering, electrical engineering, project management, civil engineering and scientists (hydrologists).

68. The third South African/Cuban Co-operation Agreement was signed on 6 February 2020 between the Department and INHR of the Republic of Cuba to second engineers to the Department to focus on infrastructure operation and maintenance throughout the “*water value chain*” (from source to tap), and furthermore to provide training and build capacity of RSA candidate engineers and artisans through skills transfer. The Agreement is valid for five years and the broad areas of cooperation include the following:

- 68.1 the provision of geo-hydrological specialist and engineering services;
- 68.2 development of sustainable approaches to use of available water resources;
- 68.3 maintenance of water supply and sanitation infrastructure;
- 68.4 capacity building through training and support;
- 68.5 management of water resources and water supply systems;
- 68.6 assessments for the evaluation of design, research and the security of hydraulic infrastructure;
- 68.7 strategic planning of water resources, groundwater, surface and sea water; and

68.8 technical exchange programmes.

69. A copy of the Agreement has already been annexed hereunto as annexure "AA1".

70. With reference to the Agreement:

70.1 the short courses referred to in Article 9 did not take place due to the COVID-19 pandemic;

70.2 the orientation course referred to in Article 11(3) took place in South Africa during September 2020 and the Third Respondent was also involved in the orientation course. It is mentioned that the orientation course could only be presented after the engineers and scientists from Cuba quarantined in accordance to COVID-19 protocol;

70.3 the orientation course was presented at the premises of the Department situated at the Roodeplaat Dam outside Pretoria and was presented by the various branches within the Department; and

70.4 the Third Respondent, as previously indicated, laid out to the Cuban engineers what is expected of them to be registered in South Africa, and they were reminded of the fact that upon departing from South Africa at the end of their term of secondment that their registration in South Africa lapses.

71. The Third Respondent (“ECSA”) is the statutory body established in terms of the EPA with the primary role of regulating the engineering profession in terms of EPA. Its core functions are:

71.1 the accreditation of engineering programmes;

71.2 registration of persons in specified categories; and

71.3 the regulation of the practice of registered persons.

72. ECSA is therefore authorised to register professionals and bestow the use of the following titles:

72.1 Pr Eng;

72.2 Pr Tech Eng;

72.3 Pr Techni Eng; and

72.4 Pr Cert Eng.

73. South Africa through ECSA is a member of the International Engineering Alliance (the “IEA”). The IEA is a global organisation, comprising members from 41 jurisdictions within 29 countries across seven international agreements which govern the recognition of engineering educational qualifications and professional competence. Through Educational Accords and Competence Agreements members of the IEA are able to establish and enforce internationally

bench-marked standards for engineering education and expected competence for engineering practice.

74. ECSA was a member of the Steering Committee of the Department prior to the delegation visiting Cuba to interview and select a third batch of engineers and scientists to be deployed to the Department. ECSA was also invited to accompany the Department to the Republic of Cuba for the process of interviews and selection, but unfortunately did not accompany the Departmental officials to Cuba.

75. ECSA is a voluntary member of the IEA by virtue of being a signatory to the Washington, Sydney and Dublin Accords. These accords are multi-lateral agreements between group of jurisdictional agencies responsible for the accreditation or recognition of tertiary level engineering qualifications who work together (collectively) to assist the mobility of engineering practitioners (Professional Engineers, Engineering Technologists and Engineering Technicians) who hold suitable qualifications. To summarise the three accords:

75.1 Washington Accord relates to the recognition of Professional Engineers (Pr Eng): Originally signed in 1989, South Africa - ECSA became a signatory in 1999, there are 20 signatories;

75.2 Sydney Accord relates to the recognition of Engineering Technologists (Pr Tech Eng): Originally signed in 2001, South Africa - ECSA is one of 7 signatories; and

75.3 Dublin Accord relates to the recognition of Engineering Technicians (Pr Techni Eng): Originally signed in 2002, South Africa - ECSA is one of 8 signatories.

76. To say that the IEA is not representative of the family of Nations of the World is an understatement. It is evident that the vast majority of countries are not signatories to the three accords.

77. The complaint of the Applicants is that the Cuban engineers, who do not hold a professional registration in South Africa, might be engaged in work which falls within the competence of professional engineers, and therefore the Department should have only appointed registered professional engineers. This complaint is without any merit because:

77.1 the Ministerial Advisory Committee engaged with ECSA, the South African Institution of Civil Engineering ("SA/CE") and the Water Institute of Southern Africa ("W/ISA") during June and July 2020 where the matter of the deployment of the Cuban Engineers was discussed, but no areas of concern were raised;

77.2 the Department has and is in ongoing engagement with ECSA on the deployment of the Cuban engineers. A virtual meeting with *inter alia* the Chief Executive Officer of ECSA was held by the representatives, including Mr Leornado Manus of the Department on 28 April 2021. The current CEO of ECSA was

not in that position at the time when ECSA formed part of the Steering Committee of the Department for the deployment of the third cohort of Cuban engineers. ECSA has confirmed that they have no standing to interfere in the employer/employee relationship, and that there is no legal impediment to the Department using non-registered professionals;

77.3 there are currently no Regulations promulgated and enforced in terms of the EPA requiring employers to only have registered engineers in their employment. Regulations relating to work reserved for professional engineers are in draft format and are due to be published for comment;

77.4 through engagement with SAQA, the Cuban Hydraulic Engineer Degree is assessed to be the equivalent of a B. Tech. Civil Engineering, which would enable the Cuban Engineers to apply for professional registration with ECSA as Pr Tech Eng. They would only qualify for recognition towards the end of their contracts and the recognition would only be applicable while working in South Africa;

77.5 those Cuban engineers who had applied for registration then withdrew because of the abovementioned limitations;

77.6 the Department notes that on 9 December 2020, ECSA published an Overarching Code of Good Practice for the

performance of Engineering Work (*"the Code of Good Practice"*). The Code of Good Practice is a statement of good practice for the performance of engineering work by registered or unregistered persons. Paragraph 8.2 of the Code of Good Practice permits the carrying out of engineering work by an unregistered person under the direction, control and supervision of a registered person in the appropriate category or discipline. The registered person assumes full professional responsibility for work done by an unregistered person. A copy of the Code of Good Practice is attached hereto as annexure "AA6".

77.7 all Cuban engineers will work under the supervision of a registered professional engineer in the employment of the Department; and

77.8 no Cuban Mechanical Engineer will do any design or render unsupervised services in respect thereof.

78. The allegations made by the Applicants that the Department is *"importing"* skills from Cuba despite there being many qualified and graduate engineers who are currently unemployed and furthermore that engineering consulting firms have the necessary capacity, skills and experience to support the Department, are without merit. It appears that the private sector is struggling to provide jobs and

mentorship opportunities for graduates, especially as a result of the COVID-19 pandemic and some companies are still retrenching staff in response to the current economic climate. Some of the engineers that graduated have applied and taken up technician posts at municipalities.

79. The current employment scenario at the Department for Engineers, Technologists, Technicians and Scientists is as follows:

79.1 689 posts on the approved establishment;

79.2 569 permanently filled;

79.3 120 vacancies;

79.4 190 posts filled additional to the establishment by Candidate Engineers, Technologists, Technicians and Scientists; and

79.5 for record and reporting purposes the 25 Cuban Engineers would also be reflected as additional to the establishment taking the number to 214.

80. The Cuban engineers and scientists have valuable expertise which can be exploited for the benefit of South Africa. To use an example: in Cuba resources are not easily accessible mainly due to sanctions and embargos imposed against Cuba. Therefore, the starting point of the Cuban engineers and scientist is different from ours in that in Cuba

they are enjoined to prolong the life of their infrastructure components. Therefore, the Cuban engineers and scientists will bring skills to assist South African Engineers to look at ways to prolonging the life of the infrastructure and its components in respect of the water infrastructure. Any assistance rendered to artisans, by Cuban Engineers, will however be done under the supervision and approval of a properly qualified engineer.

81. It is common knowledge that Cuban experts are of a high quality and are much sought after. That is not only in the water industry, but also on various other fields such as the health industry. Cuban doctors assisted many countries including South Africa and Italy during the COVID-19 pandemic.
82. However, one point must be made very clear and it is this: the Cuban Engineers and Scientists are employed in addition to the posts to be filled by South Africans in the Department. Therefore, the Cuban Engineers and Scientists have not been appointed at the expense of any South African Engineer or Scientist.
83. In order to fill the vacancies in the Department the following measures are/will be taken:
- 83.1 in the current Financial Year 2021/22 the Department has budgeted an amount of R22,672,000.00 for the filling of 32

Engineer, Technologist, Technician and Scientist posts on a permanent basis;

83.2 entry level posts would be advertised internally in order to attract Candidate Engineers, Technologists, Technicians and Scientists held additional to the establishment; and

83.3 no Cuban Engineers will be occupying permanent posts on the establishment of the Department.

84. The Applicants allege that the cost of salaries of the Cuban Engineers for the current financial year amounts to R61 million. This is untrue, because:

84.1 the whole of the budget allocation for the current financial year is R61 million;

84.2 this budget makes provision for the cost of employment (salaries) and goods and services (computers, cell phones, vehicles, accommodation etc); and

84.3 the Cuban Engineers are remunerated at the entry level of salary level 11 in the Public Service, which is R733,257.00 per annum. The total salary cost per annum is therefore R18,3 million.

85. Furthermore, the remuneration and expenses of the Cuban Engineers and Scientists are not paid out of the annual allocation by National Treasury to the Department in terms of the Division of Revenue Act.
86. The Department has two streams of income:
- 86.1 the income which is paid into the Main Account of the Department is the funds allocated by the Fiscus to the Department, in accordance with the Division of Revenue Act; and
- 86.2 in addition thereto, the Department has a Water Trading Entity account which receive funds from all holders of water use licenses issued by the Department in terms of section 40 read with section 41 of the National Water Act, No.36 of 1998 (*"the NWA"*). It is out of this account that the remuneration and other expenses of the Cuban Engineers and Scientists are paid.
87. The income received into the Water Trading Entity account is generated as a percentage on the sale of water by a water services provider directly to a consumer, such as consumers in the mining, industrial and agricultural industries.
88. Although the income generated for the Department in the Water Trading Entity account originates from entities and/or persons in South

Africa, it is not received from the Fiscus (or the taxpayer as the Applicants repeatedly stated in the Founding Affidavit). From time to time National Treasury will make an allocation to the Water Trading Entity of the Department for specific projects, and to use, for example, the raising of the Clanwilliam Dam wall, is one of such projects.

89. I annex hereunto as annexure “AA7” a copy of the annual report of the Department, and specifically that section dealing with the report pertaining to the Water Trading Entity account. The content of that section of the report is incorporated into this Affidavit through reference.

90. The Department carefully considered whether to accept deployment of Cuban Engineers and Scientists for a third time, before entering into the Agreement with the Cuban Government as annexed hereunto as annexure “AA1”. The Department has only embarked on that process after the Department carefully analysed the benefits the Department received from the Cuban Engineers and Scientists deployment to South Africa, and as an example, the following is set out regarding the deployment of the second cohort who work in South Africa from 2014 to 2019. The following is referred to:

90.1 the Cubans supplemented capacity in seven Regional Offices of the Department (12 Engineers), four Infrastructure Cluster



Offices (22 Engineers) and Head Office (1 specialist in Branch Regulations);

- 90.2 during the secondment they were involved in various water infrastructure projects in various roles which included: project management, design engineers (under supervision), hydrologists and technical advisors;
- 90.3 a comprehensive list of all the projects in which the second cohort of the Cuban engineers and scientists were involved is annexed hereunto as annexure “AA8”, and it is respectfully pointed out that they rendered services on 271 Government Waterworks and 165 projects;
- 90.4 they were allocated with supervisors and most of them were also involved in mentoring and skills transfer to Department staff, graduate trainees and in some cases to officials working in municipalities;
- 90.5 in Mpumalanga, Standerton, Eastern Cape, Jericho and Tugela they developed guidelines to be used by officials in operations and maintenance of infrastructure; and
- 90.6 they also prepared papers on some of the work which they had been involved, for example:
- 90.6.1 diagnosing the operation of Hydraulic systems;

90.6.2 proposals for Manual Operation and Maintenance –
Ermelo Northern Water Treatment Works;

90.6.3 recommendations for the Infrastructure Planning for
Water Supply in Urban Communities; and

90.6.4 maintenance in Hydraulic infrastructure works.

91. International cooperation, such as the making use of the Cuban experts is nothing foreign or strange in the modern world. Officials from the Department also enjoyed the benefit of attending courses and/or gaining practical experience in other countries, including Western countries.

92. In this regard it is pointed out that the Department concluded international agreements with the following countries:

92.1 The Netherlands, a copy of the Agreement is annexed hereunto as annexure “AA9”;

92.2 Japan, and a copy of the Agreement is annexed hereunto as annexure “AA10”;

92.3 Denmark, and a copy of the Agreement is annexed hereunto as annexure “AA11”;

92.4 Italy, and a copy of the Agreement is annexed hereunto as annexure "AA12"; and

92.5 Hungary, and a copy of the Agreement is annexed hereunto as annexure "AA13".

93. South Africa as a country, and the Department as the entity responsible for the provision of access to water, need to remain globally relevant. Through the Agreement both Cuba and South Africa obtain benefits through the exchange of information.

94. To use an example, engineers and employees from the Department attend the International Conference on Large Dams ("ICOLD") in order to stay relevant and up to date.

95. Dr Manus from the Department also attended a dam safety course for two weeks in the United States of America, as confirmed in his Affidavit already annexed hereunto.

96. The Department is a department of a specialised nature, and has the very important constitutional obligation to provide access to water to all of the citizens and inhabitants of South Africa. Therefore, any measure to advance and benefit the Department is for the benefit of the country of South Africa as a whole.

97. The Department through various projects has budgeted and allocated an amount of approximately R8,057 billion for private contractors and service providers during the current financial year.

98. In conclusion:

98.1 it is evident that the allegations made by the Applicants pertaining to taking employment opportunities from South African Engineers and giving same to Cuban Engineers is devoid of any truth;

98.2 the Department and the Minister have taken this decision after careful consideration of all facts, also keeping in mind the fact that South Africa is part and parcel of the international community, unlike the scenario that prevailed during the pre-constitutional era;

98.3 the complaint by the Applicants relating to how the Department should spend the funds received in the Water Trading Entity account is in any event not a decision which the above Honourable Court should not interfere with. In terms of the well-known principle of separation of powers, a Department should be left to its own devices to decide how to allocate and utilise these funds; and

98.4 therefore, and having regard to what has been set out above, it is evident that the Applicants' Application is ill-advised and should be dismissed with cost, such cost to include the cost consequent upon the employment of two counsel.

99. I now proceed to deal with the allegations as made in the Applicants' Founding Affidavit. Whatever is stated hereinafter should be seen against the background of what has been set out above, and if any allegation made in the Founding Affidavit is not in consonance with what has been stated above, it should be taken to be denied.

G. AD FOUNDING AFFIDAVIT

AD PARAGRAPHS 1 AND 2 THEREOF

100. I admit the allegations made herein.

AD PARAGRAPH 3 (INCLUSIVE OF PARAGRAPHS 3.1 TO 3.5) THEREOF

101. Save for denying that the allegations made herein are true and correct, I admit the remainder of the allegations.

AD PARAGRAPHS 4 TO 9 THEREOF

102. I admit the allegations made herein.

AD PARAGRAPH 10 THEREOF



103. The allegations made herein are denied. I have already stated above that the Cuban engineers were brought to this country pursuant to the conclusion of an Agreement between the Government of the Republic of Cuba and the Government of the Republic of South Africa.
104. The Agreement was concluded in accordance with the provisions of section 231 read with section 85 of the Constitution.
105. Further, I indicated that the Cuban Engineers have been deployed for the purpose of tapping into their specialist knowledge relating to the maintenance and prolonging of the lifespan of infrastructure. The government does not have the resources to replace all the ageing infrastructure.

AD PARAGRAPH 11 THEREOF

106. I deny that the application is urgent, and that the conclusion of the Agreement is reviewable under PAJA or on any legal basis.
107. The relief sought by the Applicants is of a final nature. The requirements of a final interdict have not been alleged and established by the Applicants. In any case the Applicants are not entitled to any relief, be it interim or final.
108. I have already dealt with these allegations and I refer this Honourable Court to what I have already stated above as if specifically repeated herein.

AD PARAGRAPH 12 THEREOF

109. I deny the allegations made herein. I have already indicated above that the conclusion of the Agreement and the deployment of the Cuban engineers in South Africa do not constitute administrative action but constitutes the exercise executive authority in terms of section 85 of the Constitution.
110. Further, the deployment of the Cuban engineers does not constitute administrative action in the form of procurement of services as contemplated in section 217 of the Constitution.
111. The exercise of executive authority is insulated from the provisions of PAJA and is thus not reviewable.

AD PARAGRAPH 13 THEREOF

112. I deny these allegations. I have already dealt with these allegations and refer this Honourable Court to what I have already stated above as if specifically repeated herein.

AD PARAGRAPH 14 THEREOF

113. The allegations made herein are denied insofar as they are inconsistent with what I have already stated above. More specifically, it is denied that this application is urgent.

AD PARAGRAPH 14.1 TO 14.2 THEREOF

114. I admit the existence of the letters referred to herein. I, however, deny that there was any basis for acceding to the demands by the Applicants.

115. I have already stated above that the decision to conclude the Agreement and to subsequently deploy the Cuban engineers is insulated from the provisions of PAJA or even a legality review. It is for this reason that the Respondents could not accede to the demands of the Applicants.

AD PARAGRAPHS 14.3 TO 14.4.3 THEREOF

116. The Applicants quite correctly state that the meeting of 10 May 2021 was agreed to be a "without prejudice-basis". Therefore, I am advised that, on that basis alone, I am not obligated to respond to the allegations made herein. I am further advised that it is impermissible for the Applicants to seek to disclose the contents of a meeting which was held on a without prejudice basis.

117. That notwithstanding, I wish to state that there was no basis in law or in fact for the Respondents to accede to any of the demands made by the Applicants.

AD PARAGRAPH 14.5 THEREOF

118. Save for denying that the proposal to be made by the Respondents was a mystery and that it was unlikely to be forthcoming, I admit the remainder of the allegations.
119. It was impossible to come up with a proposal which would be satisfactory to the Applicants because the view taken by the Respondents was that their decision was not legally assailable.

AD PARAGRAPHS 14.6 AND 14.7 THEREOF

120. Save for stating that I have no knowledge of the instruction to the legal representatives of the Applicants, I admit the remainder allegations made herein.

AD PARAGRAPH 14.8 THEREOF

121. I admit the allegations made herein. I have already stated above the reasons why the Respondents could not accede to the demands of the Applicants.

AD PARAGRAPH 14.9 THEREOF

122. Save for stating that funds from the Water Trading Entity of the Department are being used for the purpose of financing the salaries and costs associated with the services provided by the Cuban Engineers, I deny the remainder of the allegations.

123. I have already stated above that the deployment of the services of the Cuban Engineers flows from the conclusion of an Agreement between the governments of the Republic of South Africa and that of Cuba in terms of section 231 of the Constitution.
124. The implementation of the Agreement does not constitute administrative action and ought not to follow the procurement prescripts and processes contemplated in section 217 of the Constitution.
125. Further, I have already indicated that the deployment of the Cuban Engineers was based on their specialist knowledge on the maintenance and prolonging of the lifespan of water and sanitation related infrastructure.
126. The Honourable Court is referred to what I have already stated above in this regard and I pray that it be incorporated herein.

AD PARAGRAPH 14.10 THEREOF

127. I deny the allegations made herein. I have already stated above that the exercise of executive power or authority is not reviewable.
128. Further, the relief sought by the Applicants is drastic and is of a final nature. If the relief sought is granted the 25 Cuban nationals will be left destitute and homeless for a prolonged period of time pending the intended launching of the review proceedings.

129. Given the fact that the Cuban engineers are rendering expert services the continued payment related to the services they are rendering cannot be to the detriment of any person. The review Court which will be seized with the matter, has a wide discretion in terms of the relief or the court order to be granted should the Applicants be successful.
130. It must be noted that no basis in law or in fact has been established for the intended review application.

AD PARAGRAPH 14.11 THEREOF

131. I deny these allegations. The provisions of the EPA do not have a peremptory requirement for the registration of engineers.
132. The Honourable Court will note that paragraph 8.2 of the Code of Good Practice permits the carrying out of engineering work by an unregistered person under the direction, control and supervision of a registered person in the appropriate category or discipline. The Code of Good Practice has already been attached hereto as annexure AA6.

AD PARAGRAPH 14.12 THEREOF

133. I deny these allegations. I have already stated above that the Cuban engineers are working under the supervision of registered professional engineers. Thus, there is no basis for alleging that the safety and the operational standards will be compromised by employing the services of the Cuban engineers.

134. Insofar as the allegations relating to the lack of transparency and fairness are concerned and to the extent that by that it is referred to administrative action, I have already indicated that the presence of the Cuban engineers in the Republic of South Africa is pursuant to the conclusion of an Agreement which in itself came about as a result of the exercise of executive authority/function.

AD PARAGRAPH 14.13 THEREOF

135. I deny these allegations. I have already stated above that the relevant provisions the EPA do not make it compulsory for the employer to only procure the services of a registered person.
136. Furthermore, the Third Respondent is aware of the arrangements relating to the presence of the Cuban engineers in the Department.

AD PARAGRAPH 14.14 THEREOF

137. I deny the allegations made herein. I have already stated above that the IEA is not representative of the family of Nations of the World as it is only constituted by few countries.
138. That the Republic of Cuba is not a member of the IEA is not indicative of the fact that the Cuban Engineers possess inferior educational qualification in engineering.

AD PARAGRAPH 14.15 THEREOF

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139. I deny the allegations made herein. I have already stated above that SAQA has assessed the engineering qualifications of the Cuban engineers and have been able to determine the equivalent qualifications to the qualifications attained in South Africa.
140. Regarding the advice from ECSA I have already indicated above that the Third Respondent is aware of the presence of the Cuban engineers in the Department. Further to that, the EPA does not make the registration of engineers and other qualified persons compulsory.
141. I have also indicated that because of the time it would take for the Cuban engineers to meet the registration requirements in terms of EPA, they have opted not to register as by the time they meet the requirements their contract of service with the Department would have lapsed. Further, their registration would be valid until such time that they leave South Africa.
142. I have already dealt extensively with the unfounded allegations relating to the unfairness, irrationality and the unlawfulness of the conduct of the Respondents.

AD PARAGRAPH 15 THEREOF

143. I admit the provisions of section 33 of the Bill of Rights insofar as it is correctly cited.

AD PARAGRAPHS 16 AND 17 THEREOF

144. I deny the allegations made herein.
145. I have already stated above that the presence of the Cuban engineers in the Republic of South Africa is predicated on the conclusion of an Agreement which is the exercise of executive authority.
146. I have already stated above that the deployment of Cuban Engineers is based on the exercise of executive authority and a policy position adopted by the national executive.
147. Such exercise of executive authority is not administrative action and is thus not reviewable both in terms of the principle of legality and under PAJA.

AD PARAGRAPHS 18 TO 20 (INCLUSIVE OF PARAGRAPHS 18.1 TO 18.4) THEREOF

148. I deny the allegations made herein.
149. The provisions of the Broad-Based Black Economic Empowerment Act are not applicable to this matter.
150. Regarding the compliance with the immigration and work permit laws I deny that the Cuban Engineers have not complied therewith. I attach one copy of a visa/work permit of one of the Cuban Engineers as Annexure "AA14(a)" and "AA14(b)". All Cuban engineers and scientists are in possession of proper work permits.

151. I have already stated that the licensing and registration requirements of EPA are not compulsory.
152. Regarding the requirements of section 217 of the Constitution, I have stated above that it is not applicable as the services of the Cuban engineers have been procured through an Agreement which is the exercise of executive authority.
153. I have already dealt with the aspect relating to the purported interim relief sought by the Applicants.

AD PARAGRAPHS 21 (INCLUSIVE OF PARAGRAPHS 21.1 TO 21.6) THEREOF

154. The allegations made herein are denied.
155. As stated above any decision taken by the Minister and the Department in concluding the Agreement which forms the basis for the deployment of the Cuban engineers to South Africa, does not constitute administrative action as defined in PAJA.
156. Therefore, any purported review application based on the provisions of PAJA or a legality review is not permissible in this case.
157. But even if the provisions of PAJA were applicable, the Applicants have failed to establish the basis upon which the intended review application is sought.

158. Further, the party seeking an interim interdict pending the review application must show that there are prospects of success in the main application. This, the Applicants have failed to establish.
159. Regarding the Applicants' claim that they are not desirous of formulating a half-baked review application, the Honourable Court will note that the provisions of rule 53 of the High Court Rules make provision for the party in the position of the Applicants to supplement their Notice of Motion and founding papers.
160. The only inference which can reasonably be drawn is that the Applicants cannot establish a case for the intended review application.

AD PARAGRAPHS 22 AND 23 THEREOF

161. I deny the allegations made herein.
162. The Applicants ought to have established that there are prospects of success in the main application and that they will suffer irreparable harm if the interim interdict is not granted but the final relief is granted.
163. Further the Applicants have failed to establish a prima facie right.

AD PARAGRAPH 24 THEREOF

164. I deny the allegations made herein.

165. The amount of R 64 million is what was budgeted for the project but the actual salary bill is R18,3 million.
166. Insofar as the reference to competition herein relates to the provisions of section 217 of the Constitution, I refer this Honourable Court to what I have already stated above.
167. Regarding the allegations that the Cuban engineers are not properly qualified I refer this Honourable Court to what I have already stated above.

AD PARAGRAPH 25 THEREOF

168. I deny the allegations made herein.
169. I have already indicated above that the deployment of the Cuban engineers is the exercise of executive authority which is not reviewable, both in terms of PAJA and under the legality principle in this particular case.

AD PARAGRAPHS 26 TO 31 THEREOF

170. Save for admitting the existence of the press statement, I deny that the Cuban engineers were deployed at the expense of South Africans.

171. I have also indicated above that construction and engineering related contracts worth R8 billion have been awarded to the private sector for the current financial year.

172. I refer the Honourable Court to what I have already stated regarding these allegations.

AD PARAGRAPH 32 THEREOF

173. I note the allegations made herein.

AD PARAGRAPH 33 THEREOF

174. I note the allegations made herein.

AD PARAGRAPH 34 THEREOF

175. I admit the allegations made herein.

AD PARAGRAPH 35 THEREOF

176. Save for denying that the giving of preference to fellow countrymen by governments of the world precludes the Department from importing the skills of the Cuban engineers, I admit the remainder of the allegations.

AD PARAGRAPH 36 THEREOF

177. I deny the allegations made herein.

178. I have already dealt with these allegations and the rationale behind deploying Cuban engineers. Importantly, I have indicated that it is of paramount importance that South Africa remains globally relevant and must share information with its international partners.

179. The extent to which the South African Government has gone to protect the interest of its nationals is an open secret.

AD PARAGRAPH 37 THEREOF

180. Save for denying that this matter is urgent, I admit the remainder of the allegations as reported in the media insofar as they are correctly cited.

AD PARAGRAPH 38 (INCLUSIVE OF PARAGRAPHS 38.1 TO 38.4) THEREOF

181. Save for stating that the Cuban engineers are not utilised at provincial and local spheres of government, I admit the remainder of the allegations.

AD PARAGRAPH 39 (INCLUSIVE OF PARAGRAPHS 39.1 TO 39.7) THEREOF

182. Save for admitting the existence of a letter addressed to the Minister and a list of names of 120 engineering specialist, I deny the correctness of the allegations and/or the entitlement of the Applicants to the demands made herein.

AD PARAGRAPHS 41 AND 42 THEREOF

183. I admit the allegations made herein insofar as they correctly cite the media statement by the Department.

AD PARAGRAPH 43 THEREOF

184. I have already indicated above that the amount of R 64 million is the budgeted amount for the project, but that the actual cost thereof is far less than the amount stated herein.

AD PARAGRAPH 44 THEREOF

185. The allegations made herein are denied.
186. The reason for the release of the media statement was to provide clarity on the rationale behind the deployment of the Cuban engineers.

AD PARAGRAPHS 45 TO 47 THEREOF

187. I admit the existence of the list and the contents of the letter referred to herein. I, however, deny the correctness of the allegations made

therein insofar as they are inconsistent with what I have already stated above.

AD PARAGRAPH 48 THEREOF

188. I deny that the nondisclosure of the bilateral agreement renders the application urgent and entitles the Applicants to an interim interdict pending the release of the bilateral agreement.

189. The basis of the Applicants' case for the urgent interim introductory relief has, by the Applicants' own admission, been indicated as the continued payment of the salaries, stipends and accommodation for the Cuban engineers.

AD PARAGRAPH 49 THEREOF

190. It is denied that the Applicants are entitled to request the bilateral agreement and other information in terms of the provisions of section 26 of PAIA.

191. The Applicants, having decided to institute legal proceedings ought to invoke the provisions of rule 53 of the Uniform Rules of Court to request the filing of such information and/or records with the Registrar of this Honourable Court.

192. It is not open to the Applicants to persist with the request for information in terms of the provisions of PAIA when they have already



instituted an application in terms of which they can invoke the relevant rules of this Honourable Court.

AD PARAGRAPH 51 THEREOF

193. The allegations made herein are denied.

194. I have already dealt with this allegation and refer this Honourable Court to what I have already stated above and request that it be incorporated herein.

195. The regulations referred to herein are in a draft form and have no legal force.

AD PARAGRAPHS 52 AND 53 THEREOF

196. It is denied that the EPA precludes the employment of foreign nationals as engineers. The rationale therefor has already been stated above.

197. It is further denied that the Cuban engineers do not possess the requisite educational qualifications. To this extent I have already indicated above that SAQA has assessed the qualifications of Cuban engineers and found them to be meeting the requisite standard.

198. Regarding the purported irrationality of the decision to deploy the expertise of the Cuban engineers, I refer this Honourable Court to

what I have already stated above relating to such a decision constituting the exercise of executive authority as envisaged in section 85 of the Constitution.

AD PARAGRAPH 54 THEREOF

199. I deny the allegations made herein. I have already dealt with these allegations above and pray that what I stated above be incorporated herein.

AD PARAGRAPH 55 THEREOF

200. It is denied that the importation of the Cuban Engineers constitutes administrative action. The deployment of the Cuban engineers constitute policy making as a result of which such a decision is not reviewable.

AD PARAGRAPHS 56 AND 57 (INCLUSIVE OF PARAGRAPHS 56.1 TO 56.4) THEREOF

201. Save for admitting the existence of the letter referred to herein, I deny that the Applicants were entitled to demand the suspension of the bilateral agreement and the disclosure of the information required therein.

202. I have already dealt with these allegations and refer this Honourable Court to what has been stated above as if specifically repeated herein.

AD PARAGRAPHS 58 TO 62 AND 64 THEREOF

203. I note the allegations made herein insofar as they correctly cite what transpired during the radio interview and it is not inconsistent with what I have already stated above.
204. The attempt of the Applicants to obtain "*political mileage*" out of the interview is regrettable. The Minister dialled into the radio station to dispel the incorrect information circulating in the media.
205. I have already dealt with the remainder of the allegations and refer this Honourable Court to what I have already stated above as if specifically repeated herein.

AD PARAGRAPH 63 THEREOF

206. I have already stated above that the skills and expertise required from the Cuban engineers related to the maintenance and prolonging of the lifespan of water and sanitation related infrastructure. Such skills and expertise are for historical reasons, which I have already referred to above, unique to the Cuban engineers.
207. No purpose would have been served by using the five engineers referred to herein as such skills lay with the Cuban engineers.

AD PARAGRAPHS 65 TO 67 THEREOF

208. The allegations contained herein are denied.

209. I have already indicated above that the deployment of the Cuban engineers came about as a result of the conclusion of a cooperation agreement between the two countries and thus constitute the exercise of executive authority. Therefore, the exercise of executive authority does not implicate the provisions of section 217 of the Constitution.

AD PARAGRAPH 68 THEREOF

210. Save for admitting the existence of the letter referred to herein I deny the remainder of the allegations.

211. The views expressed in the said letter do not correctly reflect the correct legal position. I have stated above that the majority of countries are not members of IEA.

AD PARAGRAPH 69 (INCLUSIVE OF PARAGRAPHS 69.1 TO 69.3) THEREOF

212. I deny the allegations made herein.

213. I have already dealt with the fact that the decision to deploy the Cuban engineers does not constitute administrative action and is thus not reviewable.

214. Further I have already stated above that the Applicants have failed to establish a *prima facie* right with the result that there can be no irreparable harm.
215. Further, the Applicants have failed to establish their entitlement to an interim introductory relief pending the review application.
216. The allegations that the taxpayers' resources are being squandered are without any merit. Firstly, I have already indicated above that the resources being used to fund the project are sourced from the funds raised by the Water Trading Entity division. Secondly, no funds are being squandered.
217. But even if such resources constitute money from the Fiscus, such resources are used to pay for services received.

AD PARAGRAPH 70 THEREOF

218. The allegations made herein are denied. The Respondents and the 25 Cuban engineers will suffer untold harm or prejudice in that the Respondents will be stopped from utilising the rare expertise of the Cuban engineers and at the same time the Cuban engineers will be rendered homeless and without any income.
219. If the interim interdict was to be granted it will cause a major diplomatic embarrassment to the Government of the Republic of South Africa.

220. Thus, the balance of convenience favours the declining of the interim interdict.

AD PARAGRAPH 71 THEREOF

221. I deny that the Applicants have no alternative remedy. In the circumstances of this case, the Applicants do not require interim introductory relief in order to pursue the review application.

222. The review Court has the power to make whatever order it deems appropriate under the circumstances of the matter, in terms of the provisions of section 8(1) of PAJA.

AD PARAGRAPH 72 THEREOF

223. I deny that this application is urgent.

224. I have already dealt with the allegations relating to the purported urgency and I refer this Honourable Court to what I have already stated above as if specifically repeated herein.

AD PARAGRAPHS 73 AND 74 THEREOF

225. I deny the allegations made herein.

226. I have already indicated above that the decision by the Minister constitutes the exercise of executive authority and is thus not

reviewable, both in terms of PAJA and under legality principle, in the particular circumstances of this matter.

AD PARAGRAPH 75 THEREOF

227. I deny the allegations made herein. I have already stated above that the rationale for deploying the Cuban engineers was based on their rare and exclusive expertise in relation to maintaining and prolonging the lifespan of water and sanitation related infrastructure.

AD PARAGRAPHS 76 AND 79 THEREOF

228. I deny the allegations made herein. Firstly, on the basis of the First Applicant not possessing the skills and expertise possessed by the Cuban Engineers. Secondly, the Second Respondent will within a period of two months from now reached the age of 69 years old. Thus, the Second Respondent is not employable in terms of the public service prescripts for reason that the retirement age is 60 or 65 years depending on the time which a person would have been employed by the public service.

AD PARAGRAPHS 77 AND 78 THEREOF

229. It is denied that the Cuban engineers who are currently in the employ of the Department have difficulties with the language and the cultural aspects of South Africa. I have indicated above that the recruitment of

the Cuban engineers followed a rigorous process which culminated in the selection of the 25 engineers.

AD PARAGRAPHS 80 AND 81 THEREOF


230. It is denied that the Applicants have any basis in law and in fact for the relief they are seeking in this application.

231. This Honourable Court is referred to what I have already stated above as if specifically repeated herein

AD PARAGRAPHS 82 AND 83 THEREOF

232. I deny the allegations made herein.

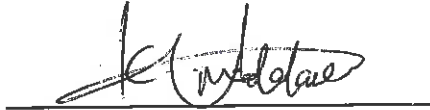
233. For the reasons already stated above I submit that this application ought to be dismissed with costs including the costs consequent upon the appointment of two counsel.



DEPONENT

SIGNED and sworn to before me at Pretoria on the
25 day of May 2021, the deponent having
acknowledged that he/she knows and understands the contents of this

affidavit and all the provisions of Act 16 of 1963 and the Regulations promulgated in terms thereof concerning the taking of the oath having been complied with in my presence and within the area for which I have been appointed as Commissioner of Oaths.




COMMISSIONER OF OATHS

Capacity: Legal Administration Officer

Full names: Kenanao Mokatlane

Physical address: 134 Pretorius Street
HSRC Building
Pretoria
0001

NATIONAL DEPARTMENT OF SOCIAL DEVELOPMENT			
EX OFFICIO COMMISSIONER OF OATHS			
LEGAL SERVICES			
134 PRETORIUS STREET			
HSRC BUILDING, PRETORIA			
Kenanao	LAO		25/05/2021
NAME	RANK	SIGNATURE	DATE
LS001			