

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

Case no: 18465/24

In the matter between:

ADAM MENDELSON

Applicant

and

COUNCIL OF THE UNIVERSITY OF CAPE TOWN

First Respondent

NORMAN ARENDSE N.O.

Second Respondent

PERSONS LISTED IN ANNEXURE "A"

Third to Thirty-First Respondents

UNIVERSITY OF CAPE TOWN

Thirty-Second Respondent

and

**SOUTH AFRICAN JEWS
FOR A FREE PALESTINE**

First applicant for admission as *amicus curiae*

**SOUTH AFRICAN JEWISH
BOARD OF DEPUTIES**

Second applicant for admission as *amicus curiae*

HEADS OF ARGUMENT FOR SOUTH AFRICAN JEWS FOR A FREE PALESTINE

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OVERVIEW

- 1 These heads of argument are filed on behalf of South African Jews for a Free Palestine (“SAJFP”).
- 2 It seeks admission as *amicus curiae* in the main application by Professor Mendelsohn challenging two resolutions passed by the Council of the University of Cape Town (“UCT Council”) on 22 June 2024 (“the Gaza resolutions”). It also asks for leave to introduce evidence to assist the Court in its determination of the issues arising from Prof Mendelsohn’s challenge to the Gaza resolutions.
- 3 SAJFP’s *amicus* application will be heard at the same time as the main application brought by Prof Mendelsohn. These heads of arguments therefore contain SAJFP’s submissions in respect of both (a) its admission and (b) the main application.
- 4 The submissions that SAJFP makes relate to issues in which it has particular expertise and knowledge, and its members have an interest.
- 5 SAJFP files three expert affidavits as well as one supporting affidavit, which provide factual and opinion evidence on a range of issues relevant to the application. These are—

- 5.1 Professor Steven Friedman, Research Professor at the University of Johannesburg, who provides opinion evidence on the necessity to distinguish between legitimate criticism of Israel and antisemitism;¹

¹ Prof Friedman’s expert affidavit begins at p 91. Vol 6A

Vol 2 of Prof Mendelsohn’s heads (p 35 footnote 164) says that this Court “*recently disregarded the evidence of one of the experts invoked by the SAJFP*” – i.e. Prof Friedman. It was the Equality Court, see *South African Human Rights Commission v Malema* [2025] ZAEQC 6 (27 August 2025) at para 61 (per Sher J). Prof Friedman had provided his views on whether Mr Malema’s comments in that case (about being willing to “kill”) were hate speech as proscribed by the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, s 10. The

- 5.2 Professor Joan Scott, Professor Emerita at the School of Social Science at the Institute for Advanced Study in Princeton, New Jersey, who provides her opinions on the consequences of the imposition of the IHRA definition of antisemitism, and on academic boycotts;²
- 5.3 Professor Isaac Kamola, Professor of Political Science at Trinity College in Hartford, Connecticut, who addresses academic freedom and donor pressure;³ and
- 5.4 Professor Rashid Khalidi, Palestinian-American historian of the Middle East and Edward Said Professor Emeritus of Modern Arab Studies at Columbia University, New York, who gives factual evidence about how the adoption of the IHRA definition by Columbia has limited his ability to teach.⁴
- 6 SAJFP's submissions and evidence are highly relevant,⁵ and we submit helpful, to various review grounds pleaded by Prof Mendelsohn:
- 6.1 First, Prof Mendelsohn's argument that the Antisemitism resolution is substantively irrational because, in his view, the IHRA definition rejected

present case is about very different issues. SAJFP is confident that the Court will assess Prof Friedman's evidence in this case on its merits, and not with reference with findings made in a different case about a different issue. In the present matter, Prof Friedman provides expert evidence on the dangers of conflating legitimate criticism of Israel with antisemitism. Prof Friedman's expert opinions on this very issue have been referred to favourably by our highest courts (see *Masuku and Another v South African Human Rights Commission obo South African Jewish Board of Deputies* 2019 (2) SA 194 (SCA) at para 25, and *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 2022 (4) SA 1 (CC) at para 152).

² Prof Scott's expert affidavit begins at p 100. Vol 6A

³ Prof Kamola's expert affidavit begins at p 111. Vol 6A

⁴ Prof Khalidi's affidavit begins at p 1580. Vol 6E

⁵ Prof Mendelson attempts to consign SAJFP to irrelevance (including by filing separate heads (vol 2) dealing with what he contends are "*irrelevant allegations*" made by SAJFP). This overlooks the detailed legal submissions and factual evidence put up by SAJFP in response to Prof Mendelsohn's grounds of review that the Gaza resolutions were ultra vires the Council's power to govern the University, and his claims that the resolutions violate his academic freedom. Our submissions will be focused on responding to these grounds of review. This is demonstrated by the fact that SAJFP addresses arguments made in vol 1 of the heads of argument.

by UCT “*does not conflate antisemitism with criticism of Israel.*”⁶ SAJFP explains why the IHRA definition can be, and is, used to make this very conflation. UCT’s rejection of the IHRA definition on this ground is thus reasonable.

6.2 Second, arguments about the alleged irrationality of the IDF resolution.⁷ Prof Mendelsohn claims that the IDF resolution does not bear a rational link to the purpose of ensuring that UCT is not associated with potential gross violations of human rights and international law. SAJFP demonstrates that the resolution, while narrow in scope, is capable of achieving that purpose and is defensible.

6.3 Third, Prof Mendelsohn’s contentions that both resolutions are unreasonable or are not justified as a part of the Council’s duty to “*govern*” in section 27(1) of the Higher Education Act 101 of 1997 because they violate his rights to academic freedom.⁸ SAJFP demonstrates that the resolutions protect academic freedom and are the result of a lawful exercise of the power to govern.

7 As preliminary remarks, SAJFP submits that this case and the Gaza resolution must be understood in their context.

7.1 There is a widespread consensus that atrocities have been and are being committed in Gaza.

⁶ HoA vol 1 para 90.

⁷ HoA vol 1 paras 98-105.

⁸ HoA vol 1 paras 108-139.

- 7.2 Most of the world's genocide scholars, including Israel's Raz Segal, Amos Goldberg and Omer Bartov, have concluded that Israel's actions constitute genocide.⁹ The United Nations and most of its experts have agreed that Israel is committing genocide.¹⁰ Reports by the most prominent human rights organisations, including Amnesty International, Human Rights Watch, and two of the most prominent Israeli human rights organisations, concur.¹¹ And the South African government has made submissions to the ICJ to this effect.¹²
- 7.3 Whether this is the case is not an issue for determination by this Court. The point is that to hold that view is not eccentric, not unreasonable, and not evidence of antisemitism. It is a mainstream view.
- 8 This context illustrates the moral urgency and legal obligation for UCT to adopt resolutions that prevent the provision of aid, assistance, or recognition to Israel's contraventions of international law and its violations of the rights of Palestinians. It is also the motivation behind SAJFP's *amicus curiae* intervention.
- 9 We address these matters under the following headings:
- 9.1 SAJFP's admission as an *amicus curiae*;
- 9.2 Legitimate criticism of Israel as distinguished from antisemitism;
- 9.3 The Antisemitism resolution;

⁹ SAJFP FA p 17 para 24.3 Vol 6A; SAJFP RA p 1502 para 15. Vol 6E.

¹⁰ SAJFP FA p 19 para 24.5. Vol 6A

¹¹ SAJFP FA pp 18–19 para 24.4 Vol 6A; Shuaib Manjra supplementary affidavit [UCT's rejoinder] pp 3460–3461 para 28. Vol 5D

¹² SAJFP FA p 20 paras 24.6–24.7. Vol 6A

9.4 The IDF resolution; and

9.5 UCT Council's duty to govern.

ADMISSION OF SAJFP AS AN *AMICUS CURIAE*

SAJFP and its interest in the litigation

- 10 SAJFP is a voluntary association with a separate legal personality¹³ made up of Jewish individuals who are citizens of or are residing in South Africa.
- 11 SAJFP's members are united by their Jewish identity, their opposition to the political ideology of Zionism, and their support for the Palestinian people in their struggle against the State of Israel — a state which purports to act in the interests of and on behalf of all Jewish people around the world.
- 12 SAJFP views Zionism as a political ideology which advocates for the establishment of a Jewish ethnostate in the region historically known as Palestine, a region historically home to Muslim, Jewish and Christian Palestinians. Zionists refer to the establishment of the Israeli state as a manifestation of “Jewish self-determination”. But self-determination cannot be realised on other people's land. That, SAJFP believes, is settler colonialism.¹⁴
- 13 SAJFP asserts that one cannot define ideologies, including Zionism, on the basis of rhetoric. Zionism must be defined and understood based on how it is practised in the real world.

¹³ While not in the papers, there was an exchange of correspondence in which Prof Mendelsohn questioned whether SAJFP exists as a legal entity capable of suing or being sued. It does indeed so exist. It appears that the issue has been put to rest, so we do not address it.

¹⁴ SAJFP FA pp 26–27 paras 45–48. Vol 6A

- 14 As a Jewish organisation opposed to the political ideology of Zionism, one of SAJFP's primary goals is *"helping to disentangle Judaism (a religion that is thousands of years old and made up of diverse ethnicities and cultures which have flourished in many different parts of the world) from Zionism"*.¹⁵ Jewish people, in their heterogeneity, cannot be limited by and defined within a single ethnic state. A key element of SAJFP's work is *"to demonstrate that it is not antisemitic to criticise Israel... [and] to oppose the existence of a Jewish state as a state which seeks to manufacture a Jewish demographic majority and Jewish political supremacy over others."*¹⁶
- 15 In addition to SAJFP's knowledge and expertise, as well as the expert testimony it wishes to place before the Court, SAJFP has a particular interest in the present litigation. This direct interest stems from the dozens of members of SAJFP who are staff and students at UCT, whose freedom of expression, including academic freedom, would be threatened should the adoption and enforcement of the IHRA definition of antisemitism at UCT not be prevented.¹⁷

SAJFP's submissions are different and will be helpful

- 16 SAJFP's submissions in this case are different from those of the parties, and are relevant and will be helpful in assessing Council's passing of the two resolutions.
- 17 First, SAJFP makes submissions from the unique positionality of its constituency: anti-Zionist Jews, many of whom are active members of the UCT community.

¹⁵ SAJFP FA pp 11–12 para 22.1. Vol 6A

¹⁶ SAJFP FA p 12 para 22.2. Vol 6A

¹⁷ SAJFP FA p 13 paras 23.1–23.2. Vol 6A

- 17.1 SAJFP, from the perspective of an anti-Zionist Jewish organisation, uniquely submits experiential evidence as to why the antisemitism resolution is necessary for the safety of all Jewish students on campus¹⁸ as well as for the safety and freedom of expression of all those who speak out against Israel and Zionism at UCT.
- 17.2 SAJFP believes that *“public institutions, including universities, have a responsibility to combat antisemitism alongside all other forms of racism.”*¹⁹ The antisemitism resolution fulfils UCT’s responsibility to protect Jewish students and staff from antisemitism.²⁰
- 17.3 SAJFP’s members, alongside others who are critical of the State of Israel and the ideology of Zionism at UCT, have been targeted due to their support for the resolutions and for their actions in solidarity with Palestine,²¹ under the guise of false claims of antisemitism that rely on the conflation of antisemitism and anti-Zionism.²² SAJFP contends that this conflation, which is rejected by the antisemitism resolution, operates to stifle legitimate anti-Zionist speech and protest.
- 17.4 SAJFP members have also had first-hand experience and knowledge of other universities, such as Columbia University, where this conflation has been used to target legitimate anti-Zionist speech.
- 18 Second, SAJFP provides unique expertise relevant to assessing the substantive issues that lie at the heart of this case.

¹⁸ SAJFP FA p 63, 77–80 paras 63, 160–160.4, 162. Vol 6A

¹⁹ SAJFP FA pp 13–14 para 23.4. Vol 6A

²⁰ SAJFP FA p 77 paras 160–160.1. Vol 6A

²¹ SAJFP FA p 13 para 23.1. Vol 6A

²² SAJFP RA pp 1502–1516 paras 30–30.10. Vol 6E

- 18.1 SAJFP's expertise is derived from extensive research and advocacy underpinned by the organisation's aims.
- 18.2 SAJFP has expertise on the differing definitions of antisemitism and the dangers of conflating anti-Zionism and antisemitism.
- 18.3 Much of SAJFP's work is focused on disentangling Judaism from Zionism. SAJFP provides a historical background to this entanglement.²³ SAJFP submits that this conflation, and the resultant conflation of anti-Zionism and antisemitism, pose real risks.
- 19 These submissions are of central relevance to the case. They demonstrate why the UCT Council had a legitimate reason to reject the conflation of anti-Zionism and antisemitism at an institutional policy level.
- 20 In relation to the Antisemitism resolution:
- 20.1 SAJFP provides expert evidence on how the IHRA definition conflates anti-Zionism with antisemitism.
- 20.2 SAJFP submits an expert affidavit by Prof Friedman on how the IHRA definition of antisemitism was borne out of an organised political (Zionist) attempt at reframing antisemitism to no longer refer only to prejudice against Jewish people, but to also include criticism of Israel.²⁴
- 20.3 SAJFP, with expert knowledge of the debates around antisemitism, demonstrates how the conflation of anti-Zionism and antisemitism is

²³ SAJFP FA p 25–29 paras 40-57. Vol 6A

²⁴ SAJFP FA pp 26–28 paras 45-53; expert affidavit of Prof Friedman pp 94–96. Vol 6A

inherent to the wording of the IHRA definition, including its examples.²⁵

This is summarised below at paras 41.3–41.3.4.

- 20.4 SAJFP submits expert evidence on how the adoption and enforcement of the IHRA at an institutional level leads to the suppression of freedom of expression, including political expression and academic freedom, precisely because it mislabels legitimate anti-Zionist expression as antisemitism.²⁶
- 20.5 SAJFP, as an anti-Zionist organisation engaged in Palestine solidarity efforts, has expert knowledge on how the IHRA definition is widely used to suppress criticism of Israel and solidarity with Palestine, particularly on university campuses.
- 20.6 Expert affidavits by Prof Scott and Prof Kamola provide evidence of the IHRA's suppression of freedom of expression in practice.
- 20.7 An affidavit by Prof Khalidi attests to the suppressive and silencing effect of the definition through first-hand experience at Columbia University. This is further demonstrated by public statements made by Prof Marianne Hirsh (Professor Emerita of English and Comparative Literature at Columbia).²⁷
- 20.8 The evidence submitted by SAJFP on the IHRA's conflation of criticism of Israel and Zionism with antisemitism and its impact on freedom of expression is relevant and helpful in determining whether the antisemitism resolution is linked to the legitimate purpose of ensuring that UCT's policies to address antisemitism, aimed at protecting Jewish students on campus, do not lead to the suppression of legitimate anti-Zionist expression.

²⁵ SAJFP FA pp 33–34 paras 67–67.2.3 Vol 6A, SAJFP RA pp 1521–1522 paras 38–39. Vol 6E

²⁶ SAJFP FA pp 38–42 paras 77–86. Vol 6A

²⁷ SAFJP Further Affidavit pp 1565–1568 paras 9–20.

21 In relation to the IDF resolution:

21.1 SAJFP is an organisation that is committed to social justice in South Africa and globally. SAJFP's submissions provide expertise in relation to a holistic, justice-oriented conception of academic freedom. Drawing on the Kampala Declaration and UCT's own academic freedom principles, SAJFP shows how academic freedom is linked to social responsibility of institutions.²⁸

21.2 SAJFP is a member of the Boycott Divestment and Sanctions (BDS) coalition. Drawing from its expertise on academic boycotts, it contends that there is a legal and moral obligation of states and non-state entities to cut ties with Israeli institutions which are complicit in the violation of the human rights of Palestinians.²⁹

Conclusion

22 SAJFP satisfies all requirements for admission as an amicus curiae.³⁰ It brings a new and different perspective that will assist the Court on the issues raised in the application. It should be admitted as an amicus.

CRITICISM OF ISRAEL AND ANTISEMITISM MUST NOT BE CONFLATED

23 A core aspect of SAJFP's mandate is advocating against the conflation of criticism of the State of Israel and the political ideology of Zionism, on the one hand, and antisemitism, on the other.

²⁸ SAJFP FA p 13 para 23.3, SAJFP FA pp 75–76 paras 156–156.4. Vol 6A

²⁹ SAJFP FA p 15 para 23.7. Vol 6A

³⁰ See eg *Maughan v Zuma and Others* 2023 (5) SA 467 (KZP) at paras 141-143.

- 24 The issue of the conflation of criticism of Israel and antisemitism arises in the present matter as a consequence of Prof Mendelsohn’s challenge to the first resolution passed by UCT Council (“the antisemitism resolution”), in which UCT Council—
- “[rejects] the International Holocaust Remembrance Alliance’s conflation of critique of Zionism and Israel’s policies as antisemitism, in favour of the Jerusalem Declaration’s dynamic understanding of what constitutes antisemitism”.³¹
- 25 Criticism of Israel and Zionism is distinct from antisemitism, a prejudice based on Jewish identity. Crucially, Judaism is distinct from Zionism.
- 26 This distinction has been affirmed by our highest courts.³² The SCA and CC judgments in *Masuku* both recognise the importance of maintaining the distinction between Judaism and Zionism when determining whether speech and expression that is critical of Israel and Zionism constitutes antisemitic hate speech.
- 27 Judaism is a religion that has been practised for thousands of years. Jews have never constituted a homogeneous ethnic group; the religion is made up of diverse ethnicities and cultures from around the world. Zionism is a relatively young political ideology which, claiming Jewish people’s right of self-determination, has sought to establish a Jewish ethno-state in historic Palestine on land where the indigenous population includes Muslim, Christian and Jewish Palestinians.³³
- 28 Since its inception, many Jewish people and Jewish formations have challenged the ideology of Zionism and the notion that Jews can only be safe through the establishment of the State of Israel.³⁴ At its emergence, many left-wing Jews rejected

³¹ For the full text of the antisemitism resolution, see UCT AA [in main application] pp 1024–1026 para 147. Vol 4A

³² *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 2022 (4) SA 1 (CC) at para 152, *Masuku and Another v South African Human Rights Commission obo South African Jewish Board of Deputies* 2019 (2) SA 194 (SCA) at para 25.

³³ SAJFP FA pp 11–12 para 22. Vol 6A

³⁴ SAJFP FA p 26 para 46. Vol 6A

Zionism and promoted social justice and combating antisemitism in the places where they lived rather than creating a state on another people's land.³⁵ Until the 1940s, Zionism was a minority position among most Jewish communities.³⁶

29 Proponents of Zionism, the majority of whom are not Jewish but of the Christian faith, conflate Zionism with Judaism, and thus anti-Zionism with antisemitism. This conflation has become a tool to package right-wing, and often Islamophobic and/or anti-immigrant agendas, as is the case of far-right politicians like Viktor Orbán or Jair Bolsonaro.³⁷ It has also been used to defend support for Israel from the perspective of countries like the United Kingdom and United States.³⁸

30 The conflation of Judaism and Zionism, and therefore of criticisms of Zionism and antisemitism, has serious implications, which SAJFP submits are relevant to assessing the reasonableness and legitimacy of the UCT Council's decision to adopt the antisemitism resolution.

30.1 Conflating Judaism and Zionism erases the multiple cultures, ethnicities and formations that make up the Jewish faith. This in itself is antisemitic.

30.2 By conflating the two matters, Jews who do not fit the mould of Zionism have been scrutinised and excluded from dominant institutions. At universities such as Columbia, which unlike UCT have embraced this conflation, anti- and non-Zionist Jewish voices are silenced.³⁹

³⁵ Prof Friedman expert affidavit p 96 p. 4. Vol 6A

³⁶ SAJFP RA p 1526 para 50. Vol 6E

³⁷ SAJFP FA p 47 para 88.2. Vol 6A

³⁸ SAJFP FA p 29 para 53. Vol 6A

³⁹ SAJFP Further Affidavit p 1566 para 13. Vol 6E

- 30.3 The conflation is used to stifle freedom of expression, free speech and academic freedom, by mislabelling Jews and non-Jews as antisemitic, purely because they oppose Zionism.⁴⁰
- 30.4 SAJFP is concerned that the conflation of Judaism and Zionism makes it difficult to deal effectively with genuine instances of antisemitism on campus, that is, prejudice and discrimination against members of the UCT community based on their being Jewish.⁴¹
- 30.5 In the absence of an institutional position and policy on antisemitism that explicitly rejects the conflation of Judaism and Zionism, Jewish students on campus are at risk of being wrongly targeted as responsible for Israel's policy and actions.⁴²
- 30.6 SAJFP submits that highlighting the distinction between Judaism and Zionism, and rejecting the conflation of anti-Zionism and antisemitism, is essential to effectively combating antisemitism,⁴³ and that the antisemitism resolution serves this function.

ANTISEMITISM RESOLUTION

- 31 Prof Mendelsohn challenges the antisemitism resolution on the following grounds—

⁴⁰ SAJFP FA pp 38–42 77–85; Prof Friedman expert affidavit pp 94–96 pp 2–4; Prof Kamola expert affidavit pp 115, 126, 129–130 paras 13, 14, 36, 39–40; Prof Scott expert affidavit pp 102–105, 107–108 paras 11, 15, 19, 20–22, 28, 30, 31. Vol 6A

⁴¹ SAJFP FA pp 77–79 para 160–160.4. Vol 6A

⁴² SAJFP FA pp 21, 79–80 paras 63, 162 Vol 6A; SAJFP RA p 1515 para 30.10.2 Vol 6E

⁴³ SAJFP RA p 1516 paras 30.11 and 30.12. Vol 6E

31.1 First, he claims that the antisemitism resolution has the impact of limiting academic freedom as it “[shuts] down contrary debate or research”⁴⁴ on the question of defining antisemitism.

31.2 Second, he claims that the antisemitism resolution has the impact of placing UCT in breach of a contract of donation “which includes as a term that UCT show... zero tolerance for antisemitism as defined by the IHRA”.⁴⁵

31.3 Third, he claims that adopting the antisemitism resolution was “based on a fundamental and material mistake of fact”, namely, that UCT Council “assumed that the IHRA definition constitutes a ‘conflation of critique of Zionism and Israel’s policies as antisemitism’”.⁴⁶

32 The issues of (a) defining antisemitism, (b) whether the IHRA conflates antisemitism and anti-Zionism, and (c) whether the UCT Council can reasonably opt for a definition that avoids this conflation thus lie at the heart of Prof Mendelsohn’s challenge.

UCT’s rejection of the IHRA definition’s conflation in favour of the JDA definition was reasonable and legitimate

33 SAJFP makes the following submissions in order to assist the Court in deciding the issues engaged by Prof Mendelsohn’s challenge to the antisemitism resolution.

34 As to Prof Mendelsohn’s first ground—

⁴⁴ Prof Mendelsohn FA [in main application] pp 55–56 para 74. Vol 1

⁴⁵ Prof Mendelsohn FA [in main application] p 36 para 52.5. Vol 1

⁴⁶ Prof Mendelsohn FA [in main application] p 57–58 para 77. Vol 1

- 34.1 It is clear from the wording of the resolution as a whole, and the context in which it was adopted, that UCT Council's rejection of the IHRA definition of antisemitism was not a rejection of its use as an object of academic study, but rather of its use as a "hate speech code".⁴⁷
- 34.2 The full text of the resolution expresses UCT's "*concern and opposition to any attempts to curtail academic freedom by labeling criticism of Israel or Zionist policies as antisemitism*" and its support of academics "*in Gaza who are surviving under appalling conditions*" and academics who are "*victimized for their willingness to speak out against the scholasticide in Gaza*".⁴⁸
- 34.3 The "*attempts to curtail academic freedom by labeling criticism of Israel or Zionist policies as antisemitism*" referred to are precisely those that entail the application of a definition of antisemitism like the IHRA definition of antisemitism in order to determine what speech and expression is acceptable.
- 34.4 Part of the context in which the antisemitism resolution was adopted is a concerted effort in various institutions, including a number of universities, to use a definition like the IHRA definition to suppress and chill free speech and expression that is critical of the State of Israel or the political ideology of Zionism.
- 34.5 UCT has been explicit that the purpose of passing the antisemitism resolution is "*to promote and protect academic freedom and prevent the*

⁴⁷ SAJFP FA pp 29–30 paras 59–60 Vol 6A

⁴⁸ UCT AA pp 1024–1026 para 147. Vol 4A

silencing of academics and academic work that is critical of Israel by labelling it antisemitic".⁴⁹ Furthermore, the intended effect of the resolution is that UCT *"will not apply the IHRA definition of antisemitism when it determines whether conduct or research is anti-Semitic"*.⁵⁰

34.6 The IHRA does not need to have a *"sanction for speech or conduct that is deemed antisemitic according to its provisions"*, in order for it to be used as a hate speech code.⁵¹ Whether or not the IHRA was initially intended for educational purposes and not as a hate speech code is irrelevant, as the indisputable facts demonstrate that the IHRA can be, and is, widely used in assessing allegations of antisemitism at an institutional level.⁵²

34.7 As long ago as 2011 Kenneth Stern, the lead drafter of the IHRA, spoke publicly and critically about *"how the definition was being abused to target academic freedom and political speech, how it was being weaponised"* at university campuses and beyond. He says that even though the definition was never meant to be deployed as a "hate speech code", the conflation of criticism of the Israeli state with antisemitism has had that effect.⁵³

34.8 SAJFP provides a number of examples of the use of the IHRA definition of antisemitism in this manner, which it submits will be of assistance to the Court in understanding the purpose of the antisemitism resolution and the context in which it was adopted.⁵⁴

⁴⁹ UCT AA p 1118 para 358.1. Vol 4A

⁵⁰ UCT AA p 1119 para 358.2. Vol 6A

⁵¹ SAJFP RA p 1519 para 32.8.2. Vol 6E

⁵² SAJFP RA p 1519 para 32.8.3. Vol 6E

⁵³ SAJFP FA p 38 para 77. Vol 6A

⁵⁴ SAJFP Annexure JS2 to RA pp 1544-1549. Vol 6E

34.9 SAJFP submits that the use of the IHRA as a hate speech code, the kind of use that was expected of UCT under the contract with the Donald Gordon Foundation (DGF), is plainly what the antisemitism resolution seeks to avoid.

35 As to Prof Mendelsohn's second ground—

35.1 The contract of donation with the DGF , which seeks to oblige UCT to “show... zero tolerance for antisemitism as defined by the IHRA”,⁵⁵ is an example of the manner by which some private donors seek to influence university policy outside of the democratic decision-making processes and structures, like UCT Council, that are empowered to set university policy.⁵⁶

35.2 If UCT were to attempt to fulfil this obligation — namely, by using the IHRA definition of antisemitism as a code by which to adjudicate whether speech and expression constitute antisemitism — it would impermissibly infringe upon the freedom of speech and expression, including academic freedom, of its staff and students.

35.3 In the context of determining whether speech that is critical of the State of Israel and the political ideology of Zionism constitutes antisemitic hate speech, our highest courts have emphasised that Judaism and Zionism must be kept distinct.⁵⁷

⁵⁵ Prof Mendelsohn FA [in main application] p 36 para 52.5: emphasis added. Vol 1

⁵⁶ SAJFP FA pp 37–38 paras 73–75 Vol 6A.

⁵⁷ *Masuku and Another v South African Human Rights Commission obo South African Jewish Board of Deputies* 2019 (2) SA 194 (SCA) at para 25; *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 2022 (4) SA 1 (CC) at para 152.

35.4 Finally, the second ground of Prof Mendelsohn's challenge creates the *"curious paradoxical consequence... that the antisemitism resolution is challenged both on the basis that UCT ought not to reject or bind itself to a particular definition, and on the basis that UCT ought to comply with its donor agreement to bind itself to a particular definition"*.⁵⁸ Prof Mendelsohn does not attempt to square the circle of this paradoxical argument.

36 As to Prof Mendelsohn's third ground,

36.1 The IHRA definition of antisemitism includes and lends itself to the inclusion of certain criticisms of the State of Israel and the political ideology of Zionism as antisemitism.⁵⁹

36.2 In particular, it does so by—

36.2.1 First, adopting a broad and vague definition of antisemitism as *"a certain perception of Jews"*.

36.2.2 Second, containing examples of so-called *"[r]hetorical and physical manifestations of antisemitism"* which conflate, or lend themselves to the conflation of, antisemitism and criticism of the State of Israel or the political ideology of Zionism.⁶⁰

36.2.3 Some of these examples include—

⁵⁸ SAJFP FA pp 30–31 para 61.2. Vol 6A

⁵⁹ SAJFP FA pp 33–34 paras 65–68 Vol 6A; See also SAJFP RA pp 1517–1520 paras 32.7–32.8. Vol 6E

⁶⁰ SAJFP FA pp 33–34 para 67. Vol 6A

- The “*targeting of the state of Israel*”, which is “*conceived as a Jewish collectivity*”, and therefore not a state like any other.⁶¹
- Levelling criticism against Israel that is not “*similar to that levelled against any other country*”, regardless of whether harsher criticism of Israel is warranted or justified;⁶² or “*applying double standards by requiring of [Israel] a behaviour that is not expected or demanded of any other democratic nation*”, regardless of whether Israel is behaving like other nations.⁶³
- Making the claim that “*the existence of a State of Israel is a racist endeavour*”,⁶⁴ regardless of the merits of the argument that Zionism advocates for a political order that is built on racial discrimination.⁶⁵
- “*Drawing comparisons of contemporary Israeli policy to that of the Nazis*”,⁶⁶ regardless of whether Israeli policy in fact resembles that of the Nazi government in Germany.

36.3 Thus, as SAJFP makes clear in its founding affidavit, “[a]t face value, the IHRA definition could plausibly lead to an institution punishing any

⁶¹ SAJFP FA pp 33–34 paras 67.1, 68 Vol 6A. This is deemed to be antisemitic, notwithstanding the fact that the Israeli Knesset (Parliament) has enacted the Nation State Law which distinguishes Israel from all other states precisely by characterising it as a state for Jews.

⁶² SAJFP FA pp 33–34 para 67.1. Vol 6A

⁶³ SAJFP FA p 34 para 67.2.2. Vol 6A

⁶⁴ SAJFP FA p 34 para 67.2.1. Vol 6A

⁶⁵ SAJFP RA pp 1517–1518 paras 32.4–32.5. Vol 6E

⁶⁶ SAJFP FA p 34 para 67.2.3. Vol 6A

academic or political expression which has Zionism and Israel as its target”

on the basis of the above examples.⁶⁷

36.4 The context in which the IHRA definition of antisemitism was developed and adopted was shaped by an organised movement to reframe and redefine antisemitism in a manner that included certain criticisms of the State of Israel and the political ideology of Zionism — a concept that was given the label the “*New Antisemitism*”.⁶⁸

36.5 When used as a mode of defining antisemitism as a form of prohibited conduct, it would therefore classify as prohibited, conduct and expression which target Israel and Zionism.

37 In light of (a) the manner by which the IHRA definition of antisemitism conflates, or lends itself to conflating, criticisms of the State of Israel and the political ideology of Zionism with manifestations of antisemitism, and (b) the concomitant impact its adoption would have on freedom of speech and expression, including academic freedom — it is reasonable and legitimate for an institution to refuse to adopt and enforce it. The fact that some other institutions have chosen to adopt the IHRA definition (such as those referred to by Prof Mendelsohn⁶⁹) does not render it unlawful or irrational for UCT Council to refuse to follow that route.

38 Public institutions, like UCT, ought to ensure that the definition of antisemitism they adopt⁷⁰ — in order to determine whether speech or conduct is antisemitic, and

⁶⁷ SAJFP FA p 37 para 72. Vol 6A

⁶⁸ SAJFP FA pp 26–27 paras 45–53; expert affidavit of Prof Steven Friedman p 94. Vol 6A

⁶⁹ HoA vol 1 para 130.

⁷⁰ Cf Prof Mendelsohn HoA vol 1 para 127, where it is suggested that the UCT Council could not have adopted a definition of antisemitism at all. This is contradictory to arguments made about the DGF contract.

whether such speech or conduct should therefore be sanctioned or prohibited — does not conflate criticisms of Israel or Zionism and antisemitism, and does not impermissibly restrict free expression.

- 39 SAJFP submits that a decision by a public institution to reject the IHRA definition’s conflation of criticism of the State of Israel and the political ideology of Zionism with antisemitism — as UCT Council does in the antisemitism resolution — is therefore a reasonable and legitimate decision to make.

The impact of the IHRA definition on universities in the United States

- 40 The facts show that the adoption of the IHRA definition of antisemitism by universities in the United States has had a demonstrable negative impact on freedom of speech and expression, including academic freedom.
- 41 SAJFP places evidence of this impact before the Court, as it is relevant to the issue of whether the problem with the IHRA definition is, as Prof Mendelsohn claims, “*imagined*”,⁷¹ or whether it is real problem which a university ought to be alive, and is entitled to address.
- 42 There is widespread evidence that the adoption of the IHRA definition of antisemitism has led to the restriction of freedom of speech and expression, including academic freedom, in institutions around the world, most notably those located in the United States.⁷²

⁷¹ SAJFP FA p 41 para 81. Vol 6A

⁷² For a list of instances of the IHRA definition of antisemitism being weaponised to suppress freedom of expression, see Arendse AA pp 1014–1016 paras 123–125. Vol 4A

- 43 The experiences of students and staff at these institutions, SAJFP submits, is an important part of the context in which UCT Council's decision to reject the IHRA definition's conflation of criticisms of Israel and Zionism and antisemitism should be understood.
- 44 The frequency of the application of the IHRA definition of antisemitism grew exponentially following the 2019 executive order signed by Donald Trump which stated that Title VI of the Civil Rights Act of 1964 would also prohibit "*forms of discrimination rooted in antisemitism*" and that federal agencies must use the IHRA definition of antisemitism in order to adjudicate cases brought under Title VI.⁷³
- 45 Following the executive order, the volume of Title VI claims alleging antisemitism has risen dramatically and legal aid organisations such as Palestine Legal have seen a significant increase in incidents involving the suppression of advocacy for Palestinians.⁷⁴
- 46 According to the American Civil Liberties Union (ACLU), the effect of bringing these cases, even if they are later dismissed, is that universities will be motivated to "*censor their communities, fearing recourse from donors, faculty, political leaders and prospective students*".⁷⁵ The ACLU has documented numerous instances in which the IHRA definition of antisemitism has been used to deem "*student events for Israeli Apartheid Week, like an event entitled 'Debunking misconceptions on Palestine and the importance of BDS'*" as antisemitic and worthy of being censored or cancelled.⁷⁶

⁷³ SAJFP FA p 39 para 77.2. Vol 6A

⁷⁴ SAJFP FA pp 39–40 para 77.2–77.3. Vol 6A

⁷⁵ SAJFP FA p 40 para 79. Vol 6A

⁷⁶ SAJFP FA p 42 para 85. Vol 6A

- 47 Sir Stephen Sedley, a Jewish lawyer, former judge of the Court of Appeals of England and Wales, and visiting Professor at the University of Oxford, points out that the chilling effect of adopting the IHRA definition will be wider than the cases which are actually brought under its provisions, as it is *“less easy to track... events which failed to take place because of such pressure, or for fear of it”*.⁷⁷
- 48 Jewish organisations, such as Jewish Voice for Peace (JVP), have been banned from certain university campuses, including Columbia University, on the grounds that their activism violates the IHRA definition of antisemitism.⁷⁸
- 49 Some prominent examples of the suppression of the freedom of speech and expression, including academic freedom, of individuals as a result of the application of the IHRA definition of antisemitism in the United States include—
- 49.1 The termination of Professor Maura Finkelstein’s tenured position at Muhlenberg College, Pennsylvania.⁷⁹
- 49.2 The detention and attempted deportation of Mahmoud Khalil, a Palestinian Master’s graduate of Columbia University, and permanent resident of the United States.⁸⁰
- 50 More recent is the experience of Prof Rashid Khalidi, a highly distinguished academic, who has provided an affidavit in this case. He cancelled a 300-student large lecture course on Middle East history at Columbia University, which he was scheduled to deliver in September 2025, because *“it has become impossible to*

⁷⁷ SAJFP FA p 40 para 79. Vol 6A

⁷⁸ SAJFP FA pp 46–47 para 88.1. Vol 6A

⁷⁹ SAJFP FA p 41 para 82. Vol 6A

⁸⁰ SAJFP FA p 41 para 83. Vol 6A

teach this course in light of Columbia's adoption of the IHRA definition of antisemitism".⁸¹ He says this has meant that it has become "impossible to accurately teach about topics such as the creation of Israel and the Palestinian Nakba" and that "[s]imply describing the discriminatory nature of Israel's 2018 Nation State Law or discussing the apartheid nature of the state, risks being labelled as antisemitic and therefore penalised now that the IHRA definition is the standard definition of antisemitism at Columbia University".⁸²

51 The expert affidavit of Prof Kamola highlights the dire consequences that the adoption of the IHRA definition of antisemitism has on freedom of expression, including academic freedom; employment at universities; and the funding available to universities.⁸³

52 Prof Marianne Hirsch, a highly distinguished academic who is the daughter of holocaust survivors, published an open letter to the Columbia University president and gave an interview to the Associated Press in which she detailed the negative effects that the IHRA definition has on her ability to teach. She stated that because of the adoption of the IHRA definition, the university is no longer a place of open inquiry.⁸⁴

53 The expert affidavit of Prof Scott sets out how *"the contested and politicised"* IHRA definition of antisemitism, which *"potentially takes any criticism of the state policies of Israel to constitute discrimination against Jews"*, is used to suppress speech, research and expression.⁸⁵

⁸¹ Prof Khalidi supporting affidavit p 1581 para 9. Vol 6E

⁸² Prof Khalidi supporting affidavit p 1581 para 10. Vol 6E

⁸³ Prof Kamola expert affidavit pp 111–133. Vol 6A

⁸⁴ SAJFP Further Affidavit pp 1565-1568 paras 9–20. Vol 6E

⁸⁵ Prof Scott expert affidavit pp 103–104 paras 12–19. Vol 6A

54 In consequence of the above, there has been widespread opposition to the IHRA from scholars and organisations, including Jewish scholars and organisations. In addition to those listed in UCT’s answering affidavit,⁸⁶ SAJFP draws attention to other examples of such opposition. These include—

54.1 Over 370 Jewish scholars who have endorsed the Jerusalem Declaration on Antisemitism, which was specifically designed as an alternative to the problematic IHRA definition of antisemitism.⁸⁷

54.2 Jewish organisations that are vocally critical of Israel’s treatment of the Palestinians, such as Jewish Voices for Peace (JVP) and IfNotNow in the United States, have criticised the IHRA definition of antisemitism for “*not [being] about Jewish safety*”⁸⁸ and for “*[muddying] the waters about real antisemitism*”⁸⁹ The “*only thing [the IHRA definition] secures*”, according to JVP, “*is impunity for decades of violating international law and trampling on Palestinian human rights*”.⁹⁰

54.3 Other Jewish organisations around the world — such as Independent Jewish Voices Canada and the Jewish Faculty Network in Canada; Na’amod in the United Kingdom; and Tsedek and the French Jewish Union for Peace (UJFP) in France — have similarly criticised and opposed the use of the IHRA definition of antisemitism.⁹¹

⁸⁶ Norman Arendse AA pp 1003–1014 paras 108–121. Vol 4A

⁸⁷ SAJFP FA p 43 para 87.1. Vol 6A

⁸⁸ SAJFP FA p 43 para 87.2.1. Vol 6A

⁸⁹ SAJFP FA p 43 para 87.2.2. Vol 6A

⁹⁰ SAJFP FA p 43 para 87.2.1. Vol 6A

⁹¹ SAJFP FA pp 44–45 paras 87.2.3–87.2.4, 87.2.6, 87.2.8. Vol 6A

- 54.4 The International Jewish Anti-Zionist Network (IJAN), an international umbrella organisation of anti-Zionist Jews, describes the IHRA definition of antisemitism as “*a subsidiary instrument*” of the State of Israel, designed to “*silence any criticism towards Zionism and the State of Israel*”.⁹²
- 54.5 Over 100 civil society organisations — including Human Rights Watch and Israel’s leading human rights organisation B’Tselem, alongside a number of other Israeli human rights organisations — sent letters to the United Nations urging it not to adopt or promote the IHRA definition of antisemitism.⁹³

The dangers of donor pressure

55 The right to freedom of expression, including “academic freedom”, is protected by section 16(1)(d) of the Constitution.

55.1 South Africa’s history informs the meaning of academic freedom.⁹⁴

55.2 As Prof Kamola points out, in the 1950s the Open Universities – UCT and the University of the Witwatersrand (open because they admitted black students) – took a stand against the apartheid government’s intention to “*impose upon universities a uniformity of practice, in accordance with its theory of apartheid*.”⁹⁵

⁹² SAJFP FA p 44 para 87.2.5. Vol 6A

⁹³ SAJFP FA pp 45–46 para 87.3. Vol 6A

⁹⁴ South Africa’s history has always been used to give meaning to the Constitution and Bill of Rights. Eg, *S v Makwanyane* 1995 (3) SA 391 (CC) at para 10.

⁹⁵ Conference of the Representatives of the University of Cape Town and University of the Witwatersrand, *The Open Universities in South Africa* (1957) at 3, referred to in Prof Kamola expert affidavit pp 130-132 paras 42-44. Vol 6A

55.3 He notes that a conference of senior academics from the Open Universities published a short book, dealing with academic freedom. It explained:⁹⁶

“In a university, knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates — ‘to follow the argument where it leads.’ This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.

...

Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university.

...

... It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”

55.4 This extract was relied on by Justice Frankfurter in a concurring judgment in the US Supreme Court decision of *Sweezy v New Hampshire*,⁹⁷ which established constitutional protection of academic freedom in that country.

55.5 It also informs South Africa’s contemporary constitutional protection of academic freedom.⁹⁸

⁹⁶ *Ibid* at 10-12.

⁹⁷ *Sweezy v. New Hampshire* 354 U.S. 234 (1957) at 262-263.

⁹⁸ Prof Mendelsohn appears to agree, see HoA vol 1 para 121.

- 56 Attaching extraneous conditions to university funding, donations or subsidies – whether by the State or by private donors – has the potential to limit academic freedom.⁹⁹ It has the potential to interfere with a University’s determination for, itself on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study.
- 57 Public universities around the world are becoming increasingly dependent on private donations as public funding is reduced.¹⁰⁰ Especially in the United States, a consequence of this has been that wealthy institutions, organisations and individuals are able to use the mechanism of donation to exert an influence over the policies and practices of the universities they fund.¹⁰¹
- 58 Over the past few decades, under pressure from wealthy philanthropists, university administrators often agreed to adopt measures or pursue projects that directly violate their institutional autonomy (such as electing or retaining their own university presidents)¹⁰² and core mission and values (such as promoting a just and equal society and a culture of respectful debate).¹⁰³
- 59 Facing the constant threat of donors walking away in reaction to, for instance, a professor’s tweet or a position taken by a student body, universities have come to practise what Prof Scott and Prof Kamola refer to as *anticipatory obedience*, with the

⁹⁹ See eg *University of Cape Town v Ministers of Education and Culture (House of Assembly and House of Representatives)* 1988 (3) SA 203 (C). Howie J held that conditions attached to university subsidies were imposed by Ministers because of the State’s ulterior purpose of combatting perceived unlawfulness at universities through student protests against apartheid. This was *ultra vires* the authorizing statute.

¹⁰⁰ Prof Kamola expert affidavit pp 112–113 para 6. Vol 6A

¹⁰¹ Prof Scott expert affidavit pp 108–109 paras 31, 34; Prof Kamola expert affidavit pp 129–130 paras 39–41. Vol 6A

¹⁰² SAJFP FA p 49 para 90.3. Vol 6A

¹⁰³ SAJFP FA p 50 paras 90.4–90.5. Vol 6A

effect of chilling free expression.¹⁰⁴ As Prof Kamola notes, this has resulted in “maximalist interpretations of the possible risk posed by a donor revolt.”¹⁰⁵

60 Prof Mendelsohn’s second ground for reviewing the resolutions based on the risk of losing donor funding should be dealt with in this context.

61 There is a palpable risk that the same phenomenon will become prevalent at South African universities too.¹⁰⁶ Indeed, the contract between the Donald Gordon Foundation (DGF) and UCT requires, as a condition of donor funding which is unrelated to the purpose of the funding, that UCT adopts and enforces the IHRA definition of antisemitism.¹⁰⁷ This condition, SAJFP submits, is inimical to academic freedom and infringes on UCT’s institutional autonomy.¹⁰⁸

62 Including a condition to enforce the IHRA definition at UCT in a donor contract is part of a trend, particularly strong since 7 October 2023 and in the United States, of Pro-Israel donors, seeking to require university administrators to penalise students and faculty for speech or conduct that they wrongly label as antisemitic or supporting terrorism.¹⁰⁹ At Columbia University, several professors, such as Joseph Massad, Kayum Ahmed and Katherine Franke, are facing imminent dismissal or have already been dismissed as a result of such donor pressure.¹¹⁰

63 UCT’s “*Academic Freedom, Autonomy and Accountability Guiding Principles*”, adopted by UCT’s Academic Freedom Committee, bears directly on the issue of

¹⁰⁴ Prof Scott expert affidavit p 108 para 31, Prof Kamola expert affidavit pp 128-129 para 38. Vol 6A

¹⁰⁵ Prof Kamola expert affidavit pp 128-129 para 38. Vol 6A

¹⁰⁶ SAJFP FA pp 16-17, 54-55 paras 23.9-23.10, 102-104 Vol 6A; SAJFP RA p 1507 para 28.6. Vol 6E

¹⁰⁷ SAJFP FA pp 37-38 paras 73-75. Vol 6A

¹⁰⁸ SAJFP FA pp 54-56 paras 102-105, 114. Vol 6A

¹⁰⁹ SAJFP FA pp 50-51 paras 91-95. Vol 6A

¹¹⁰ SAJFP FA pp 51-53 paras 96-98.3. Vol 6A

resisting donor control. Principles #3, #10-11, and #15 amount to a requirement that UCT reject any attempts by donors that would lead to the infringement of academic freedom and protected speech.¹¹¹ The DGF contract would have violated these principles.¹¹²

- 64 The grounds on which donor pressure is scrutinised is based on the threat that this pressure poses to academic freedom. Just because a donor, or members of a donor organisation happen to be Jewish, does not make concern around the donor's influence antisemitic.¹¹³

The Antisemitism resolution and academic freedom

- 65 Prof Mendelsohn contends that the Antisemitism resolution violates his academic freedom and privileges some academics' freedoms over others.¹¹⁴
- 66 The premise of his argument is that the Antisemitism resolution "*prohibit[s] legitimate uses of the IHRA definition*" and that this "*limits the academic freedom of academics who legitimately use the IHRA definition*".¹¹⁵
- 67 The argument falls at the first hurdle. The premise is bad. UCT is clear in its answer that academics can continue to use the IHRA definition in their research.¹¹⁶ This is in any event clear from the text of the resolution. While UCT rejects the use of the IHRA definition in defining antisemitism for purposes of governance of the University, the resolution does not proscribe its use by individual academics in their research.

¹¹¹ SAJFP FA pp 57–58 paras 109–111. Vol 6A

¹¹² SAJFP FA p 59 para 114 Vol 6A; SAJFP RA pp 1508 paras 28.6.3. Vol 6E

¹¹³ Prof Mendelsohn RA [in main application] pp 2123, 2137–2138 paras 25, 78, 79. Vol 5A

¹¹⁴ HoA vol 1 para 96 and subparas

¹¹⁵ HoA vol 1 para 96.4.

¹¹⁶ Arendse AA p 1119 para 358.2. Vol 4A

68 Therefore, there is simply no limitation (or chilling effect) of Prof Mendelsohn's right to academic freedom as he has claimed.

69 This argument confuses the difference between (a) adopting the IHRA definition and (b) rejecting it in favour of the JDA definition, which has a different effect.

69.1 Had UCT adopted the IHRA definition to decide whether conduct or research is antisemitic, it would have impacted on academic freedom. This is because criticism of Israel – for example in an international law lecture by a professor – could have been found to be antisemitic and thus liable to discipline by the University.

69.2 Rejecting the IHRA definition, and embracing the JDA definition, does not have any such effect. Those individuals who wish to use the IHRA definition in their research are entitled to do so.

70 The Antisemitism resolution thus protects academic freedom. Adopting the IHRA definition would have had the opposite effect.

IDF RESOLUTION

71 The second resolution relates to research collaborations with members of the Israeli Defence Force and the broader Israeli military establishment.

72 In terms of the IDF resolution, *“no UCT academic may enter into relations, or continue relations with, any research group and/or network whose author affiliations are with the Israeli Defence Force, and/or the broader Israeli military establishment”*.

73 Prof Mendelsohn levels the following charges at the IDF resolution—

73.1 First, that the IDF resolution is “*not linked rationally to any legitimate purpose*”.¹¹⁷ In particular, that it does not and cannot achieve the purpose of “[preventing] UCT’s affiliation with or complicity in unlawful conduct by the Israel Defence Forces (IDF), and... [pressuring] the IDF to act lawfully”.¹¹⁸

73.2 Second, that UCT Council lacked the power to pass the IDF resolution, as its obligation to “govern” UCT in terms of the Higher Education Act “*must be interpreted as including the promotion of academics’ constitutional right to freedom of expression, which includes academic freedom*” and “[c]onsequently ... cannot mean taking decisions that limit academic freedom”.¹¹⁹ Prof Mendelsohn contends that passing the IDF resolution is beyond these powers because it “*limits academic freedom by “[precluding] academics from “entering relations” with certain groups or networks*”.¹²⁰

74 SAJFP makes the following submissions regarding the IDF resolution—

74.1 The meaning and purpose of the IDF resolution must be interpreted in the context of the ongoing “*scholasticide*”¹²¹ in Gaza and in light of the role

¹¹⁷ Prof Mendelsohn FA pp 17–18 para 6. Vol 1

¹¹⁸ Prof Mendelsohn FA p 17 paras 6.1–6.2. Vol 1

¹¹⁹ Prof Mendelsohn FA p 19 para 7.2. Vol 1

¹²⁰ Prof Mendelsohn FA p 19 para 7.3. Vol 1

¹²¹ Defined by the United Nations experts as “*the systemic obliteration of education through the arrest, detention or killing of teachers, students and staff, and the destruction of educational infrastructure*”. United Nations Office of the High Commissioner for Human Rights ‘Press Release: UN experts deeply concerned over “scholasticide” in Gaza’ 18 April 2024, available at <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>, accessed on 8 June 2025. Defined in SAJFP FA p 60 Para 117. Vol 6A

played by academic boycotts in struggles against repressive regimes, like the apartheid regime in South Africa.¹²²

74.2 The scope of the IDF resolution is limited, making it well-suited to the dual aims of (i) protecting academic freedom and (ii) ensuring that UCT conducts its research in compliance with international law and the normative framework established by our Constitution.

74.3 The impact of the IDF resolution on academic freedom should be evaluated based on a holistic understanding of academic freedom, which is the understanding adopted in UCT's Academic Freedom, Autonomy and Accountability Guiding Principles and endorsed by leading experts on academic freedom.

UCT's responsibility to prevent complicity in war crimes and adhere to international law

75 In July 2024, the International Court of Justice (ICJ) found in an Advisory Opinion that Israel's continued presence in the Occupied Palestinian Territories is unlawful under international law and that Israel must end its occupation immediately. It further found that Israel's policies violated the right of the Palestinian people to self-determination as well as Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), which prohibits segregation and apartheid.¹²³

¹²² SAJFP FA pp 59–60 paras 115.1–115.3 Vol 6A. For examples of the academic boycott of apartheid South Africa, see SAJFP FA pp 68–69 para 134. Vol 6A

¹²³ ICJ Advisory Opinion *Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem* (2024).

- 76 Most importantly for the purposes of this application, the ICJ clarified the obligations of third-party states (such as South Africa) and the institutions within those states (such as UCT). This includes an obligation, broadly defined, not to render any aid or assistance to Israel or institutions in Israel toward maintaining the situation.¹²⁴ While the ICJ's advisory opinion postdates the Gaza resolutions, it confirms the legal position. As a public institution, UCT's IDF resolution is an expression of these international legal obligations.
- 77 The resolution is not a boycott, although an academic boycott can be a legitimate tool to apply pressure on human rights violators, as was done in support of South Africa's liberation movements during apartheid.¹²⁵ Prof Scott, an expert in this matter, wrote in the Journal of Academic Freedom that it is *"because we believe so strongly in principles of academic freedom that a strategic boycott of the [Israeli] state that so abuses it makes sense right now"*.¹²⁶
- 78 The IDF resolution, though not a full academic boycott, is therefore an expression of UCT's commitment to opposing scholasticide. SAJFP submits that the resolution affirms and protects, rather than limits, academic freedom.¹²⁷ It is part of a history of universities upholding their ethical and legal obligations to refuse complicity in crimes against humanity.

¹²⁴ At para 279.

¹²⁵ SAJFP FA pp 67-69 paras 133.3-134. Vol 6A

¹²⁶ Prof Scott expert affidavit pp 106–107 para 26. Vol 6A

¹²⁷ SAJFP FA pp 59–60 para 115. Vol 6A

The limited scope of the IDF resolution: A small but positive step forward

- 79 Contrary to Prof Mendelsohn's claims, the IDF resolution's scope is limited. SAJFP believes that a more expanded and extensive resolution would be appropriate and justified, but submits that the resolution is a positive step forward.¹²⁸
- 80 The IDF is the primary Israeli institution enforcing the gross and sustained abuse of the rights of Palestinians. For this reason, the resolution aims to prevent research collaboration with IDF members and certain IDF-affiliated institutions. It applies only to individuals who are directly and actively affiliated with the IDF and other Israeli military institutions. It does not apply to former IDF soldiers, or to academic organisations and institutions just because they may include people affiliated to the IDF. Furthermore, it does not apply to surveys of IDF members or research about the IDF.¹²⁹
- 81 The resolution therefore aims to comply with international legal obligations and protect the university from being complicit in human rights violations, crimes against humanity and in particular scholasticide. It also aims to actively oppose these crimes, in line with UCT's social responsibility and commitment to academic freedom.¹³⁰

The IDF resolution and academic freedom

- 82 As opposed to the narrow notion of academic freedom on which Prof Mendelsohn's application turns, UCT's Academic Freedom, Autonomy and Accountability Guiding Principles adopt a holistic understanding of Academic Freedom that is inherently

¹²⁸ SAJFP FA p 71 para 141. Vol 6A

¹²⁹ SAJFP FA pp 66-67 para 131, p 70 paras 136–139. Vol 6A

¹³⁰ SAJFP FA pp 70–71 paras 139–140. Vol 6A

connected to other values and aims of the university and explicitly rejects a “*strict content-neutral approach to academic freedom*”.¹³¹

83 According to the Guiding Principles, academic freedom is “*a core value necessary for society to flourish*” and one which “*cannot be viewed in isolation of other core values in higher education, including equitable access, accountability, institutional autonomy, social responsibility, and human rights*” and from “*its economic, historical, social, political, and cultural determinants and impacts*”.¹³² This understanding of academic freedom has emerged from struggles for justice and intellectual autonomy on the African continent, and entails that the goal of achieving and defending academic freedom cannot be blind to past and present forms of injustice. SAJFP submits that the resolutions have to be read consistently with this holistic approach to academic freedom.¹³³

84 Further underscoring a holistic interpretation of academic freedom as driven by the imperative of social justice, UCT’s Guiding Principles were informed by the Kampala Declaration on Intellectual Freedom and Social Responsibility (“the Kampala Declaration”), which was adopted at a Symposium on Academic Freedom and Social Responsibility of Intellectuals on 29 November 1990. According to the Kampala Declaration, members of the intellectual community shall not “*participate in or be party to any endeavour which may work to the detriment of the people or the intellectual community*” (Article 23); and “*the intellectual community is obliged to show solidarity and give sanctuary to any member who is persecuted*” (Article 24).¹³⁴

¹³¹ SAJFP FA pp 72–73 paras 148–150. Vol 6A

¹³² SAJFP FA p 74 para 154.2. Vol 6A

¹³³ SAJFP FA pp 74–75 paras 154–155. Vol 6A

¹³⁴ SAJFP FA p 75 para 156. Vol 6A

- 85 Prof Scott and Prof Kamola, who are experts on academic freedom, support this holistic, collective understanding of academic freedom.¹³⁵ It is this understanding that undergirds their view, not least as members and leaders of the American Association of University Professors, that “*academic boycotts conducted in an effort to defend academic freedom do not violate academic freedom*”.¹³⁶
- 86 This is all buttressed by the historical understanding of academic freedom set out above with reference to the Open Universities.
- 87 Having regard to UCT’s stated principles endorsing a holistic, historically and societally situated understanding of academic freedom; the ongoing scholasticide in Palestine; and the international legal obligations on South African public institutions as outlined above, SAJFP submits that the IDF resolution protects academic freedom rather than violates it.

UCT COUNCIL’S LEGAL AUTHORITY TO ADOPT THE GAZA RESOLUTIONS

- 88 The authority of UCT Council to adopt the Gaza resolutions is ultimately a matter for UCT to address.
- 89 Nevertheless, SAJFP wishes to make the following submissions on this question, particularly those that are relevant to SAJFP’s submissions on the substantive merits of the Gaza resolutions.

¹³⁵ Prof Scott expert affidavit pp 101, 109 paras 7, 33; Prof Kamola expert affidavit pp 120–122 paras 25–29. Vol 6A

¹³⁶ Prof Kamola expert affidavit pp 116–117 para 17. Vol 6A

- 90 UCT Council is both empowered and obliged by Section 12(1) of UCT's Institutional Statute, read with Section 27(1) of the Higher Education Act, to “*govern*” UCT in terms of the provisions of the Act and the Statute.
- 91 An interpretation of the nature and scope of UCT Council's power and responsibility to “*govern*” UCT must be done in a manner that promotes the spirit, purport and objects of the Bill of Rights,¹³⁷ in particular the right to freedom of expression,¹³⁸ including academic and scientific freedom.¹³⁹
- 92 As to the antisemitism resolution, SAJFP submits that the passing of the antisemitism resolution is a reasonable and legitimate mechanism of “*governing*” UCT for the following reasons:
- 92.1 It addresses the threat that the adoption and enforcement of the IHRA definition would bear for legitimate and constitutionally-protected speech and expression, including academic research;
- 92.2 It responds to the large body of evidence demonstrating the impact that the adoption and enforcement of the IHRA definition at universities, particularly in the United States, has had on these freedoms; and
- 92.3 It counters the efforts made by private donors to pressure UCT to sanction speech and conduct that the IHRA definition deems antisemitic.

¹³⁷ Section 39(2) of the Constitution.

¹³⁸ Section 16(1) of the Constitution.

¹³⁹ Section 16(1)(d) of the Constitution.

92.4 By clarifying UCT's understanding of antisemitism, in order to better detect and address antisemitism on campus, it fulfils UCT's responsibility to protect Jewish students and staff from racism and discrimination.¹⁴⁰

92.5 UCT Council's refusal to adopt a definition that conflates criticism of Israel or Zionism with antisemitism, as the IHRA definition does, reduces the risk of harm to Jewish staff and students that adopting such a definition poses — namely, that it obscures real instances of antisemitism and makes their identification more difficult or contentious.¹⁴¹

93 As to the IDF resolution:

93.1 SAJFP submits that the adoption of the resolution should be understood in light of the holistic understanding of academic freedom, in particular its “*dual mandate*” to protect academic autonomy and fulfil the institution's responsibilities to its own community and to broader society.

93.2 Such an understanding is supported by UCT's own Guiding Principles, the Kampala declaration, and UCT's context and history as an African institution.¹⁴²

93.3 UCT is explicit in its answering affidavit that the adoption of this resolution was aimed at “[*preventing*] the university's association with allegations of gross human rights violations, breaches of international criminal justice and international humanitarian law and possible genocide.”¹⁴³

¹⁴⁰ SAJFP FA p 77 para 160. Vol 6A

¹⁴¹ SAJFP FA pp 77–79 para 160.2–160.4. Vol 6A

¹⁴² SAJFP FA p 75 para 155. Vol 6A

¹⁴³ UCT AA pp 1120 para 359.2. Vol 4A

CONCLUSION

- 94 SAJFP submits that the Gaza resolutions constitute a reasonable and legitimate attempt to protect freedom of expression, including academic freedom, and to ensure UCT fulfils its commitments to international law and its own principles of social responsibility.
- 95 SAJFP submits that the resolutions are reasonable and lawful and should not be set aside.

Geoff Budlender SC

Mitchell de Beer

Chambers, Cape Town

12 October 2025

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