

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

Case No.: \_\_\_\_\_

In the matter between:

**OBSERVATORY CIVIC ASSOCIATION**

Applicant

and

**TRUSTEES FOR THE TIME BEING OF**

**LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

**HERITAGE WESTERN CAPE**

Second Respondent

**CITY OF CAPE TOWN**

Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT**

**(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL**

**AFFAIRS & DEVELOPMENT PLANNING, WESTERN**

**CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,**

**ENVIRONMENTAL AFFAIRS & DEVELOPMENT**

**PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT**

Fifth Respondent



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**EXPERT AFFIDAVIT**

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I, the undersigned,

**DEIRDRE PRINS-SOLANI,**

do hereby make oath and state as follows:

1. I am an independent consultant and practitioner specialising in the fields of intangible heritage research, education, and community-based inventorying.
2. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.

### **INTRODUCTION**

3. As an independent consultant and practitioner, I have more than ten years of experience in the fields of intangible heritage, education and community-based inventorying. I have gained professional experience in my specialist fields in multiple regions and countries. Within the African region I have experience working on heritage issues in Rwanda, Ghana, Kenya, Seychelles, Mauritius and South Africa. I am an active facilitator for the UNESCO 2003 Convention for the safeguarding of intangible cultural heritage and also a member of the UNESCO



2003 global capacity facilitators network. Details of my qualifications, training and experience are set out in the attached copy of my *curriculum vitae* ('DP1'). I respectfully submit that I am qualified by my qualifications, training and experience to express the expert opinions which are set out in this affidavit.

4. The Applicant in this matter requested me to review, and provide my expert opinion on, the following reports which form part of the final environmental impact report ("Final EIR") for the proposed development of the River Club site in Cape Town:

4.1. the 2019 Heritage Impact Assessment prepared in terms of Section 38 of the National Heritage Resources Act, by Steven Townsend and Tim Hart; and

4.2. the Heritage Western Cape's commentary in relation to that Heritage Impact Assessment.

5. In the course of preparing this affidavit I have also reviewed and considered the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

6. In this affidavit, as in the founding affidavit:

6.1. "the developer" means the First Respondent;

6.2. "the proposed development" means the River Club Development;

6.3. "the 2003 Convention" or "the 2003 UNESCO Convention" both refer to the Convention for the Safeguarding of Intangible Heritage adopted by the

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United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2003; and

- 6.4. “The Heritage Impact Assessment” or “HIA”, unless otherwise indicated, refers to the 2019 Heritage Impact Assessment prepared in terms of Section 38 of the National Heritage Resources Act, by Steven Townsend and Tim Hart on behalf of the LLPT, submitted as part of the Final EIR for approval of the proposed development.
7. This affidavit consists of the following 6 parts:
    - 7.1. Part One describes and clarifies the concept of Intangible/ “Living” Heritage and its dynamic nature;
    - 7.2. Part Two describes the links between Intangible Cultural Heritage, urban land issues and related disruptions to social fabric in Cape Town;
    - 7.3. Part Three outlines the relationship between Intangible Cultural Heritage and urban sustainable development, both in general and with specific reference to Cape Town;
    - 7.4. Part Four outlines global best practice for practitioners’ engagements with Intangible Cultural Heritage, and considers the extent to which such best practice is evident in HIA;
    - 7.5. Part Five assesses the merits of the arguments and findings of the Heritage Western Cape commentary on the HIA;

7.6. Part Six provides a conclusion and my opinion on the adequacy of the assessment of intangible heritage by the developer and its consultants, on the basis of Parts One, Two, Three, Four and Five above, in my capacity as an independent expert on intangible cultural heritage, its management and safeguarding.

## **PART 1: INTANGIBLE CULTURAL HERITAGE (ICH)**

8. Intangible Cultural Heritage (“ICH”), a term used interchangeably with the term “Living Heritage”, is defined as those aspects of a person, group or community’s heritage which are not immediately visible. They have no physical or material form, such as buildings or objects or place.
9. However, they may be manifest in material form. Examples of these are:
- 9.1. objects used for sacred practices or producing crafts;
  - 9.2. a building which manifests the human capacity for thought and writing;
  - 9.3. a space designated and used for rituals; or
  - 9.4. a landscape linked to particular beliefs, practices, or spiritual qualities.
10. The 2003 UNESCO Convention identifies the following particular domains of ICH:
- 10.1. oral traditions and expressions (and language as a vehicle of ICH);
  - 10.2. performing arts;
  - 10.3. social practices;



- 10.4. rituals and festive events;
  - 10.5. knowledge and practices concerning nature and the universe; and
  - 10.6. traditional craftsmanship.
11. These domains are only a guideline and, in some cases, countries (including for example China and Brazil) have expanded these domains in keeping with their particular contexts and needs.
  12. Where there are distinct domains associated with living heritage, there are elements of living heritage which may overlap multiple domains. Similarly, whilst there are cultural values associated with living heritage, ICH elements can be identified in all aspects of human life. These may include among several others: health, knowledge of the world, moral systems, economy, cultural expression and so on. This ever-present nature of living heritage in the everyday is both a challenge to heritage practitioners, as well as processes which attempt to document or inventory living heritage.
  13. South Africa is not currently a signatory to the 2003 UNESCO Convention on ICH. However, the definitions of ICH provided in the 2003 Convention as well the mechanisms for its safeguarding are in line with the provisions of the National Heritage Resources Act, 1998 (“**NHRA**”) and are generally accepted as global best practice for understanding, assessing, managing and safeguarding intangible cultural heritage.



14. Intangible heritage is accounted for in South African legislation and in policies at all levels of government. These include, but are not limited to the following laws and policies.

14.1. The National Heritage Resources Act:

14.1.1. Section 2(xxi) provides a definition for “living heritage” as “the intangible aspects of living culture”, to include cultural tradition, oral history, performance, ritual, popular memory, skills and techniques, indigenous knowledge systems, and the holistic approach to nature, society, and social relationships. These definitions overlap with those of the 2003 UNESCO Convention and in certain respects are even broader and more inclusive than those of the 2003 Convention.

14.1.2. Section 3(2)(a-d) includes the definition of the National Estate: *places, buildings, structures and equipment of cultural significance; places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes; and landscapes and natural features of cultural significance.*

14.1.3. The association of place with living heritage is clearly framed as an indicator of heritage significance in the NHRA. In other words, the heritage significance of a place or landscape is not limited to spaces that contain material relics such as buildings or archaeological material. A “heritage resource” as defined in the NHRA, and used in Section 38(3), may include places, spaces, or landscapes that



are significant because of their association with intangible heritage, oral history, indigenous knowledge systems and so forth, and is not limited to buildings or other material heritage. Such spaces should, according to the provisions of the NHRA, be included in a register of the National Estate which SAHRA is mandated to draw up.

- 14.2. South Africa also has a Draft Policy on Intangible Heritage, intended to provide more explicit tools for the management of intangible heritage than those currently in place within the NHRA.
  - 14.3. The National Department of Science and Technology has had a policy on Indigenous Knowledge Systems (“**IKS**”) in place since 2004. The NHRA defines IKS as one of several elements of intangible heritage.
  - 14.4. The City of Cape Town has had an Arts, Culture and Creative Industries policy in place since 2014, which specifically mentions intangible heritage as a key element of the city’s heritage and cultural capital.
15. From the above, it is clear that all levels of government, from national to local, regard intangible heritage as an irrevocable and critical element of the National Estate that intersects with diverse socio-economic interests including urban cultural policy, science and technology, place-making, and the protection of spaces and landscapes.





16. Living heritage is dynamic in nature, changing according to wider social, economic, cultural, environmental and other factors. It either responds to change or serves as a catalyst for change.

16.1. An example of this is the practice of female genital mutilation which had been common practice in parts of Kenya, and in response to a changing political and constitutional framework has been changed so as to be in keeping with the Universal Declaration of Human Rights

16.2. As an example of intangible heritage being a catalyst for change, we can look to the assignment of land rights ownership and protection in the Republic of Korea to women, so as to continue the agricultural production of *rami*.

17. The inherently dynamic nature of living heritage therefore precludes the valuing of any forms of intangible heritage based purely on the idea that it is “authentic”. The concept of “authenticity” is a modality or definition often used in the assessment of significance for tangible heritage such as buildings and material culture. In the application of the 2003 UNESCO Convention on ICH across the globe, States parties are actively discouraged from using notions of “authenticity” in assessing value and importance. In addition, States parties are encouraged to involve communities of practice (those for whom the ICH is identified as a part of their identity) to determine values, condition and safeguarding of the ICH. Global best practice is therefore that heritage significance is to be determined by the groups/

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individuals/ communities who identify the living heritage as theirs, and as a part of their identity.

## **PART 2: ICH AND URBAN LAND ISSUES IN CAPE TOWN**

18. The colonial and apartheid histories of South Africa have disrupted conditions for many living heritage practices. In the context of the 2003 UNESCO Convention, a critical element of safeguarding living heritage is the creation and sustainability of a viable environment for intangible heritage practices to continue.
19. "The environment", in this case, includes; the social, political, economic, natural environment, social and cultural conditions necessary for it to be seen to be useful and good for the community of practice.
20. Colonial ideologies of private land ownership, as opposed to an indigenous knowledge system and way of being in the world rooted in the idea of custodianship of land, created historical ruptures which were both economic and social in nature. These historical ruptures deeply affected cultural practices in relation to land and place as well.
21. This disruption is further deepened through the brutal Natives Land Act of 1913 and later Group Areas Act of 1950 under Apartheid. Disruptions of land ownership and settlement in the Cape led to changes in the ways in which living heritage was and is practiced.



22. It can also be safely assumed that much living heritage no longer exists because of these disruptions. However, there is also evidence, through continued investigations of foodways, plant and herbal medicinal knowledge and practices, rites of passage, language (“Afrikaaps”) and so on, that there has been both a confluence of cultural influences in the living heritage of the Cape which has emerged over time, as well as living heritage practices which have been sustained through adaptation to context.
23. In South Africa land and conservation issues are further entangled in its colonial and apartheid past, where distinctions have been and continue to be drawn between what is regarded as “natural” and “cultural” heritage with little recognition and affirmation of the interrelationship between these.
24. The prescribed EIA processes administered by the National Department of Forestry, Fisheries and Environment, and in this case the Western Cape Department of Environmental Affairs and Development Planning, includes questions on living heritage which go some way to bridging this divide. It can certainly help in providing a systematic way of identifying, documenting information about living heritage associated with particular natural landscapes.

### **PART 3: ICH AND URBAN SUSTAINABLE DEVELOPMENT**

25. The provisions of the 2003 UNESCO Convention clearly state that no safeguarding measures of living heritage can take place without taking into consideration its role in ensuring sustainable development.



26. In global best practice, the investigation of living heritage aspects within communities need to be coupled with an investigation of their contributions to, and relationship with, the United Nations Sustainable Development Goals. In the disparate and unequal levels of livelihood and economic growth in the city of Cape Town, any investigation of living heritage needs to identify the opportunities for addressing the requirements of the Sustainable Development Goals and particularly those related to building sustainable cities.
27. The diversity of cultures within urban spaces makes for a complex process of identification and documentation of living heritage. Such identification and documentation have however been done successfully in several contexts, some of which I have been personally involved in. These include Marrakesh, Morocco, Zimbabwe, Kingston, Jamaica, Salt River, Cape Town and the development of cultural policy for the Cayman Islands and Jamaica, to name a few.
28. The 2003 UNESCO Convention speaks specifically to the importance of protecting community access to place as a mechanism for safeguarding living heritage.
29. One method of engaging with the complexities of landscapes that are closely linked to intangible heritage practices is through the mechanisms of the Historic Urban Landscape (“HUL”) approach. The HUL approach aims to identify places of significance, associated values and the living heritage elements which reside in them and which are associated with them. These elements then inform design and form for any future development, with an emphasis on inclusivity and meaningful community participation.



**PART 4: ASSESSING THE HERITAGE IMPACT ASSESSMENT IN TERMS OF  
GLOBAL BEST PRACTICE FOR ICH ASSESSMENT AND SAFEGUARDING**

30. Community-Based Inventorying (“CBI”) is a critical and core methodology, created by UNESCO, for the identification and documentation of living heritage.
31. As the name indicates, CBI is led and driven by communities rather than “experts” or academics. The identification of who constitutes “the community” is an important part of this exercise.
32. The 2019 Townsend and Hart HIA only refers specifically to the First Nations. However, historic records of the site indicate that there is a far wider and more complex composition of “community”, and that a homogenous concept of “First Nations” does not capture this complexity. This would include users of the site over a lengthy historical period and their descendants, as well as members of the Cape Town community who have been pushed to the margins of the city through Group Areas legislation.
33. The disruption of colonization and apartheid spatial design adds another level of complexity in the identification of community. Nothing in the 2019 HIA reflects an engagement with these levels of complexity.
34. In CBI, the role of experts, the state and academics are largely to serve as resource persons and facilitators of the research. CBI involves:
- 34.1. the identification of living heritage elements with their given/colloquial names;



- 34.2. a description of what constitutes the living heritage element;
  - 34.3. identification of risks and concerns which affect the safeguarding/protection of the living heritage;
  - 34.4. documentation of the modes of transmission; and
  - 34.5. existing safeguarding mechanisms.
35. This systematic process leads to the creation of an inventory which is made accessible and available to community members, and serves as a resource for planning, research and so on. The spurious reference to oral history and the dependence on archival, expert and archaeological evidence in the 2019 HIA is in conflict with the notion of community driven process.
36. Coupled with the CBI process is the identification of material heritage resources which emerge from this process and are linked with intangible practices: place, landscape, archival material, objects and so on are examples of these.
37. The final component of the CBI is the identification of significance and value of any given element of intangible heritage. While the focus of the CBI could be specifically related to place, it is important to note that there may be other elements which emerge associated with other located sites.
38. There is nothing in the 2019 HIA which indicates that any or all of the above steps have been undertaken.



- 38.1. There is no evidence of a systematic identification and documentation of living heritage associated with the site.
- 38.2. The significance of living heritage which has been outlined in the HIA is limited and does not reflect the levels of complexities explained above, neither does it explicate even some of the historical information shared in the HIA.

## **PART 5: HERITAGE WESTERN CAPE COMMENTARY ON THE HERITAGE IMPACT ASSESSMENT**

39. The HWC response to the HIA is thorough and comprehensive and I agree with the findings. I wish to reiterate the following in the light of the above.
- 39.1. The narrow boundaries of the river courseway proposed for the HIA are not enough as the scope of the site is much larger than the proposed development site and should not be disaggregated. This disaggregation has resulted in significance being lost, and the coherence between existing uses and buildings being ignored. A thorough inventorying of living heritage would reveal meanings, significance and interrelationships between various components of the whole that are not captured in the HIA.;
- 39.2. The visual and sound routes across the proposed site are part of the heritage value – but these aspects are is not well explored in the HIA. For



example, there is no Visual Impact Assessment which assesses, compares and overlays living heritage aspects.

39.3. The focus on the river courseway as the only site of significance erases the relationship between land and people and living heritage.

39.4. An adequate living heritage inventorying process should have been undertaken to ensure that the heritage impact assessment complied with the requirements of Section 3(2)(a-d) of the NHRA and met the conditions for ascertaining heritage significance provided in Section 3(3) of the NHRA. Such a process would be in keeping with the provisions of Section 38(3) of the NHRA, particularly:

39.4.1. Section 38(3)(a): "The identification and mapping of all heritage resources in the area affected"; and

39.4.2. Section 38(3)(b): "An assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under Section 7".

## **PART 6: CONCLUSIONS**

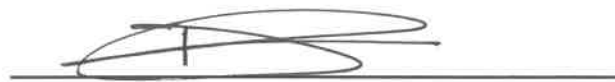
40. Considering the failure of the HIA to adequately assess the impacts of the development on the intangible and living heritage associated with the site, in my expert opinion:





- 40.1. Heritage Western Cape was correct to rejection the HIA, on the grounds that it does not meet the requirements of Section 38(3) of the NHRA;
- 40.2. a new heritage impact assessment must be undertaken which includes a careful inventorying of living heritage related to the site, in order to comply with NHRA as well as global best practice;
- 40.3. the significance and values of the living heritage elements associated with the site must fundamentally inform any development plan, as opposed to being last-minute mitigating additions; and
- 40.4. a clearer articulation between the living heritage and heritage resources associated with the site, and the United Nations sustainable development goals should be made and integrated by the developer into a broader business model or plan.

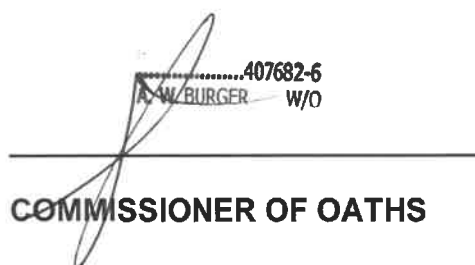


**DEIRDRE PRINS-SOLANI**

I hereby certify that the deponent has acknowledged that she:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on her conscience.

Thus signed and sworn to before me, at  
on **July 2021**, the Regulations contained in Government Notice  
No. R1258 of 21 July 1972 (as amended), having been fully complied with.



.....407682-6  
A. W. BURGER W/O

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**COMMISSIONER OF OATHS**



## CURRICULUM VITAE

1. **Proposed role in the project: Mentor**
2. **Family name: Prins-Solani**
3. **First names: Deirdre**
4. **Date of birth: 17/07/1970**
5. **Nationality: South African**
6. **Civil status: South African**
7. **Education:**

Institute Name [from (date) - to (date)]	Level of Degree(s) or Diploma(s) obtained Title of Studies
University of Cape Town	Bachelor of Arts
University of Cape Town	Diploma in Education
University of Cape Town	Postgraduate Diploma in Organisation Development
University of Cape Town	Postgraduate Diploma in Adult Education
University of Cape Town (Current)	Masters in Southern Urbanism (Environmental and Geographical Sciences)

8. **Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing
English	1	1	1
Afrikaans	1	1	2

9. **Membership of professional bodies:**

Association of Critical Heritage Studies

Member of the International Council of Museums

Member of board for the Intangible Cultural Heritage subcommittee

UNESCO facilitator for intangible cultural heritage

Past president of South African Museums Association (SAMA)



Founding Member of Board for the African Program in Museums and Heritage Studies (APMHS: University of Western Cape and Robben Island Museum)

Past President of International Council of African Museums (AFRICOM)

**10. Other skills: (e.g. Computer literacy, etc.)**

Computer literacy, immersive interactive dialogue processes

**11. Present position:**

Student – Mphil in Southern Urbanism, African Centre for Cities, Environmental and Geographical Sciences, University of Cape Town

Independent Consultant – Education, Culture and Heritage

**12. Number of Years within the firm:**

7 years

**13. List of key qualifications: (Relevant to the project)**

**Education degree** – exceptional skills in facilitating learning processes, mediation and creative research methods

Strategic thinking and planning for organisational development/**UCT Postgraduate diploma**

**In service training:** - internship at Smithsonian, ICCROM/PREMA (International Centre for the Study of the Preservation and Restoration of Cultural Property, Prevention in Museums of Africa) – design of learning resources and materials

**Facilitator for the UNESCO 2003 Convention for the safeguarding of intangible cultural heritage** – exceptional high level and community based (inclusive processes) consultation skills for policy reviews, redesign and writing

**14. Specific experience in the region:**

Country	From (date) - to (date)
Rwanda	2015 to present
Ghana	June 2018 to February 2019
Seychelles	February to June 2017
Mauritius	2012-2015
Kenya	2009-2012
Southern African region	1998 - 2018
South Africa	1998 - 2019
Algeria	March to July 2019
Southern and East Africa	June to December 2018

### 15. Professional experience

<b>Dates</b> From (date) - to (date) (Total n° months)	<b>Location</b> City, Country	<b>Employer:</b> Firm, Reference Contact. Funding source (EC, USAID, DFID...)	<b>Position</b> Title of Position and Seniority Level (Senior/Junior)	<b>Description</b> Title of Project, main goals, main activities of the expert, (if possible) budget of the project
June 2020- present	Global	International Council of Museums	Co-creator/writer	Development of ICOM MOOC on building and sustaining inclusive museums
February 2021- June 2021	Global	UNESCO ICH section	Co-creator/writer	Development of UNESCO online course modules on gender and living heritage
Part Time lecturer and supervisor/ Mentor On-going	South Africa	University of Cape Town	Lecturer	Lecture on world heritage and intangible cultural heritage
February 2020- October 2021	South Africa	University of Cape Town	Facilitator	Introducing community based inventorying to three local communities in Cape Town as part of a broader spatial justice research initiative
August 2020	South Africa	University of Cape Town	Facilitator	Facilitated an EU-SA dialogue on culture and urbanisation
September 2020	South Africa	University of Cape Town	Lecturer	Facilitating a Masters Degree studio course on film theory and urbanism

2017- 2019	Rwanda	Institute of National Museums Rwanda Isidore Ndikumana +250 738 742 026	Senior consultant	Lead local team in the revision and regeneration of the education, marketing and public programs departments within Rwanda
June 2018 – February 2019	Ghana	UNESCO Ghana, Ghana Ministry of Tourism, Arts and Culture Carl Ampah +233 27 4239651	Senior Consultant	Lead local team in conducting country wide needs assessment of the culture and heritage sector, draft research report and strategic plan with budget. This included policy review and proposals for revision
February to June 2017	Seychelles	Ministry of Youth, Sports and Culture Julienne Barra +2482724637	Senior Consultant	Lead local team in dialogue sessions and workshop on cultural policy gaps and revisions across three islands
2012 – 2015 (over two week block period)	Mauritius	University of Mauritius George Abungu +254 724462883	Lecturer	MPhil in Heritage Management Studies, taught module on intangible cultural heritage

2009 –June 2012	Kenya	Centre for Heritage Development in Africa (CHDA) Webber Ndoro +39 06585531	Director	Responsible for capacity building, research and development support to heritage agencies, local communities for English speaking Africa. Remit included; world heritage, national and local heritage site management and intangible cultural heritage
1998 - 2018	Southern African region	UNESCO Damir Dijakovic +263 77 722 3323	Senior consultant/Lead facilitator	Research, capacity building and cultural policy review
March – July 2019	Africa region	UNESCO HQ, Paris and CRESPIAL, UNESCO Category Two Centre, Algeria Susanne Schnuttgen +33 603 208368	Lead Facilitator Researcher	Plan, co-facilitate training of trainers for new cohort of global capacity building facilitators in UNESCO 2003 Convention for Africa  Conduct monitoring and evaluation of global capacity building program in Africa, analyse data and write up report

1998 - 2019	South Africa	Department of Arts and Culture Robben Island Museum Archival Platform/UCT Western Cape Government Gordon Metz +27 83 2703088		Training for Transformation within Museums (SAMMA/DAC collaboration) Revise policies through consultative processes for the Robben Island Museum as part of development of an Integrated Management Plan 'State of the Archives' national consultation process for policy and planning/budgeting process Deeply consultative process for the Redesign and installation of new exhibition at the Drostdy Museum, Swellendam Facilitate community dialogue sessions for the planning of a Cape Town Museum
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**16. Other relevant information (e.g., Publications)**

Kindly see attached publication list