

**IN THE EQUALITY COURT
(HIGH COURT, CAPE TOWN)**

Case number: Equality Court 03/2016

In the matter between:

SOCIAL JUSTICE COALITION	First Applicant
EQUAL EDUCATION	Second Applicant
and	
MINISTER OF POLICE	First Respondent
NATIONAL COMMISSIONER OF POLICE	Second Respondent
WESTERN CAPE POLICE COMMISSIONER	Third Respondent
MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE	Fourth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned

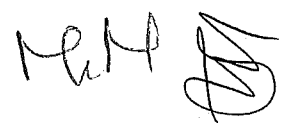
NTUTHUZO NDZOMO

do hereby make oath and state:

I INTRODUCTION

1. I am an adult male (ID 9201045733081), serving as the Deputy General Secretary of Equal Education (**Equal Education** or **EE**), the Second Applicant in this matter.

2. Equal Education is a movement of learners, parents, teachers and community members working for quality and equality in South African education, through analysis and activism. I am duly authorised by the National Council of Equal Education to depose to this affidavit and to bring this application on Equal Education's behalf. A copy of the resolution is annexed as **NN1**.



- 3. The facts contained in this affidavit are both true and correct, and unless the context indicates otherwise, within my personal knowledge. The submissions of law I make in this affidavit are made on the advice of Equal Education’s legal advisors. I believe that advice to be correct.

- 4. This application concerns the irrational and inequitable allocation of police resources (**the resourcing policy**) to poor and black communities, which results in unfair discrimination. The Founding Affidavit of **PHUMEZA MLUNGWANA**, deposed to on behalf of the First Applicant, explains the manner in which the resourcing policy impacts on the interrelated fields of race, poverty and crime.

- 5. The purpose of this affidavit is not to repeat the contents of the Founding Affidavit. Equal Education endorses the full contents of that affidavit, and I confirm its contents insofar as it relates to EE. Rather this affidavit is intended to provide EE’s perspective on the impact of the discriminatory distribution of resources on learners in under-resourced areas, and on EE itself. It provides additional evidence about EE’s attempts to address school violence, the impact of discriminatory resourcing on learners and on EE. Moreover, EE advances supplementary evidence about how the resourcing policy limits the right to basic education, and is contrary to various international treaties.

- 6. This affidavit is structured as follows:
 - 6.1 The objectives and work of Equal Education;
 - 6.2 The steps Equal Education has taken to address violence in schools in poor communities;
 - 6.3 The negative impact of the discriminatory and irrational system of allocation of police resources on learners;

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6.4 My personal experiences in Khayelitsha and the negative impact that the discriminatory and irrational resourcing policy has on the work of Equal Education; and

6.5 Finally, the supplementary legal grounds Equal Education contends support the relief in the notice of motion.

II THE OBJECTIVES AND WORK OF EQUAL EDUCATION

7. Equal Education is a membership-based social movement whose members are learners, teachers, parents and community members, and is duly approved as a public benefit organisation. A letter from the South African Revenue Services is annexed hereto as **NN2**.

8. Equal Education has standing to institute proceedings under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (**the Equality Act**) on a number of grounds, including:

8.1 Equal Education constitutes a *“person”* as defined in the Equality Act as EE is a *“juristic person”* and/or *“a group or category of persons”*;

8.2 Equal Education acts, *“in the interests of, a group or class of persons”*, namely its members who are learners across five provinces in South Africa (Equality Act s 20(1)(c));

8.3 Equal Education acts as *“any person acting in the public interest”* (Equality Act s 20(1)(d)); and

8.4 Equal Education acts as *“any association acting in the interests of its members”* in that one of the EE’s objectives is to campaign to achieve equal and quality education for every person (Equality Act s 20(1)(e)).

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9. Additionally, Equal Education has standing to bring this application in terms of section 38 of the Constitution.
10. Equal Education's core objective is to campaign to achieve equal and quality education for all. In terms of clause 5 of its Constitution EE may conduct a broad range of activities to achieve this objective, including but not limited to:
- 10.1 contributing to a strong civil society that holds private interests, government, individuals, and itself accountable to the values in its Constitution;
 - 10.2 promoting and defending basic democratic principles and rights, such as freedom of expression and association, access to information, privacy, good governance, participation in democratic elections, and freedom and security of the person, including freedom from sexual harassment and gender-based violence;
 - 10.3 sharing information and ideas, and supporting campaigns of other organisations and movements locally and globally that advance freedom, equality and human rights; and
 - 10.4 where necessary, using courts and legal processes to advance the values and objectives listed in its Constitution.

I attach a copy of EE's Constitution as annexure **NN3**.

11. Whilst government has a duty to lead society and to marshal all the resources available – both publicly and privately – to achieve quality education for all, Equal Education believes that the systemic crisis in education cannot be solved by government alone.

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12. Our movement was established in 2008 in Khayelitsha, Western Cape. It has a representative learner Leadership Committee of approximately 60 members. It also has a parents' committee.
13. The core of Equal Education's membership base is high school learners, termed "Equalisers", who actively advocate quality education for all. EE has approximately 3,220 Equaliser members across five provinces (KwaZulu-Natal, Eastern Cape, Western Cape, Limpopo and Gauteng) who are active on a weekly basis. Equal Education also has a parent component, with six EE parent branches located in the Western Cape and Gauteng. In addition, Equal Education has many more active supporters throughout South Africa.
14. Equal Education works to promote quality education for all through campaigns grounded in grassroots mobilisation and detailed policy analyses which are supported, where appropriate, by litigation. EE has, for example, conducted awareness programmes and campaigns for the realisation of the rights of learners to life, safety and security, dignity and quality education in the Western Cape, Eastern Cape, Gauteng, Mpumalanga, KwaZulu-Natal, the North West Province and Limpopo.
15. Since its inception, Equal Education has been concerned with learning conditions in poor and working class schools and communities. EE's very first campaign was aimed at ensuring that over 500 broken windows at a school in Khayelitsha were fixed so as to improve the school's physical conditions and to ensure that teachers and learners could focus better in the classroom.
16. We have engaged provincial and national departments through meetings, letters, petitions, pickets, marches, night-vigils, and a 24-hour sleep-in at the gates of Parliament. Equal Education's marches have taken place in Cape Town,

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Johannesburg, Tshwane, Polokwane, New Hanover, Pietermaritzburg and Bhisho. Over 100,000 people in South Africa have signed Equal Education petitions, for example calling for one library per school. Over 40,000 people have marched in Equal Education marches calling for basic school infrastructure, school libraries, school safety, scholar transport and for educational inequalities to be addressed.

17. Since 2010, our movement has run campaigns advocating against learners' arriving late at schools in Cape Town and Ekurhuleni, as well as campaigns encouraging learners to return textbooks at the end of the school year. The campaign against late-coming has involved hundreds of learners, parents, and civil society structures.
18. In 2010, Equal Education launched a sustained campaign to compel the Minister of Basic Education to promulgate legally-binding regulations pertaining to norms and standards for school infrastructure in line with her responsibilities under section 5A of the South African Schools Act 84 of 1996 (**the Schools Act**). The sustained activism of our members and supporters around the country, combined with legal strategies and interventions, resulted in the adoption of regulations for school infrastructure on 29 November 2013.

III **STEPS TO ADDRESS VIOLENCE IN SCHOOLS IN POOR COMMUNITIES**

19. Equal Education has taken various steps to address violence in schools in poor communities. One of these steps was leading a march to the Western Cape provincial legislature in October 2014, where more than 2,000 Equalisers from across the Western Cape called on the Western Cape Education Department to address the education inequalities. One of the reasons for this march was that many learners find it impossible to learn because they experience schools as violent places, where gangsters are able to enter the school premises freely to sell drugs and rob learners. The Equalisers' memorandum stated that 32% of learners in Khayelitsha have seen



another human being shot, 46% have witnessed a stabbing, and that murder is the leading cause of death for people of the ages 15 to 18 years living in Khayelitsha. A copy of the memorandum is attached marked **NN4**.

20. In September 2013, Equal Education joined a coalition of civil society organisations, including SJC, in a solidarity visit to Manenberg. Historically Manenberg, a Cape Flats township, has been plagued by gang-related violence. The organisations met with the community to assess the impact of gang violence on the ability to teach and learn. A media report of the visit is attached marked **NN5**.
21. In November 2011, together with SJC and several other organisations, Equal Education lodged complaints with the Premier of the Western Cape that led to the establishment of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between South African Police Service (**SAPS**) and the Community of Khayelitsha (**the Khayelitsha Commission**).
22. Yoliswa Dwane, the Chairperson, and a founding member, of Equal Education, submitted an affidavit to the Khayelitsha Commission, outlining some of her experiences as a young black woman living and working in Khayelitsha. Dwane's affidavit is annexed hereto marked **NN6**.
23. In her affidavit, Dwane explains that Equal Education facilitates regular youth groups in Khayelitsha. These youth groups provide a platform for Equalisers to meet and discuss the movement's strategy and direction, and to engage in learning about socio-economic struggles and political history. Through these interactions, Dwane explained, EE became aware of the socio-economic struggles of its high school membership in Khayelitsha. Dwane notes: "*the high incidences of violent crime affects school going youth as much as it affects other population groups if not more*" (para 35).



24. Equal Education welcomed the findings of the Khayelitsha Commission, contained in its Report, which is annexed to the Founding Affidavit and which contains a number of Recommendations. We especially welcomed Recommendation 12 about Youth Safety in Khayelitsha. Recommendation 12 calls on the Western Cape Department of Community Safety (**DOCS**) to establish a multi-sectoral task team within six months from the date of the Report. This task team should consist of DOCS and other institutions including the Western Cape Education Department, the Provincial Department of Social Welfare, the City of Cape Town and non-governmental organisations that work with children and youth. Once established, the task team must draw up a strategic plan dealing with the issue of youth gangs; and the plan should at least address the following issues: (1) safety in schools; (2) provision of learner transport; (3) provision of after school care and extra mural activities; (4) ensuring that schools monitor absenteeism patterns of learners; (5) development and extension of diversionary programmes for youth at risk; (6) visible policing; (7) a consistent approach to the arrest and prosecution of young people suspected of committing crimes; and (8) crime intelligence work to assist to eradicate violent gang practices.
25. In response to the Khayelitsha Commission's Report, the Khayelitsha Joint Forum was established to: *"build an environment in Khayelitsha where all people but particularly vulnerable persons (including seniors, people living with disabilities, women, lesbian, gay, bisexual, transgender and intersex persons; asylum-seekers, refugees and immigrants; **youth; children** and informal traders) feel and are safe and secure."* (emphasis added)
26. The Joint Forum consists of various sub-forums, including a Youth Forum. The Youth Forum consists of various institutions including SAPS, DOCS, SJC and EE. A Youth



Forum Plan had been drawn up, a copy of which is annexed as **NN7**. The Youth Forum Plan however fails to address all the issues as set out in the above paragraph.

27. On 3 December 2015, a letter was sent to DOCS, the Western Cape Premier, First Respondent (**the Minister**), Third Respondent (**Provincial Minister**) and other task team members to enquire about the implementation of Recommendation 12. A copy of the letter is annexed as **NN8**. Equal Education requested information, amongst others, about the strategic plan for safety in schools, the strategic plan for provision of safety measures for learners while travelling to schools in Khayelitsha and the strategic plan for visible policing. EE specifically enquired about the provision for a police presence at schools in Khayelitsha. Searches of learners have to be conducted at schools and weapons must be seized and this cannot be done without SAPS or Metro Police officers. Safety measures should also be put in place for learners travelling to and from schools in Khayelitsha, including increased visible policing.

28. After almost two months, DOCS responded on 29 January 2016. It explained that, despite numerous attempts, SAPS has repeatedly failed to sign a draft Memorandum of Understanding between it and DOCS about their respective duties and responsibilities and about a structure for the implementation of the Commission's recommendations. A copy of the letter from DOCS is annexed as **NN9**. None of the other parties to whom the letter was addressed bothered to respond.

IV THE IMPACT OF DISCRIMINATORY RESOURCE ALLOCATION ON LEARNERS

29. In poorer areas, learners are victims or perpetrators of violent crimes. In our experience as an organisation working with members in various provinces, including the Western Cape and KwaZulu-Natal, we see how an absence or shortage of police resources negatively impact on learners.

30. Under my supervision, Equal Education launched a social audit of schools in the Western Cape during August 2015. The social audit focused particularly on the issues of safety and sanitation, which EE members had identified as critical issues affecting their right to access basic education.

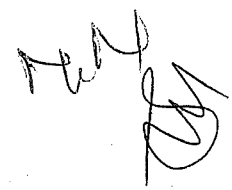
31. The social audit involved learners and community members visiting schools, observing conditions and conducting in depth interviews with principals and learners.

32. The social audit is the product of months of dedicated work by Equal Education facilitators, staff, Equalisers and parents, supported by communities across the province. The final report has not yet been released, so it is not attached to this affidavit, but it will be made available to this Court prior to the hearing of this application. A number of findings are clear:

32.1 Learners in poor and black communities feel unsafe on their travels to and from school, as well as at their schools. The perception of a lack of police contributes to this feeling, and exacerbates learners' experience of crime.

32.2 The prevalence and impact of school-based violence on learners in poor and black communities are distressing. The Western Cape has the highest rate of violence and robberies in South Africa's schools, and the second highest rate of assault and sexual assault. This is confirmed by the 2012 Centre for Justice and Crime Prevention Report annexed hereto marked **NN10**.

32.3 One third of learners in quintile 1 schools (which are schools located in the poorest communities) feel unsafe at their school. In the urban setting this increases to half of all learners.



32.4 61% of learners surveyed walk all the way to school and a further 8% walk some of the way. 89% of the learners who walk to school are unaccompanied, and 31% of learners walking to school feel unsafe. The latter percentage increases to 41% when considering only those learners who walk long distances. This fear is rooted in the high number of learners experiencing or witnessing crime on the way to or from school.

32.5 The presence of sufficient numbers of police resources, and concomitant police efficiency, are significant deterrents to crime. It is not surprising then that, proportionate to the discrimination in allocation of police resourcing to precincts in black communities, white learners are shown to have suffered significantly less violence in the past year.

32.6 When the police are present, it is usually just around school hours: morning (43%) and after school until 3 pm (27%). They are much less likely to be present in the late afternoon (3%) or evening (1%). The absence of police presence contributes to a feeling amongst learners that they are unsafe. As the social audit found: *"Police presence tends to make learners feel safer. In general, 81% of learners felt safer when police are around. This does decline for secondary learners, which only feel 74% safer (sic) when police are present. Interestingly, police presence makes poorer learners feel safer at a higher rate (84%) than learners in general."*

33. A lack of adequate police resources in poorer, black communities profoundly impacts on access to education of learners in those communities. The social audit found that: *"The SAPS and security agencies are failing to protect people in communities where their presence is insufficient in deter [sic] potential offenders or catch those who commit crimes. The task team report on the state of policing in Khayelitsha, which was*

commissioned by the National Commissioner of the SAPS, shows that policer officers would fail to do basic tasks like collect fingerprints or other forms of evidence at crime scenes; fail to comply with domestic violence regulations; and wrongfully release suspects or help them escape custody.

The deficiencies in South Africa's criminal justice system have far reaching social consequences. When justice is not seen to be done, citizen trust in safety institutions is reduced, if not completely shattered. It creates an environment where criminals may wage violence with impunity. The result is communities resort to vigilantism or mob justice which further undermines the rule of law and the primacy of the Constitution".

34. Children should be safe in their communities and should feel safe at home as well as on their journeys to and from school. The school itself should be a place where learners can focus on their studies and the experience of growing by making friends and working together on projects. Learners in poor schools, however, are distracted by a sense of fear of violence and crime.
35. The social audit findings highlight how a lack of police resources is negatively impacting the constitutionally guaranteed rights to safety and education of learners in poor, black communities. While learners in poor, black communities are being exposed to violence and crime on a daily basis, white learners are shown to have suffered significantly less violence in the past year. This constitutes unfair discrimination and violates the learners' right to equality.

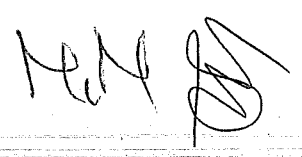
Discriminatory Allocation of Police Resources in Nquthu, Kwazulu-Natal

36. Nquthu in the Umzinyathi District of northern KZN, has an estimated population of 165,300, of whom 99.7% are classified as Black African. The town is primarily rural and comprises mostly of dispersed rural settlements, with only 10% of its population living in semi-urban areas. The local municipality accepts that the provision of basic

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infrastructure such as water supply, electricity, sanitation, as well as social services is largely insufficient.

- 37. In the Nquthu area there are only 135 police officers for every 100 000 people in the area. This lack of police resources and police visibility leaves Nquthu learners vulnerable to crime and violence. Without resources and police efficiency, Nquthu precincts are unable to provide these learners with adequate protection. The actual distribution of police to precincts in Nquthu presents an example of the way that the irrational resourcing policy unfairly discriminates against black people in that region.
- 38. From August 2014, Equal Education members began mobilising learners, parents and community members in Nquthu to demand the provision of scholar transport for learners in the Nquthu area who have to walk long distances to school. We became aware of the struggle of hundreds of learners without scholar transport, who are compelled to walk long distances to and from school each day.
- 39. During this mobilising drive we obtained affidavits from learners at fourteen schools in Nquthu. The common theme amongst these learners is that they walk in excess of 6 km to and from school every day, through dangerous terrain and mountainous areas. Some learners walk through fields, forests and dongas with some leaving as early as 3 am in order to arrive at school on time.
- 40. Learners travelling these long distances regularly deal with sand or dirt roads and/or unfavourable weather conditions. Those lucky enough to find a ride are often packed into the back of open-top bakkies with dozens of other learners, risking serious injury and death.
- 41. Learners are also a target for violent attacks and crime on their routes to and from school. The perpetrators are adults and fellow learners. The struggle of Equal



Education's membership and other learners in Nquthu therefore highlights not only a barrier to access to education, but also an ongoing infringement on the rights of learners and children to safety. Learners in Nquthu have experienced or witnessed many incidents of muggings, kidnapping and rape while walking to and from school, and often feel that the police have not or will not be efficient in investigating these crimes. In the afternoons learners have to navigate territories controlled by rival gangs. These dangers are compounded when learners are forced to walk to school in the dark.

42. Sherylle Dass (**Dass**), an attorney at the Equal Education Law Centre, was advised by the Principal of Hlubi High School, that there were two notable incidents of rape of learners of his school who were walking long distances to school. One was a young girl who was raped on her way home and still had to walk to her home thereafter. The second incident involved a young boy; who was so traumatised after being raped that his parents took him out of the school. Dass interviewed the young girl, who described her rape ordeal to Dass. A supporting affidavit by Dass will be filed together with this affidavit.
43. The infringement on learners' rights to education, safety and equality is rooted in the lack of police resources and police visibility in the Nquthu area, caused by the unfairly discriminatory allocation of police resources.

V PERSONAL EXPERIENCES AND THE IMPACT OF THE RESOURCING POLICY ON EQUAL EDUCATION

44. I was born in Khayelitsha and spent my whole childhood there. I attended both primary school and high school in Khayelitsha. As the Deputy General Secretary of Equal Education, I work in Khayelitsha.

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45. As both a child and adult in Khayelitsha, the lack of visible and active policing has affected me directly. During my schooling years, I knew of friends who had been mugged.
46. I became an Equaliser whilst I was still in high school. I became involved with Equal Education because the movement spoke to my realities as a learner. Equal Education appealed to me as it encouraged South Africans to confront the deep-rooted inequality existing in our society whether it be in education, health care or justice. Since then I have remained active in Equal Education, and now work full-time as the Assistant General Secretary.
47. I have been a victim of crime several times in Khayelitsha. In 2011, I was held up at knife point and the attackers stole my cellphone and cash. In 2012, I was robbed outside the Equal Education offices. This experience still haunts me today. In 2012, two separate robberies occurred on EE's premises in Khayelitsha in which computers and kitchen appliances were stolen at gunpoint.
48. In March this year, a car parked just outside my office window. Whilst I was looking at the occupants of the vehicle, the occupants took out guns and proceeded to enter our offices where the staff was held up and robbed. My personal assistant and I locked ourselves in our office. The robbery resulted in Equal Education having to close our office for a week. Staff members worked from town as they did not feel safe or comfortable in the Khayelitsha office. EE's human resources manager organised counselling for staff members. Equal Education now prohibits staff members accessing the Khayelitsha office after hours and during the weekends.
49. In addition, in the time that we have been based in Khayelitsha members and employees of Equal Education have been victims of robberies on their way to or from

the Equal Education office. In most cases the police have not conducted further investigations or even attempted to apprehend the offenders, despite receiving full descriptions of the assailants. This lack of response has led to a general apathy towards reporting crimes save for when it is necessary for insurance purposes.

- 50. Equal Education continues to face similar incidents, which significantly impact on the movement's mobilisation action and campaigns. Equal Education is naturally not the only organisation so affected. Many NGOs working in areas like Khayelitsha are negatively affected by the lack of policing resources and the resulting decrease in safety.

VI SUPPLEMENTARY LEGAL GROUNDS

51. Equal Education fully endorses the claim of unfair discrimination as set out in the Founding Affidavit. However, EE submits that the unfair discrimination must also be evaluated against the background of existing statutes and treaties protecting the rights of children. These additional submissions are not new causes of action. The Applicants have one cause of action: unfair discrimination under the Equality Act. These submissions merely supplement and contextualise that cause of action.

52. In this Part, I briefly summarise the complementary legal grounds that EE will advance at the hearing of this matter. These can be divided as follows:

- 52.1 The Equality Act;
- 52.2 Children's Rights;
- 52.3 The Right to Education;
- 52.4 The African Charter of the Rights and Welfare of the Child (**African Charter**);
and

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52.5 The United Nations Convention on the Rights of the Child (**UN Convention**).

The Equality Act

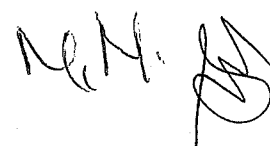
53. Equal Education endorses the First Applicant's unfair discrimination analysis in terms of the Equality Act. The current resourcing policy fails to take into account the existence of systemic discrimination and inequalities in poor black communities as a result of the apartheid system. By failing to alter the resourcing policy in line with the recommendations of the Khayelitsha Commission, SAPS has not acted in accordance with one of the Guiding Principles of the Equality Act which recognises "*the need to take measures at all levels to eliminate systemic discrimination and inequalities, particularly in respect of race, in all spheres of life as a result of past and present unfair discrimination, brought about by colonialism, the apartheid system and patriarchy* (Equality Act s 4(2)).

54. Equal Education contends that the resourcing policy has a particularly adverse effect on poor, black learners. The very real threat of danger experienced by learners in poor, black communities, partly as a result of the resourcing policy, means that many such learners do not attend school and/or do not receive a quality education that they otherwise would, and to which they are entitled, should they feel safe, not only on their commute to and from school, but also within the school environment. Learners would feel safer (and less unsafe than their rich, white counterparts) if police resources were equitably allocated. The resourcing policy does not have the same impact on white learners in more affluent areas. The resourcing policy thus infringes black and poor learners' rights to equality and basic education by excluding them from the full opportunity of attending school and/or receiving a quality education. The resourcing policy therefore directly impacts on learners' right in terms of s 29(1)(a) of the Constitution to receive a basic education.

55. It is necessary, appropriate, and obligatory, for the Respondents to develop a policy that addresses any unfair discrimination against poor, black children as a result of the allocation and distribution of SAPS officers in poor, black communities. Equal Education has demanded from that SAPS fulfils its obligations, but it has failed to do so.
56. What is required is a policy that distributes resources in a manner that is consistent with the Equality Act and the Constitution. Such a policy will go some way to addressing the realities experienced by learners in poor and black communities.
57. For the same reasons submitted in the First Applicant's Founding Affidavit, we submit that the discrimination against black, poor school children on the intersecting grounds of race and poverty cannot be justified as fair discrimination. In particular, as noted in the Founding Affidavit, the discriminatory distribution of police resources impacts multiple constitutional rights. In addition to the right to equality (section 9), the following rights are infringed: the right to human dignity (section 10); and the right to freedom and security of the person (section 12).
58. Equal Education wishes to highlight the impact the discriminatory allocation of police resources has on children's rights (section 28) and the right to basic education (section 29(1)(a)).

Children's Rights

59. The Children's Act 38 of 2005 was enacted to give effect to children's rights in terms of section 28 of the Constitution. The Children's Act confirms that the best interests of the child are of paramount importance and the objectives of the Children's Act include giving effect to the Republic's obligations concerning the wellbeing of children.
60. SAPS have failed to fulfil its obligations under the Children's Act. In particular:



60.1 Section 5 of the Children’s Act mandates all organs of state (in all spheres) involved with the care, protection and wellbeing of children to cooperate in the development of a uniform approach aimed at coordinating and integrating the services delivered to children. The SAPS, as an organ of state, thus has an obligation to cooperate in developing such an approach. Its refusal to engage in implementing Recommendations 7 or 12 of the Khayelitsha Commission’s Report is contrary to this obligation.

60.2 Section 6(2) of the Children’s Act further requires that all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child’s rights as set out in the Bill of Rights; respect the child’s inherent dignity; treat the child fairly and equitably; and to protect the child from unfair discrimination on any ground. Section 9 of the Children’s Act furthermore provides that in all matters concerning the care, protection and well-being of a child, the best interests of the child are of paramount importance. Determining the allocation of resources is a decision that directly affects children and the rights of children to be treated fairly and equitably had to be considered. The results of the current policy demonstrate that they were not taken into account.

60.3 Children have a right to care and protection especially where the child lives in or is exposed to circumstances which may seriously harm that child’s physical, mental or social wellbeing. Children living in poor, black communities live in and are exposed to circumstances which may seriously harm them. Children in these communities fear being criminally victimised both during the journey to and from school and whilst in school. More police are needed in these areas to ensure the safety and protection of these children.

Right to Education

61. All children have a right to a basic education. Circumstances that prevent or limit access to education violate that right. Being too scared to walk to school, or too scared to concentrate in school, clearly limits that right. That is the exact effect of the current discriminatory allocation of police resources for children in poor, black areas.

African Charter of the Rights and Welfare of the Child

62. South Africa is a signatory to the African Charter and accordingly is bound by the provisions therein which impose both positive and negative obligations upon the State.

63. The African Charter states that the best interests of the child are of paramount importance. The African Charter additionally confers a number of rights upon children and specifically provides that every child is allowed to enjoy these rights and freedoms "regardless of his or her race, ethnic group... social origin, fortune... or other status". Accordingly, all children are afforded the same rights irrespective of their background or circumstances and this means that children in poor, black communities cannot be denied the right to safety, security and access to education by mere virtue of their race and poverty.

64. The African Charter further obliges States to address the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination. SAPS must accordingly address the special needs of children exposed to an increased chance of criminal victimisation due to the lack of adequate allocation of police officers in areas with higher crime rates.

65. The African Charter also demands of governments to obliterate harmful social and cultural practices that affect the welfare and dignity of children. SAPS thus should implement measures, including the better allocation of police officers in areas with higher crime rates, so as to protect the dignity and welfare of the children living in such areas.

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UN Convention on the Rights of the Child

- 66. South Africa is also a signatory to the UN Convention and the instrument accordingly imposes binding obligations upon the State.
- 67. The UN Convention too provides that the best interests of the child shall be a primary consideration. It requires State Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members. SAPS has ignored and/or failed adequately to respond to requests for a better allocation of police officers to high crime areas.
- 68. The UN Convention further obliges State Parties to undertake to ensure protection and care of the child as is necessary for his or her wellbeing. State Parties are obliged to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. The South African state thus has an obligation to ensure that the SAPS, as an institution responsible for the protection of children, conform with standards established by competent authorities.
- 69. State Parties are mandated, in terms of Article 19.1, to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. It is clear that SAPS has failed to meet this obligation.
- 70. Equal Education submits that the unfair discrimination challenge must be decided against the background of the fact that the state, including SAPS, is obliged to take steps to ensure the safety and protection of children, as children's rights are

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recognised both locally and internationally thus creating a robust duty to uphold and enforce these rights.

VII CONCLUSION

71. The allocation of police resources unfairly discriminates against poor black people. It has a particularly negative effect on children, and limits their rights as children, and their right to a basic education. The unfair discrimination is inconsistent with South Africa's international obligations regarding children. It must be remedied.

72. I accordingly pray for the orders sought in the notice of motion.

N. Ndzomo

NTUTHUZO NDZOMO

Signed and sworn before me at Cape Town on this 19th day of April 2016 the deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath to be binding on his/her conscience.

Shareefah Manuel

COMMISSIONER OF OATHS

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